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Senate

The Senate met at 12 noon and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord of life and love and laughter, You are the alpha and the omega, the beginning and the end. Thank You for the miracle of a new day. We pause to acknowledge Your sovereignty and to admit that because of You we live and move and breathe and have our being.

Show us how to use this day's fleeting minutes for Your glory. Make us Your instruments to bring deliverance to captives and sight to the blind. Open our ears to cries of despair all around us and forgive us for our premature declarations of peace. Sanctify our thoughts, words, and deeds throughout this week and in all the days of our lives. We pray this in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 1805, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1805) to prohibit civil liability actions from being brought or continuing

against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from the misuse of their products by others.

Pending:

Hatch (for Campbell) amendment No. 2623, to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

Kennedy amendment No. 2619, to expand the definition of armor piercing ammunition and to require the Attorney General to promulgate standards for the uniform testing of projectiles against body armor.

Craig (for Frist/Craig) amendment No. 2625, to regulate the sale and possession of armor piercing ammunition.

Levin amendment No. 2631, to exempt any civil action against a person from the provisions of the bill if the gross negligence or reckless conduct of the person proximately caused death or injury.

Warner amendment No. 2624, to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

Lautenberg amendment No. 2632, to require that certain notifications occur whenever a query to the National Instant Criminal Background Check System reveals that a person listed in the Violent Gang and Terrorist Organization File is attempting to purchase a firearm.

Lautenberg amendment No. 2633, to exempt lawsuits involving injuries to children from the definition of qualified civil liability action.

The PRESIDENT pro tempore. The Senator from Idaho is recognized.

SCHEDULE

Mr. CRAIG. Mr. President, today, the Senate will resume consideration of S. 1805, the gun liability bill. The unanimous consent agreement from Friday provides for approximately 4 hours of debate in relation to two proposed amendments that will be voted on tomorrow. The debate today will center around the gun show loophole amendment and the assault weapons ban amendment.

I will manage time on our side during this period, so Senators are welcome to come to the floor to speak.

Following the debate, at 4 p.m. today, Senator BINGAMAN will offer his amendment relating to definition. Under the order, that debate will go until 5 o'clock, at which time we will vote in relation to the Bingaman amendment. Therefore, the first vote of today's session will occur at 5 o'clock.

The consent agreement governing the remaining consideration of the gun manufacturers' liability bill allows for further debate tomorrow morning prior to a series of stacked votes on a number of amendments. There will be as many as seven stacked votes, including final passage, in that series of votes, which will begin at 11:35 a.m. on Tuesday.

Members can therefore expect final passage of S. 1805 tomorrow afternoon.

The PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, Senator FEINSTEIN will be managing the first hour of the debate today on assault weapons; and Senator JACK REED from Rhode Island will be the manager of the second hour relating to gun show loopholes.

Let me wish my colleagues a good afternoon.

THE BUDGET FOR VETERANS AFFAIRS

Mr. President, I want to talk, on my leader time, about an issue that will be the subject of a good deal of attention next week; and that is the budget, especially as it relates to our veterans.

The budget this year has many reasons for concern for all of us. I will address many of those concerns at a later time. But I want to focus, this afternoon, if I can, on just one; that is, the budget for Veterans Affairs.

The legislation before the Budget Committee would increase the Veterans Affairs budget by about 2 percent. Unfortunately, that represents about a \$700 million increase in health care for veterans going from approximately \$28.5 billion to \$29.2 billion—a \$700 million increase for veterans health.

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



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S1901

What is disturbing to me about that number is what one finds when you look at what it means a little more closely. What it means is that, for the first time, veterans themselves will be required to pay fees in excess of \$1 billion for health care that they were promised. People probably cannot fully appreciate what that means—a billion-dollar fee requirement from veterans themselves for the first time. We have never, in all of history, had a requirement that veterans pay at this level—\$1 billion—for health care.

For now, categories 7 and 8 will be charged \$250 a year before they can walk in the door the first time. Their fees—which have been \$7, and were \$2 just a couple years ago—for prescription drugs now go up to \$15. Their per-office doctor visits go from \$15 to \$20.

So for the first time, veterans, in many cases, will be denied care, not because they do not need it but because they cannot afford it.

When I was home over the last week or so, it was troubling to me how many veterans said: Senator DASCHLE, \$250 may not seem like a lot to you, but there is no way I can pay \$250. I just won't get care; or: I will try to find care at some clinic where it's free.

It is so troubling to me that I would be hearing that from veterans who gave so much to their country, at a time when we are counting on our soldiers to do so much for us in Iraq, in Afghanistan, and now in Haiti. Time after time, we send our soldiers into harm's way. They come back now, having felt the brunt of that war, and we tell them we just can't afford to give them the care they need.

This is only one of the issues that will be debated during the veterans budget. But I hope all of us—Republicans and Democrats alike—will be very careful before we commit to this new fee structure.

Some of us have argued for a long time that it is now time for us to pass what we call mandatory funding—to treat veterans health the way we treat Medicare, the way we treat Social Security—to recognize that we have an obligation, and it ought to be met.

Mandatory funding is a bill that has been offered to authorize this new status in health care delivery, and I hope that our colleagues would consider it very carefully.

What is all the more troubling is that there is also a provision in our veterans health care system that is very ironic, it seems to me, in so many ways. We actually require a veteran, after he has gone to a private physician and has been prescribed prescription medicine, to go to a VA doctor to have it verified. Sometimes the VA doctor requires additional physicals. But this duplicative process, this requirement for yet another VA physician review now costs the Veterans' Administration a billion dollars. So the irony is that now that we are asking veterans to pay for fees they cannot afford—now in excess of a billion dollars—we are

actually spending a billion dollars we would not have to spend if we simply said we are going to trust the decisions made by those physicians in the first place. We tested it with 8,000 veterans over the last couple years, and we found there was absolutely no problem associated with having this requirement that a VA doctor be consulted eliminated. We could save a billion dollars.

I argue that billion dollars ought to come out of the fees required of our veterans. That alone would reduce some of the anxiety and extraordinary frustration so many of our veterans now experience. This, too, is a veterans budget matter that I hope we can address both in the Budget Committee, as well as on the floor of the Senate in the coming days as we debate the veterans budget.

There are two other issues of budget connection and budget relevance that I think we ought to address. The next is the concurrent receipt problem. It is still remarkable to me in this day and age that we deduct disability compensation from retirement income for veterans. Those who gave the most are now required to pay the biggest financial sacrifice. For the life of me, I cannot understand why. We are told we cannot afford it, but those men and women could not afford to give up their jobs, sometimes their good health, to go into war either.

Where there is a will, there is a way. We ought to be cognizant of the incredible disparity and extraordinary unfairness for every disabled American veteran today by this practice of deducting disability pay from retirement. Over the last couple of years, we have actually ultimately passed compromise legislation that would allow veterans who are at least 50-percent disabled from beginning to receive their full compensation for both disability and retirement. But it will be phased in over the next 10 years. A lot of veterans in South Dakota told me they will be gone before this legislation is fully phased in. So I hope we can also look at concurrent receipt.

Let's eliminate the disability tax. Let's recognize that we owe these disabled veterans more than just lip service. Let's recognize in this day and age, especially now as some are even required to pay fees, that this disparity, this unfairness, this embarrassment in our Veterans' Administration health delivery and compensation system has to be addressed.

Finally, while the President pro tempore has been as sensitive to this issue as anybody in the Chamber, we still have a long way to go in providing TRICARE to all members of the Guard and Reserve. I was reminded, as I talked to another guardsman who has been permanently injured as a result of wounds incurred in Iraq, he has no health insurance. I worry about all of those veterans who come home, about the prospect of losing their health insurance not only for themselves but for

their families. In this day and age, with the extraordinary role now played by the National Guard and the Reserve, we can't accept a double standard with regard to the way health care is provided. If we are forcing these young men and women into battle, if we are forcing them to endure the pain, suffering, anxiety, the loss of life and limb, we ought to at the very least provide them with the health insurance they have earned and they deserve.

So we will be offering legislation once again to provide full funding for TRICARE health insurance for members of the Guard and Reserve. It is my hope that on a bipartisan basis, as we have done now on several occasions, we can pass it, enact it into law, and send a clear message that that double standard, too, will end in this Congress.

Mr. President, there are a lot of issues relating to veterans that I hope will be provided the time, attention, and priority they deserve. We will have the first opportunity during the budget debate next week. I look forward to that debate and to the consideration of amendments to address many of these concerns. I am hopeful that on a bipartisan basis we can address them successfully.

I yield the floor.

The PRESIDENT pro tempore. Under the previous order, there will be 4 hours of debate, with 1 hour of the time controlled by the Senator from Arizona, Mr. MCCAIN or his designee; 1 hour under the control of the Senator from California or her designee; 2 hours under the control of the Senator from Idaho, Mr. CRAIG, or his designee.

Mr. REID. Mr. President, if anybody wants to use part of their time, they have to get permission from Senator FEINSTEIN. She is here to use her hour. Senator REED will be the designee for Senator MCCAIN. We have the offer of the amendment by Senator BINGAMAN for an hour, and then we will vote.

The PRESIDENT pro tempore. Who seeks recognition?

The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I rise on behalf of myself and Senators WARNER, SCHUMER, DEWINE, LEVIN, CHAFEE, DODD, JEFFORDS, BOXER, and CLINTON, and also Senators REID and LAUTENBERG, to offer an amendment which is identical to S. 2109, introduced early last week. This amendment will simply reauthorize the 1994 assault weapons ban. It is a straight reauthorization. There is nothing added to it.

The present legislation sunsets on September 13 of this year. As you and others know, the President has said he will sign a straight reauthorization. This is it.

Mr. President, I want to thank Senator WARNER, who I hope will be here shortly to speak for himself. I very much appreciate his cosponsorship of this legislation. When the legislation came before this Senate 10 years ago, Senator WARNER didn't support it. Therefore, his reconsideration of that

position is all important. I won't give reasons for it. I believe that is up to him. I believe both he and Senators DEWINE and SCHUMER will be utilizing the hour of our time.

I ask that the Chair inform me when 15 minutes of the hour has passed, if I might.

The issue of assault weapons is near and dear to my heart. It is not about politics or polls or interest groups. In my view, it is about real people and real lives. It is about the ability of working men and women and children to be safe from disgruntled employees or schoolmates who show up one day at a law firm or school or a place of business and fire away until the room becomes filled with dead and wounded colleagues.

Unfortunately, in this society, we are always going to have some people who are prone to grievance killing.

It is my belief the assault weapon, the military-style semiautomatic assault weapon, has become the weapon of choice for grievance killers.

It is about the ability of children to learn, play, and grow without the fear that someone such as Dylan Klebold or Eric Harris would show up at Columbine High School with assault weapons and fire until the school is literally littered with bodies—a dozen students and a teacher murdered, more than two dozen others injured.

It is about making sure our law enforcement officers can safely go about their duties and return home to their families at the end of the day, instead of finding themselves confronted, such as Officer James Guelff found himself in 1994, with assailants wearing body armor and firing from an arsenal of 2,000 rounds of ammunition and a cache of assault weapons.

The officer was gunned down after 10 years of service, and it took 150 police officers to equal the firepower of a gunman clad in Kevlar carrying assault weapons.

I first raised this issue in 1993, when I was a new Senator. I was determined to try to pass the assault weapons legislation as an amendment to the crime bill. Members told me: Forget it; the gun owners around here have too much authority. We would never be able to enact assault weapons legislation. I was told the NRA was simply too strong. Senator BIDEN, then-chair of the Judiciary Committee, said it would be a good learning experience for me, and, in fact, it was.

It was the will of the American people, it turns out, that was stronger than any lobbying organization, even the National Rifle Association. And today, 77 percent of the American people and 66 percent of gun owners believe this legislation should be reauthorized.

We got the bill passed, and America has been safer for it. In fact, the percentage of assault weapons used in crimes since this bill has passed has diminished by two-thirds. That is the fact. Assault weapons traced to crimes

since the passage of this legislation have diminished by two-thirds. That is the good news.

It is interesting, the NRA says: Oh, the ban doesn't work; it is just cosmetic; forget it. But the ban does work, and it was carefully put together. No gun owners have lost their weapon because of this legislation. No gun anywhere in America has been confiscated from a legal owner because of this ban. The sky did not fall. Life went on, but it went on with fewer grievance killings, fewer juveniles using them, fewer driveby shooters having access to the most dangerous of firearms.

I want to talk about just a few of the guns we banned. The bill banned 19 specific assault weapons and then set up a physical characteristics test which, frankly, if given my way, I would toughen now. We have had more experience. We know gun manufacturers get around it. California has toughened the test and, basically, I would like to emulate that legislation. Clearly, the votes are not in this Chamber for it; certainly not in the other Chamber, and we probably would not be able to gain a Presidential signature. I probably used too optimistic a word by using "probably." Let me say we would not be able to gain a Presidential signature.

Let me speak for a moment about perhaps the most notorious assault weapon, the AK-47. This gun, developed in the former Soviet Union, is one of the most widely used military weapons in the world. It is not used to hunt, at least not to hunt animals. It is not well designed for home defense. Its ammunition can easily pierce walls and kill innocent bystanders. I will tell you what it is good for: the rapid killing of other people. How well I remember when an unstable drifter by the name of Patrick Purdy, with an assault weapon modeled after the AK-47, walked into a Stockton schoolyard in northern California. He lay on his belly, and he fired indiscriminately into the schoolyard. He fired 106 rounds of ammunition. By the time he was done, 5 children were dead and 29 were injured—five children dead because of a drifter who could gain one of the most powerful military weapons and use it against children.

Each of these children had families. They had futures. One might have been a doctor one day, another a teacher, maybe even one a Senator, but they never got that chance. Their families did not see them grow up.

Then there is the Uzi. The Uzi was designed for Israeli paratroopers in the 1950s. Again, this is not a weapon designed for hunting or self-defense. This is a weapon of war. It can spray fire rapidly and with some accuracy and is used for raids, firefights, and, to put it simply, the killing of enemy soldiers in close combat.

An easily concealed weapon of war that sprays fire can also be used against civilians, and so it was when James Huberty walked into a McDonald's in San Ysidro, CA. He was able to

kill 21 people and wound 15 others. The McDonald's customers were simply in the wrong place at the wrong time. Had Huberty carried a revolver, who knows how many lives would have been saved. But with an Uzi, there is no ability to escape. With a big clip and a light trigger, nobody can get to you to disarm you before you have emptied the clip. The spray fire begins and the tragedy looms large. Again, a weapon of war falls into the hands of a grievance killer.

The TEC-9. For me, these incidents really came to a head on July 1, 1993, when a man by the name of Gian Luigi Ferri walked into 101 California Street carrying two high-capacity TEC-DC9 assault pistols.

Let me show you what he looked like. He is dead in this picture. Look at this clip on this assault pistol. Look at the additional clips he was carrying in the bag. And look at the weapon in his hand.

Ferri's gun—well, his guns—actually had special spring-loaded hellfire switches that allowed them to be fired, for all practical purposes, as fast as a machine gun. As a result, it did not take long for him to accomplish his task. Within minutes, he murdered eight people and six others were wounded.

I just looked at a shot of a lovely blond woman on the floor in her office with three shots in her back and one in her shoulder. I have spoken to the survivors and families of these victims over the years, and I can tell you it is just plain heartbreaking.

One such survivor was Michelle Scully. I will paraphrase what happened to her that day. Michelle and her husband John Scully—he was a lawyer in the firm—sought refuge in the nearest room, but the door did not have a lock. Michelle and John tried to block the door with a file cabinet, but they could not move it. Finally, he spread his 6-foot-4 body over his wife as a shield as the gunman wordlessly opened the door and fired this gun over and over again.

John was hit six times. His wife once. "Michelle, I'm sorry," John Scully said a few minutes later, "I am dying."

No one should have to go through this. No one should have to read about it in a newspaper. Nobody goes to work in the morning or says goodbye to their spouse expecting something like what happened at 101 California Street.

These were not soldiers or law enforcement officers. These were people doing everyday jobs in an everyday place. Because a person who had a bone to pick also had two assault pistols, eight lives were ended before the day was done.

Now, my colleagues can tell me guns do not kill people, that people kill people. Of course, I have to agree with that, but when there is a nut or a man so inflamed that he is going to go out and exact vengeance and a weapon of war designed to kill large numbers in close combat is made available to him,

when our Government enables this to happen, we fall down on the job because we are here to see that there are laws that protect people.

In 1994, a man used a TEC-9 to kill three people in the Washington, DC, police headquarters. Those killed were two FBI agents and a veteran police sergeant. The shooter walked into the crowded building with a concealed weapon, one of the key factors in how dangerous these weapons can be because they either have collapsible shoulder mounts or they are easily concealed. He then proceeded unimpeded directly into a homicide squad office and began firing. This is what the TEC-9 can do. Again, we do not hear stories of TEC-9s being used to hunt deer. We do hear about tragedy after tragedy.

The PRESIDENT pro tempore. The distinguished Senator has utilized 15 minutes of her time.

Mrs. FEINSTEIN. I thank the Chair. I appreciate that.

In 1999, even after the assault weapons ban had been law for almost 5 years, Dylan Klebold fired 55 shots from a TEC-DC9 at Columbine. The TEC-DC9, a gun manufactured before the ban took effect and thus grandfathered and legal, was obtained from a gun show and then used to kill his fellow students.

It is my hope that over time and the way the bill is structured, the availability of these guns will dry up because what the legislation does is prohibit the manufacture and the sale of these weapons, not the possession. When they do dry up, the Dylan Klebolds of the world can no longer have access to them.

The supply of these guns is not going to dry up, however, if the assault weapons ban sunsets in September. We would be giving Intratec and other such companies a renewed license to manufacture these military guns and market them elsewhere across the Nation.

We specifically exempted 670 rifles and shotguns from the legislation so anybody who said, oh, my gun is going to be taken, could be reassured and we could show them we did not, in fact, take their gun.

Although it may be difficult to read, this is the listing of the hunting guns and other recreational weapons protected in the legislation. It goes on and on. The Weatherby Mark V Sport Rifle, the Savage Model 111BC heavy barrel varmint rifle, and all centerfire rifles that are single shot, drillings, combination guns; shotguns-auto loaders; shotguns-slide actions; shotguns-over/unders; centerfire rifles-auto loaders; centerfire rifles-lever and slide; centerfire rifles-bolt action; shotguns-side by sides, shotguns-bolt actions and single shots. Total, 670 hunting weapons.

The reason I did this is I approached some Members of the Senate and said, what do they need to support legislation? And they said they needed assur-

ance that hunting weapons are not covered. We provided that assurance. That assurance has worked and no one has lost a single weapon on this list.

The list includes every conceivable weapon: shotgun, rifle, et cetera. It is designed to protect the ability of innocent gunowners to keep their hunting weapons and to keep their guns for self-defense. The list of protected guns and the 9 years of accounting of history behind the ban show that the National Rifle Association's hysterical claims of gun confiscation are simply not true.

I will speak about support for this legislation. As my colleagues can see from the list behind me, countless organizations, civic and law enforcement, are asking that this assault weapons legislation be reauthorized. At the top of the list we have the largest law enforcement organization in the Nation, the Fraternal Order of Police. We have the National League of Cities, the United States Conference of Mayors, National Association of Counties, the International Association of Chiefs of Police, the National Association of Police Organizations, the International Brotherhood of Police Officers, the United States Conference of Catholic Bishops, the National Education Association the NAACP, and the list goes on.

By latest poll, more than three-fourths of the American people, even two-thirds of gunowners, support reauthorizing the assault weapons legislation. So the will of the people could not be more clear. The American people know that these guns should not, once again, be manufactured and imported into the United States.

We saw in the Columbine shooting, the Long Island Railroad shooting, and so many others that high-capacity assault weapons can make those who wield them temporarily invincible because it is so difficult to get close to them to disarm them. So the fate of this bill is in this Senate.

In April of last year Presidential White House spokesman Scott McClellan said of the assault weapons legislation:

The President supports the current law, and he supports reauthorization of the current law.

That is what we are doing with this legislation, reauthorizing the current law, period.

Now, I realize the President has expressed concern about amendments to the gun immunity bill that might delay its passage beyond this year, but the assault weapons legislation expires in less than 7 months and we cannot delay this bill beyond this year, either. I am hopeful that as people look back and they look at this terrible litany of events all across this Nation, in schoolyards, in businesses, in factories, in print shops, in law offices, wherever people congregate, they recognize that it is prudent to keep assault weapons off the streets of our American cities.

As gangs move guns across State lines, they move assault weapons. So

the ability to dry up this supply over time, the ability to prohibit their manufacture and their sale is what this legislation does.

It has always puzzled me because the NRA says it is only cosmetic, it does not work, and I wonder, if it is only cosmetic why do they get so exercised about it? But it does work, because assault weapon gun traces to crimes have declined by two-thirds since this bill has passed. That is the proof. It has had an effect. That is why the NRA is calling offices today. That is why the NRA is asking Members not to vote for this: Because it has worked.

I reserve the remainder of our time. I yield the floor. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ROBERTS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mrs. FEINSTEIN. I ask unanimous consent the time that is running be equally divided between both sides.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. The first hour, of course, is allocated to the debate over the semiauto ban, so your request is against the semiauto ban and the total?

Mrs. FEINSTEIN. Just this one.

Mr. CRAIG. I object to that until I better understand it. I want to allocate my 2 hours reserved in the UC for this afternoon. Could the Senator explain?

Mrs. FEINSTEIN. There is a reason for it. We were told this would be later, at 3 o'clock, and then learned it would be 1 o'clock, and then it was noon. I was here so I could come down. Senator WARNER, I believe, has not yet arrived, and would like to speak, as would Senator DEWINE and Senator SCHUMER. It is a Monday. The time has essentially changed. So I would like to leave them time to be able to speak.

Mr. CRAIG. Mr. President, might I ask we go into a quorum, only for the purpose of discussing this and better understanding it?

Mrs. FEINSTEIN. I have no objection.

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

The PRESIDING OFFICER. The Senator is able to do that. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, before the Senator from Florida speaks—and neither the Senator from California nor I,

who control time at this moment, object to that; it is my understanding he wants to speak on the crisis in Haiti—what I would like to consider is that we reconsider the unanimous consent from the Senator from California as it relates to time. Apparently there has been a misunderstanding on the part of some Senators, or their staff failed to inform them as to the time schedule that was agreed upon in the unanimous consent that was established to operate today.

What is critical is a 5 o'clock vote on the Bingaman amendment and allocating necessary time for the Senators to speak to that prior to that vote, and for me to respond.

I ask unanimous consent that time that is being used now, or that may not be used in quorum call, be taken equally from all sides and that that time be extended after the vote, at 5 o'clock, for those who were not given the opportunity to speak on the assault weapons ban or the semiauto ban who are missing it at this time, so we can keep the Senate running.

Mr. President, I will withhold that UC for a while. There is another Senator who has an amendment that is in position at this time who would have to concur. Why don't I withdraw my UC and yield the floor to the Senator from Florida for speaking on Haiti as in morning business.

The PRESIDING OFFICER. Who yields time to the Senator from Florida?

Mr. CRAIG. He would speak as in morning business.

The PRESIDING OFFICER. With the time now charged against anyone?

Mr. CRAIG. Time charged on all sides.

The PRESIDING OFFICER. Is there objection? Time charged on all sides?

Mr. CRAIG. Yes.

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

The distinguished Senator from Florida is recognized.

HAITI

Mr. NELSON of Florida. Mr. President, moment by moment things are unfolding down in the poverty-wracked, AIDS-infected, politically unstable island nation of Haiti. I have had quite a bit of commentary on this subject since I had sent a letter of February 10 to the President suggesting what should be done. Given the events that have unfolded over the weekend—the fact that Aristide has fled, the fact that the U.S. military is located there as a first wave of an international security force to try to establish order—I want to talk about the future of that island nation.

Clearly, it is a nation that has been troubled for stability, political and economic. I think what is in the interests of Haiti, as well as the interests of the United States, is to stabilize that nation. It is a nation that has not been comfortable because of the scores of coups d'etat that have occurred over the 200-year history of that little coun-

try. It is a country where we only need to look 10 years back to see that.

When Aristide was elected President, a coup went in, removed him from power, and it took the U.S. military to come back in to put him back into power. The problem is that we didn't stay for the long haul. We didn't help Haiti pull itself up by its economic bootstraps. We didn't continue to help them understand if they had no history of democratic institutions that functioned well—to help them continue to improve their institutions so it would foster free and fair elections and people would respect the rule of law.

That is why we are at this place. That is why I have taken this occasion to come and talk to my colleagues about what ought to happen in the future in Haiti.

First, the Haitian people are an industrious people, and they are a proud people.

I visited the city slum called Cite Soleil in the capital city of Port-au-Prince amidst enormous poverty and the most meager of material possessions. There is a huge drainage ditch running through this section of Port-au-Prince. It is an open garbage sewer. Yet as I walked into those little homes which many times only had a piece of corrugated tin across the top not even sealing the roof, I found those little homes so neatly kept with such pride. I found in the middle of that slum a little area no larger than half the size of a basketball court neatly swept and used as a soccer field. I found there were lots of Americans there trying to assist with education.

One of our colleagues from this body, Senator DEWINE of Ohio, has been to Haiti some 12 or 13 times. He contributes from his own pocket each year to some of the missions there and a Catholic priest who has a school—not only for the children but a school afterhours for the parents to come and learn what their children are learning so they will be in a position of encouraging their own children to have a chance to escape poverty by opening up their minds through education.

I saw an extraordinary medical clinic, much of which is assisted by the United States, in the midst of all of that poverty and disease—indeed AIDS as well. This medical clinic was like a beacon of light in the midst of darkness. It was well respected—even by the hooligans who are there. They respect that medical clinic as well.

Our delegation talked to a Dr. Pap who has had tremendous success in bringing under control the surging numbers of AIDS infections. But when you start with a huge percentage of the population already infected with AIDS—indeed the highest degree of infection in the Western Hemisphere—then you have to start from a base that is already out of control.

I saw industries that were once thriving suddenly, because those private enterprises could not get loans—by the way, what bank was to give loans to an

area where it was so wracked with political and economic chaos? I saw the fact that our Government had basically not gone to bat for Haiti on international loans from the development banks; and that we were insisting that Haiti pay off arrears before it would get another loan. How was Haiti going to pay off any arrears? As a result, there were not the loans coming in to build the roads or, more importantly, to improve the existing roads and just to maintain them.

As I went 50 miles north from Port-au-Prince on a road that only had a hard surface for 16 or maybe 17 miles, then there was nothing but potholes, and all the commerce running north and south in the island was attempting to go on that road.

What can we learn about what to do for the future of Haiti? It is very clear to me. The United States had better be involved. We had better not have a hands-off policy as we have had over the course of the past 5 or 6 years. We had better be involved, because it not only affects Haitians but it affects the United States. Let me tell you how.

In the midst of the Western Hemisphere with a country to be as poverty stricken as Haiti is, it is going to be ripe for insurrection and tumult. What happens when there is insurrection and tumult? It is ripe to attract the drug trade—which it already has in big-time numbers—and it is ripe to attract terrorists.

When we start talking about what is in the interest of the United States, it had better be one conclusion: to help Haiti in the future. If there is hopelessness and despair with no way out and no jobs, what is going to happen? There is going to be a mass exodus from that island nation just as there was in the beginning of all of this political strife that occurred over the past few weeks.

The Coast Guard has picked up over 700 people at sea. What is in the interest of the United States? The Coast Guard doesn't have to do that. But if people start fleeing in such huge numbers that they start overwhelming the coast of Florida, what does that do to our social system in Florida? What does that do to Immigration and Customs? What does that do in our ability to protect the homeland by securing our borders?

Need I remind you that in a mass migration to the United States, is there not the opportunity for terrorists to slip into the country under the cover of that mass migration, not even to speak of the drug trade that would be entering our country?

I appreciate the time in the midst of this gun debate. I thank the two Senators who are leading this debate for allowing me to come and pour out my heart. I am not looking to the past now. The past is past. Let us go forward. It is clearly in the interest of the United States and it is clearly in the interest of the Haitian people for the

United States to take the lead economically and politically; for institutions to help them understand and develop. That should be an international effort outside of the Western Hemisphere.

France has an interest and has already offered to help. We should work with all of the nations of the world that want to help this little poverty stricken nation. Then we will be doing what we should. We will be leading by an example—that what we preach, in fact, we are doing with our daily acts.

Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER (Mr. SMITH). Who yields time? The distinguished Senator from Idaho.

Mr. CRAIG. Mr. President, we will not propound a unanimous consent request because time is burning on the clock equally. The unanimous consent agreement that brought us here this morning largely allocated 4 hours of time between 1 and 4 p.m. to debate both the assault weapons ban and the gun show loophole argument.

At 4 o'clock, Senator BINGAMAN will be here to offer his amendment and that will be debated. We will vote at 5 p.m. Following that, the Levin amendment will be debated. Of course, we can debate into the evening on either of those two issues, if Senators so wish. Feeling they may not have gained time this afternoon to do so, there is no restriction in that.

For a few moments let me discuss the issue that is at hand, the effort to reinstate the assault weapons ban. In September of this year the law expires, so there is urgency on the part of those who believe it was an effective law to get it reinstated. I will argue in the next few moments it has made no difference and that statistics do demonstrate certain things, but statistics have to be placed in the right context of understanding how they were gained to show the ineffectiveness of this law and the ineffectiveness of the ban itself.

Semiautos are not the weapon of choice in the commission of nearly all the crimes in this country.

What is important is to understand where we are with S. 1805, the underlying bill and the ability to keep that bill as clean as possible so that it can get to the President's desk. The semiauto ban, the gun show loophole, and a variety of other issues could simply drag this bill down and deny substantial tort reform in an area that is narrow, that is specific, that is clean, that says to the American people: Yes, we are becoming responsible in denying the kinds of junk lawsuits that some push through the courts to legislate a public policy that they cannot effectively gain by bringing it to the Congress of the United States.

That is why the administration has been clear in its statement of administrative policy. On S. 1805, the administration strongly supports the passage of this legislation. The administration

urges the Senate to pass a clean bill in order to ensure enactment of the legislation this year. Any amendment that would delay enactment of the bill beyond this year, in their opinion, is unacceptable. For myself, being the author of the amendment, I clearly agree with that.

The manufacturers or sellers of a legal, nondefective product should not be held liable for the criminal or unlawful misuse of that product by others.

This is a continuation of the statement of administrative policy: The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, sets a poor precedent for other lawful industries, will cause a loss of jobs and burden interstate and foreign commerce. S. 1805 would help curb frivolous litigation against a lawful American industry and the thousands of workers it employs and would help prevent abuse of the legal system.

At the same time, the legislation would carefully preserve the rights of individuals to have their day in court with civil liability actions. These civil actions are enumerated in the bill and respect the traditional role of the States in our Federal system with regard to such actions.

That is the statement from the administration as it relates to this legislation. It is important because they are asking for a clean bill.

Listeners will hear me say time and time again over the course of today and tomorrow as we move to the vote on these amendments that are being debated today: Let's keep this bill clean. The legislative year is short. We have a bill that is supported now by a 2-to-1 vote margin in the Senate. This bill will pass this Senate by a fair margin. That expresses a bipartisan will of this Congress to get this bill to our President under the same context as the statement of administrative policy so spoke.

Let's talk about the amendment at hand at this moment, the assault weapon or semiauto ban. I prefer to call it a semiauto ban, and during the course of the next few minutes you will see why. The word, "assault," is by itself an image-getter. It is a cosmetic word that defines for some a certain type of firearm, at the same time sometimes as a weapon, obviously sometimes as a collector's piece. What more clearly identifies the issue at hand is the mechanism of the gun itself, the firearm itself. For the next few moments I will speak to that.

At the time this law was first enacted, most in Congress were very skeptical it would work. That is why there was a sunset provision included in the law. OK, if the law is able to accomplish this, let's see if, in fact, it can accomplish that. Let's make sure

that Congress has an opportunity to revisit it, as we do quite often with laws we are not sure of, and therefore a sunset provision. The year is at hand, the sunset provision is such that this bill will expire. The results are in. These firearms are not, nor have they been generally—and I use the word "generally"—used in crime. The restrictions imposed by this law make no sense and only create a burden on law-abiding citizens and businesses.

It is my opinion we ought to let it expire. Again, it is another one of the bureaucratic hurdles we love to put in front of the law-abiding citizens of this country, knowing full well that the criminal on the ground does not play by the rules, and that in a civil society is the law. My arguments of the next few moments will show just that.

There continues to be a tremendous amount of misinformation about the firearms banned by this law and what the ban has accomplished, so let me go through some of the facts. Semiautomatic firearms were first introduced more than a century ago. The first semiautomatic rifle was introduced in 1885, the first small pistol in 1890. The first semiautomatic gun, the Browning automatic 5, was patented in 1900. Theodore Roosevelt, our United States President from 1901 through 1909, hunted with a semiauto shotgun.

Today, Americans own approximately 30 million semiautomatic rifles, pistols, and shotguns across the landscape of this great Nation, approximately 15 percent of privately owned firearms in the United States. About 15 percent of all firearms owned in the United States meet the definition of semiauto. What are they doing with these firearms? Semiauto rifles, including many defined as assault weapons—again, a definition of a term based on how a given weapon appears by the 1994 Federal gun ban—are used for formal marksmanship, competition, recreational target shooting, and hunting. Semiauto shotguns are very widely used for hunting, as well as skeet, trap and sporting clay shooting.

Many of us enjoy that sport and engage in it. Semiautomatic handguns are used in formal marksmanship competition, as well as for recreational shooting and hunting. Many semiautomatic firearms, including some affected by the Federal assault weapon law, are highly valued by gun collectors. They are also commonly kept and used, as witnesses testified during the hearings before the House of Representatives Subcommittee on Crime in 1995, for protection against crime and criminals.

There is nothing intrinsically more dangerous about these firearms than others. In fact, they do less damage to a target than a shotgun does. Clearly, the shotgun, given the range, has by far the greater force. And they are functionally identical to thousands of other guns being used for legal purposes in this country today, functionally identical. Many people mistakenly

believe these are machine guns which fire more than one bullet when the trigger is pulled. If someone was listening to this debate and they heard the words "spraying a crowd," they would think of a fully automatic weapon. That is simply not the case, and I think that fact needs to be clearly understood.

On the contrary, semiauto firearms do not spray bullets. They fire one bullet per trigger pull. The mechanism simply ejects the shell and replaces it with another bullet, and you have to pull the trigger again. That is a semiauto. Let's remember that fully automatic machine guns have been banned since 1934. This Congress spoke to that in 1934.

The Federal assault weapon law is set to expire, as I have said. It has prohibited the manufacture, since September 13, 1994, of a semiauto rifle equipped with a detachable magazine or two or more attachments, such as a bayonet lug or a flash suppressor, with similar guidelines imposed on handguns and shotguns. The manufacture of large ammunition magazines, holding more than 10 rounds, was also outlawed.

Now we are beginning to get into what is, by those who understand it, viewed as an assault weapon. It is the physical attributes of two or more attachments, such as a bayonet lug and a flash suppressor.

Assault weapons, large magazines manufactured before September 13, 1994, are exempt from the law. Before September 13, 1994, manufacturers accelerated production to increase inventories available for sale later.

After the law took effect, the BATF informed manufacturers that they could produce firearms identical to assault weapons but without one or more of the prohibited features. And that is a reality today. So again, when I use the word, "cosmetic," there is a lot more truth to that than fiction. If it does not look this way, if it does not have this particular item on it, but it shoots identically and it has the same firepower, well, then it is legal.

Also, new models of semiautomatics have been introduced, and the production of some previously discontinued models has resumed.

The ban affects firearms never widely used in crime, according to a study conducted by Congress—the Urban Institute, Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994.

According to the FBI, rifles of any kind are used in only about 3 percent of homicides—only about 3 percent of homicides.

Here is an explanation of why a law-abiding gun owner would purchase one of these firearms. Now, I pulled it out of my files because I thought it was a good one because the Senator from California said: Well, these weapons are not for hunting purposes.

Yes, some people do hunt with them. Does it mean you simply machine gun

down a deer? No, it does not mean that at all. It is because it is a weapon of choice, largely because it is lighter than many hunting weapons, and it can be carried by a smaller person.

In this instance, this person's name is Mary. She happens to be a licensed hunter in Idaho, and she happens to use a Colt AR-15. It is a semiauto that uses a 20-round clip. That is what she hunts her deer with. That is what she kills her deer with. So she and her boyfriend wrote us and sent a picture, saying: Look, what the semiauto ban of 1994 does is it eliminates this kind of firearm, and, in essence, it eliminates the ability of a smaller person to go out into the brush to hunt deer and to recreate in that fashion.

Now, the ban in 1994 did a couple of things. First of all, it named certain guns specifically. And I could go through that list of particular firearms that it actually named. Of course, the Senator from California is very well aware of that in crafting a specific list of firearms at that time. Some guns it only named by features.

A semiautomatic rifle that can accept a detachable magazine and has at least two of the following is included within the ban: a folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, a bayonet mount, a flash suppressor or threaded barrel, a grenade launcher. But, then again, of course, the National Firearms Act already outlaws those, so even if this law expires in September of this year, it still is going to be illegal to have a grenade launcher, as it should be, unless you are a bona fide collector and have been given the authority to collect for collection purposes.

A semiautomatic pistol that can accept a detachable magazine and has at least two of the following: again, an ammunition magazine that attaches to the pistol outside of the pistol grip; a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer; a shroud that is attached to, or partially or completely encircles the barrel, and that permits the shooter to hold the firearm with the nontrigger hand without being burned; a manufactured weight of 50 ounces or more when the pistol is unloaded; and a semiautomatic version of an automatic firearm.

That is how technical this law has become.

Here is another one: a semiautomatic shotgun that has at least two of the following: a folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, a fixed magazine in excess of five rounds, and an ability to accept a detachable magazine.

But here is something that is important to understand. You know the old phrase, "Let's make the record perfectly clear." I think it is appropriate.

What were banned by other laws that will still be banned after this law expires? I think I heard reference to the

popularity of the AK-47, a foreign rifle, and Uzis. Well, they were banned from importation in 1989, under Federal firearms importation law—now 18 USC 925(d)(3). The use of gun parts to assemble the same guns in the United States was prohibited by the Unsoeld amendment in 1990. In 1993, the so-called assault pistols, like the Uzi pistol, were banned under the importation law. In February of 1994, revolving cylinder shotguns—I have heard the words used here, and they were commonly called "Street Sweepers" and "Striker-12s"—were banned under the National Firearms Act.

So those will still be illegal firearms to traffic in, to commerce in. And as a result of that, it is important that we make the record perfectly clear that ownership of these prior to the passage of the law but after the passage of the law, these do not go away.

Again, as I have said, after the assault weapons law expires, here is what will happen. American-made rifles, such as the AR-15, will once again be made in their original configurations. Private citizens will also, once again, be able to buy standard capacity ammunition—magazines usually between 13- and 17-round capacity—instead of the arbitrarily reduced capacity 10-round magazines the law imposed, a change that will assist in defending themselves against criminals and for recreational purposes. In other words, what a difference a law makes.

Well, in this instance, the difference the law made was it kept firearms of these type and by definition out of the hands of law-abiding citizens. But if you are a criminal, if you want to deal in the back streets and in the black market, as most criminals do, then you are not going to walk in and try to buy one of these off the shelf. That is why criminals will have them, because you cannot acquire them off the shelf because it is illegal under the current law, and you would not be able to anyway if you were a criminal. It is the law-abiding citizens who subject themselves to the laws, as they should.

Now, is this statistic that I have in front of me accurate? The Senator from California had a chart a few moments ago that would indicate quite the difference. In fact, she showed a declining number in the statistics. This statistic is accurate. Bureau of Justice statistics, Department of Justice: Before the semiautomatic firearms ban, less than 2 percent of crimes in this country were semiauto. After the ban, 1997 and forward, less than 2 percent were. Same figure.

How is it possible, then, that the Senator from California gets the statistic and the chart that shows the decline? I am not suggesting she misrepresents this chart, because I believe this chart to be accurate, and I believe it is accumulated in a nonbiased way.

Let me try to talk about the use of and/or the misuse of what is known as tracing data. There is a problem when using firearm commerce tracing reports justifying any assault weapon

law. Let me try to walk you through this. Is this technical? It is a bit technical. But the CRS looked at it and they agree with this figure. That is the research service that we employ in a nonpartisan way to give us accurate facts and statistics about those items we debate on the floor.

More than a decade ago, the CRS examined the firearms tracing system in the context of the assault weapon issue and determined that information derived from traces should not be used to determine how often any kind of guns—not just assaults or semiautos—were used by criminals. One of the key limitations of the tracing system is the fact most guns that are traced have not been used to commit violent crimes, and most guns that are used to commit violent crimes are never traced. The tracing system was designed to collect statistics. The Congressional Research Service said this:

Fire arms selected for tracing do not constitute a random sample and cannot be considered representative of the large universe of all firearms used by criminals or of any subset of that universe.

CRS also noted that:

A law enforcement officer may initiate a trace request for any reason. No crime need be involved.

It pointed out that the Bureau of Alcohol, Tobacco, and Firearms and Explosives admitted:

It is not possible to determine if traced firearms are related to criminal activity.

In other words, it is just a matter of gaining certain statistics on certain items.

One problem with the tracing system in the context of assault weapons is that before the assault weapon law was enacted, traces on those guns were requested disproportionate to their use in crimes. That is because there was so much political interest in the guns at the time. It was the talk of the day, if you will. It was the placebo of action in 1994 that gave us the political law we have today that still represents those figures, known as the assault weapons ban. That is why it was disproportionate. Why? Political interests, a lot of questions being asked.

Certainly crimes that were committed using a semiauto or an assault weapon in this percentage of 2 percent or less were highly dramatized at the time. That is because there was, again, so much action today. A decade later, they constitute a smaller share of traces because there has been less interest in them and because other guns are now being traced more heavily. In other words, the decline in the Senator's chart, in my opinion, represents that shift in attitude and in attention, if in fact you use tracing data as a way to determine that semiautos/assault weapons are being used in the commission of the crime. That is the reason for this statistic from the Department of Justice.

While they look at these kinds of statistics, they don't believe them valid. Because of the method by which they

are collected, they are viewed as heavily inaccurate if used in certain contexts. To determine the extent to which assault weapons have been used in crimes, we have to look at State and local law enforcement agency reports on prime weapons. That is the Department of Justice's felony survey and the congressionally mandated study on the assault weapon law. They all show assault weapons have been used in only a very small percentage of violent crimes. That is the reason for that statistic.

Well, getting technical about a technical issue is important. We can talk about all of the dramatics and the tragedies that happen when firearms are misused. We can talk about Columbine, and there are a lot of kinds of things that are, appropriately so, to emote the kind of emotion all of us feel and understand when these kinds of firearms are used improperly and illegally.

But what happens when we start banning them, we have all learned, is that it is the law-abiding citizen who may own them and use them responsibly and who may be collecting them that is blocked by the law. The criminal is not.

In this survey that the Department of Justice uses, they go out and survey criminals. They surveyed 14,000 of them locked up in prison and, as a result of that, that figure, along with a good many others, I think clearly demonstrates the dramatic and important side of this issue.

Well, I will talk through the balance of the day on this issue. But I think it is important that we demonstrate in its appropriate context the information we are providing.

In my opinion, based on CRS's studies, based on the Department of Justice studies, to say the assault weapons ban law has dramatically worked since 1994 is inappropriate. The reality is that it was less than 2 percent in 1991, and less than 2 percent after its passage in 1997 and beyond. That statistic holds today, in my opinion, based on the sources that I quote, which I believe are valid and justifiable. There are a good many more statistics that I can talk about, and we will throughout the course of the day.

Let me return to my initial argument. I think we have the opportunity to, in a very narrow and specific way, protect law-abiding people—gun manufacturers, licensed gun dealers who play by the rules that this Congress has laid down, and provide a quality product to Americans under their second amendment rights. But what we now see is a class of lawsuit out there that is designed for one reason: to control guns. It is a new form of gun control, because the gun control advocates of this country who continually came to Congress through the 1960s, 1970s, and 1980s, saying we have to have gun control to save people's lives, found out that we read the statistics, we looked at the facts, and we said no. They de-

cided they would go through the courts and they would begin to, by law or by action of the court, attempt to legislate those kinds of actions—in this case, by penalizing a law-abiding citizen for a third party action.

Let me close with this thought. It happened to me once again this morning. I was on the phone to my State of Idaho in a radio interview. The interviewer said:

Senator, we watch what you are doing on the floor of the Senate. How is that any different from suggesting that—

And he used the particular automobile, the Chevy truck. He said:

How is what you are doing any different from suggesting if a drunk driver uses a Chevy truck and runs over someone and kills them, that Chevrolet is responsible for that third party action?

I said:

Frankly, there is no difference. That is why it is important that this Congress reinstate the historic tort law as we understand it. Individuals are held responsible for their actions. That is what the administration is asking us to do.

That is what we are doing in S. 1805. Let's not extend the assault weapon ban, add it to S. 1805 and risk a failure to pass this very important piece of legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I hope I will have an opportunity to rebut the distinguished Senator's comments. I find it very interesting that suddenly gun trace information is not acceptable information, but we can go out and do a survey of criminals, and that is an acceptable way of evaluating the success or failure of the assault weapons legislation. I don't buy it. In my view, tracing guns to crime is an appropriate way.

I ask unanimous consent to have printed in the RECORD the executive summary of a new report out on "Target: The Impact of the 1994 Federal Civil Assaults Weapons Legislation."

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

EXECUTIVE SUMMARY

To evaluate the questions below, the Brady Center to Prevent Gun Violence asked Crime Gun Solutions LLC to review and analyze national crime gun trace data maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). This data represents guns nationwide that have been illegally possessed, used in a crime, or suspected of being used in a crime, thereafter recovered by law enforcement, and then traced to learn about the sales history of the gun.

Has the Federal Assault Weapons Act reduced the incidence of assault weapons in crime?

Yes. In the five year period (1990–1994) before enactment of the Federal Assault Weapons Act, assault weapons named in the Act constituted 4.82% of the crime gun traces ATF conducted nationwide. Since the law's enactment, however, these assault weapons have made up only 1.61% of the guns ATF has traced to crime—a drop of 66% from the pre-ban rate. Moreover, ATF trace data

shows a steady year-by-year decline in the percentage of assault weapons traced, suggesting that the longer the statute has been in effect, the less available these guns have become for criminal misuse. Indeed, the absolute number of assault weapons traced has also declined.

This decline is extremely significant to law enforcement and has clearly enhanced public safety, especially since these military-style weapons are among the deadliest ever sold on the civilian market. For example, if the Act had not been passed and the banned assault weapons continued to make up the same percentage of crime gun traces as before the Act's passage, approximately 60,000 additional assault weapons would have been traced to crime in the last 10 years—an average of 6,000 additional assault weapons traced to crime each year.

Have industry efforts to evade the Act through "copycat" assault weapons eliminated its positive effects?

No. After the Assault Weapons Act was passed, gun manufacturers sought to evade the ban by producing weapons with minor changes or new model names. The Act was designed to prevent this occurrence by defining assault weapons to include "copies or duplicates" or the firearms listed in the ban in any caliber, though this provision has never been enforced. Yet, even if copycats of the federally banned guns are considered, there has still been a 45% decline between the pre-ban period (1990–1994) and the post-ban period (1995 and after) in the percentage of ATF crime gun traces involving assault weapons and copycat models.

The results of this study make it clear that the United States Congress needs to renew the Federal Assault Weapons Act. If the Act is not renewed, a decade of progress could be lost and thousands of additional assault weapons are likely to be used in crime in the future.

Mrs. FEINSTEIN. Mr. President, I would like to recognize the presence of the Senator from Ohio and cede 10 minutes of time to him.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, first, I thank my colleague, Senator FEINSTEIN, for her great work in this area. I rise today in support of her amendment to reauthorize the 1994 assault weapons ban which is set to expire later this year. I thank her for her great leadership in this area.

Since it took effect in 1994, the assault weapons ban has been an effective tool in curbing crime in this country. The assault weapons ban has made it more difficult for vicious criminals to get access to firearms that are designed really only to maximize the number of shots that can be fired and people killed in a short period of time. It is the only reason they exist, the only reason they are made. The ban has allowed us to keep these dangerous weapons out of the hands of dangerous criminals and has helped make our streets safer.

Banning these weapons is smart law enforcement and it is good public policy. Continuing the ban is simply the right thing to do.

I am not alone in this assessment. The assault weapons ban reauthorization has the support of the White House and also has the support of every major law enforcement organization in

this country—every single one. Furthermore, it has the support of the National League of Cities, the United States Conference of Mayors, and the U.S. Conference of Catholic Bishops. This is for good reason.

Prior to the 1994 ban, the Cox newspaper service conducted a survey using data from the Bureau of Alcohol, Tobacco, and Firearms. That study found that assault weapons were 20 times more likely to be used in a crime than a conventional firearm. This, therefore, is a question of public safety.

It is to me disconcerting that we still hear complaints about extending the duration of the ban. One stated concern is the ban may somehow accidentally infringe on the rights of law-abiding gun owners. For example, some people worry the ban may affect hunting or recreational rifles. The ban has been in effect for almost 10 years now and that has not been a problem so far.

What is the compelling reason to repeal this law, because that is, in effect, what we would be doing if we do not extend it? What has been the problem? How many of us have heard from our hunters? How many of us have heard from people who want to use a firearm in a proper way to protect themselves or for recreation purposes, that this particular law is somehow infringing upon their rights? I do not think we have.

This law will not be a problem in the future either because this legislation specifically provides protection of 670 different types of hunting and recreational rifles that are presently being manufactured. This list is by no means meant to be exhaustive. A gun does not have to be on the list to be protected.

Furthermore, the ban does not just protect the right to purchase and use rifles. It also protects a wide range of guns because it only affects those weapons with no legitimate use.

We know why American citizens buy guns. The most common answer to the question of why we buy a gun is protection, hunting, target shooting, and other legitimate reasons. These are very legitimate uses for legally acquired firearms. The firearms included in the assault weapons ban do not effectively serve any of these purposes.

No legitimate gun owner need have a weapon such as the TEC-9 that has been talked about before. I will not take my colleagues' time to talk about this weapon, but it is not a legitimate weapon for anyone but a criminal who wants to see how quickly he can kill a large number of people.

Probably the most important reason to have this ban, if we really want to analyze it, is that it limits the number of rounds in a clip to 10. What significance does this have in regard to law enforcement? Maybe if I can go back to my days as a county prosecuting attorney and draw upon my conversations I had not just then but throughout the years with my friends in law enforcement, some of my police officer friends

who I have known and continue to know and call my good friends, what is it people fear and police officers fear? One thing is someone comes in and they have a big clip, and they can just shoot, shoot, shoot, and shoot and nothing will stop them—15, 20, 30 rounds.

What does this law do? It limits it to 10. That is an arbitrary figure. It could have been something different. We understand that. At least it limits it to 10. That makes some sense. Yes, someone could put the other clip in and continue on, but there is a period of time where they have to stop and do that. What law enforcement people tell us is that period of time, when you have a mass murderer who is intent on killing as many people as he or she can, is valuable, that period of time is significant from a law enforcement point of view and it maybe will save lives. In some cases, it will save lives.

Law enforcement will be able to react in that period of time and lives will be saved and shots will not be able to be taken, and that criminal, that person who maybe is insane, will be stopped, disabled, or killed by law enforcement, by a bystander, by someone.

That, from a law enforcement point of view, is the most effective part of this bill. In my opinion, at least, and in the opinion of many people in law enforcement with whom I have talked, that is the heart of this law we have today, and I think it is the heart of the Feinstein amendment. She is attempting to do something that is not revolutionary. All she is trying to do with this very modest amendment is to keep current law. Let me emphasize that. A vote for the Feinstein amendment is a vote for the status quo. It is a vote to keep current law. I urge my colleagues to follow that law.

The assault weapons ban prevents the manufacture of new high-capacity military style magazines for sale to the general public. Indeed, the guns we banned were designed to work in conjunction with these high-capacity magazines. Many of them are able to hold 30 or 40 rounds in each magazine. That is 30 bullets that can be fired rapidly without ever reloading.

This is far more ammunition than a hunter, sportsman, or individual concerned with self-protection needs in one magazine. This deadly combination of large clips and rapidly firing guns is not characteristic of recreational guns or guns used for personal protection. We all know that. Neither is a threaded barrel designed to accommodate a silencer, a feature that is much more useful to assassins and snipers than it is to a sportsman; or a bayonet mount that allows a knife to be attached to the front of a rifle; or a grenade launcher. Again, it was provided in this bill. Does a grenade launcher sound recreational?

Under this provision, the Feinstein amendment, and under current law, we do not outlaw a gun unless it has two of these features. It has to have two of

them. I think it is a pretty modest law, and a pretty modest amendment.

The assault weapons ban does not outlaw a gun if it has one of these features. It only outlaws a gun with two or more of these features.

These are dangerous weapons that do not belong on our streets. I urge my colleagues to talk, as I have, to law enforcement officers in their States. Talk to the mayors of their cities, talk to people who are on the front lines and who might potentially have to deal with these types of weapons if we do not reenact this law. They will say these weapons are a threat to law enforcement and to the general public. These weapons are not for hunting. They are not for self-defense. It is time to once again reauthorize this law.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Ohio for his comments and for his support. I very much appreciate it.

One of the issues is that those States that have big cities see how these weapons are used, and in the big cities they are used by gangs. So the argument of the collector versus the argument of the majority who wants to be protected from these weapons is what we are talking about today.

The distinguished Senator from Idaho referred to them as just semi-automatic firearms, really no different from other firearms. I do not see it that way at all. Many of these come with collapsable stocks. They come with 20-round clips. Two 30-round clips can be put together, and two banana clips, and have 60 rounds. The trigger can be adjusted so that with some of these weapons one can fire as many as, believe it or not, 30 bullets in 3 seconds. That cannot be done with a revolver and with most rifles.

So these are different weapons, and those of us who support this legislation essentially believe they do not belong on our streets. No collector is stopped from collecting one of these weapons. A collector can still buy one of these weapons. What is stopped is the manufacture and sale of new weapons. The existing stock is still around.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that during the quorum call the remaining time be equally divided between the two sides.

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

Mrs. FEINSTEIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

Mr. REED. Mr. President, I ask that time allocated to Senator McCain, co-sponsor of the gun show amendment with myself, be given to me for such time as I may consume.

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

Mr. REED. Mr. President, we are debating legislation that is a serious encroachment on the common law of negligence. It is a legislative proposal that, in my view, is audacious in its breadth and also something that is presumptuous, presumptuous in the fact that, at the heart of this legislation, any liability for a gun dealer or a manufacturer or a trade association would rest on a violation of a statute, a Federal or State statute. Of course that presumes we are wise enough and bright enough to provide a statutory answer to every question posed by life. And I don't think we are.

That is, in effect, one of the reasons why the law of negligence arose. It was not a response to the fact that we have too many laws; it was a response to the fact we had laws that did not require a standard of care in every circumstance. This legislation presumes we will govern every conceivable item of conduct and if one of those items of conduct is violated, a statutory requirement, then liability will arise. That defies human experience.

Again, that is why our system of law over centuries developed the notion that outside of laws there is another standard. That is the standard of reasonable conduct. That is a standard that says an individual should act in a way that does not reasonably lead to the injury of another.

We are upsetting that totally with this legislation. One example of the deficiency of the current legislation that we have, the legislative framework, is the governance of gun shows. These are sales of weapons in public areas that take place in most jurisdictions of this country—in many, many jurisdictions. We became aware of one of the glaring shortcomings of this legislative framework after the Columbine killings. There, two very disturbed young men were able to obtain a weapon through a gun show. They used this weapon and other weapons to go in to wreak havoc in Columbine High School: classmates dead, families shattered, a community in turmoil.

At that point, this body moved very appropriately to try to close the gun show loophole. What is this gun show loophole? It is very simply stated. If you are a licensed Federal firearm dealer, then you must conduct a back-

ground check upon anyone who purchases a weapon from you. But if you are an unlicensed dealer, i.e. someone who does not engage in the sale of firearms, then there is no requirement that you conduct this background check. It turns out that at gun shows there are many licensed dealers but a significant number of unlicensed dealers.

They come and sell their wares at that show. In fact, you can go up to one table at a gun show and ask about a weapon. A licensed dealer would presumably quote you a price and say, I also have to conduct a background check under Federal law. You can step 3 or 4 feet away to another table to an unlicensed dealer, someone who "knows the business" of selling weapons, where in fact you don't have to do a background check. He says, "I don't have a license. This is the price I want for it."

It is not fair. It also allows for the distribution of this weapon into society in a way that can be harmful. The Columbine case is an example of that. Senator McCain and I are proposing legislation that will close this loophole.

Again, back in 1999, in the wake of Columbine, Senator LAUTENBERG proposed legislation that passed this body. It was, unfortunately, stripped out of the legislation before it reached the desk of the President. We hope to offer an amendment tomorrow morning, and hopefully it will be agreed to.

It is very important to have an active framework for the regulation of firearms in the country. It is important because in many cases we have avoided subjecting firearms to the regulation which is common for other goods that are sold in commerce. Firearms are exempt from consumer product safety laws that apply to virtually every other product in the country.

I think it is important when we have public sales of firearms that we should have a situation in which every dealer is required to conduct a background check on the purchase.

The Bureau of Alcohol, Tobacco, and Firearms reported to Congress in 2000 that gun shows are a major source of gun trafficking, responsible for 26,000 illegal firearms sales during the 18-month period they studied these sales.

That suggests to me this is an issue that must be dealt with and must be dealt with in this legislation. They have told us many of these purchases are by convicted felons, domestic abusers, and other prohibited purchasers who cannot obtain a weapon if they go to a licensed dealer and have a background check.

At least three suspected terrorists that we know have also exploited the rules to acquire firearms, including one suspected member of al-Qaida.

Under Federal law, Federal firearms licensees are required to maintain careful records of their sales and, under the Brady Act, to check the purchaser's background with the National Instant Criminal Background Check

System. However, as I explained, a person does not need a Federal firearms license, and the Brady Act does not apply, if the person is not "engaged in a business" of selling firearms pursuant to Federal law.

These unlicensed sellers make up to one quarter or more of the sellers of firearms at thousands of gun shows in America each year. Consequently, felons and other prohibited persons who want to avoid Brady Act checks and records of their purchases buy firearms at these gun shows. It stands to reason if you are a felon and you know the system and know that if you go to a licensed dealer you have to have a background check, where do you go? You go to someone who doesn't have to conduct a background check. In many cases, it is gun shows and unlicensed dealers.

As I also mentioned, 5 years ago, Eric Harris and Dylan Klebold killed 13 people at Columbine with weapons purchased from an unlicensed seller at a gun show. The woman who purchased those guns on behalf of Harris and Klebold testified to the Colorado Legislature she would never have purchased the weapons had she been required to undergo a background check. Had we had those background checks in place, then we might have avoided a terrible tragedy at Columbine.

We are united in this bipartisan legislation, Senator MCCAIN and myself and other cosponsors, and we have brought together provisions from several previous gun show bills to make gun show transactions safer for all Americans. The amendment we will propose tomorrow will require Brady law background checks on all firearms transactions at any event where 75 or more guns are offered for sale. Three years after enactment, States could apply to the Attorney General of the United States for certification for a 24-hour background check for unlicensed sellers at gun shows. In order to be eligible for this 24-hour certification, a State would be required to have 95 percent of its disqualifying records automated and searchable under NICS, including 95 percent of all domestic violence misdemeanor and restraining orders dating back 30 years.

If a State can show their records are accessible through the system, if they are updated, if they cover the range not only of felony convictions and other criminal convictions but also domestic violence, misdemeanors, and restraining orders, then they could have a system in which an unlicensed dealer could have the check resolved in no more than 24 hours.

Before certifying a State for this 24-hour background check, the Attorney General would be required to establish a toll-free telephone number to enable State and local courts to immediately notify the NIC system anytime a domestic violence restraining order is filed, and courts within a certified State would be required to use the telephone number immediately upon the

filing of such an order to notify the NIC system.

The bill also directs the Attorney General to work with States to encourage the development of computer systems that would allow courts to provide electronic records to NICS immediately. The Bureau of Justice Statistics would conduct an interim review of all certified States to ensure they continue to meet the conditions of the 24-hour background check and certification.

The amendment Senator MCCAIN and I will offer tomorrow differs in several respects from the legislation Senator MCCAIN and I proposed last fall.

First, gun show operators would not be required to notify the Attorney General of plans to hold a gun show. This provision was included in previous legislation, but it has been stricken from the amendment. Thus, there will be no requirement for a gun show operator to notify any Federal agency about plans to operate a gun show.

Second, gun show operators would not be required to notify the Attorney General of vendors who sell firearms at gun shows. Again, this is a provision that has been dropped from previous legislation. The ledger of vendors at a gun show would be maintained at the permanent place of business of the gun show operator.

Let me repeat that our amendment contains no requirement for gun show operators to notify any Federal agency about the names of firearms vendors at gun shows. Therefore, the amendment would not, as the NRA has claimed, in their words, create "gun owner registration." It would not do that.

Third, our amendment does not authorize the Department of Justice to draft regulations concerning how gun shows notify each gun show patron on the provisions of the law.

Again, in previous editions of legislation, there was a requirement they would inform patrons about the provisions of the law. This legislation does not contain such a provision.

The NRA has claimed, in keeping with their longstanding tradition of extreme rhetoric, our bill would create "massive bureaucratic red tape" and give a so-called "antigun administration" the power to "regulate gun shows out of business." That was never true to begin with. But the changes Senator MCCAIN and I have made to our amendment should put these accusations to rest.

The overriding purpose of our bill is to require background checks on all gun show sales in the most convenient manner possible for gun show operators, unlicensed sellers, and private citizens who seek to purchase firearms at gun shows.

I have no doubt the gun lobby will continue to say this is an attempt to end gun shows. But the experience of States that have closed the gun show loophole proves otherwise.

California, for example, requires not only background checks at gun shows

but a 10-day waiting period for all gun sales. Yet gun shows continue to thrive there.

We are not trying to end gun shows. We are trying to end the free pass we are giving to terrorists and convicted felons that allows them to simply walk into a gun show, find an unlicensed fellow, buy whatever weapons they want, and walk out without a Brady background check.

In overwhelming numbers, gun owners believe a background check should be required whenever a firearm is sold at a gun show. An October 2003 poll found 85 percent of gun owners support closing the gun show loophole, that 83 percent of those who have attended gun shows support closing the loophole as well.

The people of Colorado—one of several States—confirmed this widespread support after Columbine when they approved a ballot initiative to close the gun show loophole. President George Bush said repeatedly during the 2000 campaign he supported legislation to require background checks at gun shows.

We hope tomorrow this amendment will be adopted so the President can sign a bill which he has indicated clearly and repeatedly throughout the 2000 campaign that he supports. I urge my colleagues to support the McCain-Reed amendment so we can finally close the loophole in every State and make sure that convicted felons, domestic abusers, and other prohibited persons do not use gun shows to purchase firearms without the background check.

There has been some discussion and rebuttal by those who say this is unnecessary because this is not an opportunity for felons to obtain weapons. In fact, the NRA maintains there is no gun show loophole. What is the truth? Under Federal law, licensed dealers must do background checks at gun shows, but unlicensed dealers do not. Thus, at thousands of gun shows each year, a licensed firearm dealer must conduct a background check, while 2 feet away an unlicensed dealer is able to sell a weapon without a check. That suggests strongly—it would defy common sense otherwise—that if you are looking to get a weapon and you are prohibited from having one, where would you go? Right to the unlicensed dealer, right to that loophole. Put the money on the table and take the weapon and walk out, no questions asked.

According to the NRA, they suggest hundreds of thousands of guns are sold each year at gun shows without these background checks—that is their own statement—hundreds of thousands of guns not subject to background checks.

It is not fair. I have talked to my colleagues from States that have quite a few gun shows and they simply say, what sense does it make that someone who walks into a Target or a Wal-Mart to buy a weapon has to undergo a Federal firearms check and they can just walk across the street to some type of

gun show and get one without a background check. That is not fair. It is not an even playing field. It is a loophole. We hope we can close that loophole tomorrow.

The NRA says if we adopt this legislation we will put gun shows out of business. That is not true, either. Seventeen States have closed the gun show loophole on their own. According to the Krause Gun/Knife Show Calendar, which bills itself as the complete guide for anyone who attends or displays at gun shows, States which closed the loophole hosted more gun shows each year than States which have left this loophole open: an average of 45 gun shows per year in the 17 States which have closed the loophole compared to 41 in the other 33 States.

The NRA also says lengthy background checks take too long for weekend gun shows. But thanks to improvements made by the NIC system, National Instant Recovery background system, 91 percent of the background checks take less than 5 minutes; 95 percent take less than 2 hours to complete. For 19 out of 20 background checks, instant checking is truly instant, within minutes, and no more than 2 hours. Of the remaining 5 percent that take longer than 2 hours, about one-third of these result in a denial because they have found information indicating the individual is prohibited from purchasing a weapon.

Also, as indicated, our amendment gives the State the opportunity to qualify for a 24-hour background check for unlicensed sellers at gun shows if it has automated 95 percent of its background check records. These checks can be made, they will be made, they are being made without inhibiting gun shows on behalf of licensed dealers who sell at the shows. The idea that requiring unlicensed dealers to get a background check would disrupt gun shows is, in my view, completely unsubstantiated.

The NRA says criminals do not buy guns from gun shows. The truth is, crime guns do come from gun shows and it has been documented. That is according to ATF Special Agent Jeff Fulton. In a comprehensive ATF report on illegal guns, they found gun shows were the second leading source of firearms recovered in illegal gun trafficking operations.

The NRA says also the Department of Justice survey of prison inmates found only 2 percent of prisoners obtained their firearms from the gun shows and flea markets. The 1997 survey at the NRA sites admits an obvious flaw: The gun show loophole did not exist until the Brady law passed at the end of 1993, requiring background checks by licensed dealers. Thus, any criminal imprisoned before 1994, or inmate who acquired a firearm before 1994, could go to a gun store without having to undergo any type of background check. The survey they rely upon is invalid.

We have several recent examples of gun show loopholes being exploited by

criminals. Thomas Timms was arrested last October with 147 guns, 60,000 rounds of ammunition, a submachine gun, a 20 millimeter antitank rifle, a 12-gauge "street sweeper" and a rocket launcher. According to Federal agents, he had been selling large quantities of weapons at Georgia gun shows that were used in crimes in Washington, DC, New York, and Georgia.

Caesar Gaglio was arrested in September after selling 11 guns to undercover agents and was among 5 unlicensed sellers caught with 572 guns in an undercover sting that encompassed gun shows in Oklahoma, Kentucky, and Kansas.

John Loveall and eight others were arrested in June for selling firearms to felons or people under indictment at Tennessee gun shows. They were arrested with 500 guns in their possession. In the words of the Federal attorney, this is 500 guns that will not wind up in the hands of criminals to use, to rob, or to shoot or murder citizens of Memphis or anywhere else in the western district of western Tennessee.

Tommy Holmes pleaded guilty in October for being part of a trafficking scheme that included a known felon buying scores of guns at Alabama gun shows to sell on the streets of Chicago. Fifteen of the firearms have been recovered in the course of criminal investigations or at crime scenes.

Bud Varnadore was sentenced to prison in November for trafficking in firearms at Tennessee gun shows. He was caught in a sting that identified 23 other suspicious sellers and recovered over 1,600 firearms. Tennessee is a "source State" of guns for criminals, through unlicensed dealers, according to AFT Special Agent James Cavanaugh.

Nigel Bostic and two accomplices were arrested for buying 239 firearms at 11 Ohio gun shows and reselling them to criminals in Buffalo, NY. At least one was recovered in a homicide. In one instance, Bostic purchased 45 firearms and his accomplice purchased 85 guns. "We are still finding guns that have been used in crimes and tracing them back to him," said Buffalo Police Lieutenant Amy Marracino.

Viktor Mascak was arrested on 56 counts of trafficking in firearms at Washington State gun shows. At least five of Mascak's guns were recovered in crimes, including one that was carried into Hanford Middle School by a 13-year-old.

Billy Gage and Lowell Ronald Wilson, a felon, were arrested at the Seagoville flea market outside of Dallas with 2 machine guns, 91 handguns, and 49 rifles. They were apprehended after a 9 millimeter pistol they sold to a felon was used to murder Garland County Police Officer Michael Moore.

This is quite a record of criminals exploiting gun shows and exploiting the current loophole. If we do not close it, there will be more to add to this infamous list.

The NRA says supporters of closing the gun show loophole are shamefully

exploiting terrorism to make their case. The truth is, we know three cases where suspected terrorists exploited the gun show loophole. Ali Boumelhem, a Lebanese national and member of the terrorist group Hezbollah, was arrested and convicted of attempting to smuggle firearms he bought from Michigan gun shows to Lebanon.

Muhammed Nasrar, a Pakistani national in the country on an expired visa, admitted to buying and selling firearms at Texas gun shows. Nasrar is a suspected al-Qaida member who obtained a pilot's license, had photos of tall buildings of American cities, and, though seemingly impoverished, attempted to purchase a time share for a Lear jet.

Connor Claxton, an admitted member of the Irish Republican Army, spent over \$100,000 at Florida gun shows and through other private dealers to obtain firearms to smuggle to Ireland.

The National Rifle Association says also the McCain-Reed amendment creates gun owner registration. Not correct.

The truth: Special firearms event licensees, those who are certified to perform background checks for unlicensed firearms vendors at gun shows, are required to keep the same records as federally licensed firearms dealers, no more or no less. Unless one argues that buying a firearm from a licensed dealer constitutes gun owner registration, then one cannot argue this amendment constitutes gun owner registration.

The NRA says the McCain-Reed amendment requires gun show operators to register all firearm vendor names to the Federal Government.

The truth: The amendment does not require this. Gun show operators are not required to submit a list of vendors to the Federal Government. Gun show operators are only required to maintain their own paper records of those who sell firearms at gun shows.

The NRA says the McCain-Reed amendment requires registration of gun shows.

The truth: The amendment does not require gun show operators to register or notify the Federal Government about the scheduling of any gun shows. A gun show notification requirement in our bill has not been included in this amendment. We struck it. The Federal Government has no role in approving or denying gun shows from operating in any way.

The NRA says the McCain-Reed amendment allows harassment of gun show organizers and vendors.

The truth: Federal authorities will have no more inspection authority over gun show operators than they have now with licensed firearms dealers. There is no new inspection authority over any vendors in this amendment.

The NRA also says the McCain-Reed amendment creates massive bureaucratic redtape.

The truth: This amendment is remarkably redtape free. There are no

new paperwork requirements for unlicensed sellers. The Federal Government has no role in approving or disapproving gun show events. Gun shows are under no obligation to notify Federal authorities about their intent to hold an event.

The NRA also says the McCain-Reed amendment turns casual conversations into gun show sales.

Not true. The amendment clearly defines a firearms transaction as "the sale, offer for sale, transfer, or exchange of a firearm."

The NRA says the McCain-Reed amendment's 24-hour maximum allowable background check is a smoke screen.

It is not. If a State wants to place a 24-hour limit on the length of background checks at gun shows, it may do so once that State has its background check records in order and automated. If a State chooses not to limit the length of background checks below the current 3 business days, it does not have to.

The NRA says the McCain-Reed amendment makes no improvements to instant check.

The truth: Legislation to improve instant check has been introduced separately by Senators SCHUMER, CRAIG, HATCH, and KENNEDY. I am proud to be both a cosponsor of the legislation and a longtime supporter of the National Criminal History Improvement Program to help States get more of their disqualifying records into the system.

NRA also says the McCain-Reed amendment gives no priority to gun show background checks.

That is because it is not necessary. The NIC System currently operates from 8 a.m. to 1 a.m. 7 days a week and 364 days a year. That is why 91 percent of background checks are completed in minutes, and 95 percent are completed within 2 hours. The remaining 5 percent are 20 times more likely to turn up an illegal buyer than the rest of the checks. There is no need to put gun show checks in front of other background checks the NICS processes nationwide every day because the system is working very efficiently.

These are some of the refutations of the amendment Senator MCCAIN and I are offering, but none of them hold any weight. This is an amendment that will close the gun show loophole without materially affecting the operation of gun shows or the conduct of unlicensed gun dealers, but it will attempt to prevent some of the rogues, whom I described, from getting access to weapons.

Once again, there is a great discussion on this floor almost every moment of the principles of law, the principles we espouse. But a lot of what we do must be common sense. I ask my colleagues, and also the people listening, to think about it. If you were a felon, or if you were a terrorist, and you were aware, as so many of them are, that you could go to a gun show, find unlicensed dealers and buy a weapon—some

of them extremely dangerous weapons—without any questions asked, where would you go? You would go right there.

All the principles of law, all the principles of legal theory, have to respond to that commonsense insight. The McCain-Reed amendment seeks to make a commonsense response to this glaring omission, to close the loophole, to require anyone purchasing a weapon at a gun show must go through a background check, and to do so in a way that we do not inhibit gun shows and we do not impose undue requirements on both the operator of the gun show or those dealers, both licensed and unlicensed, who may attend.

I mentioned before discussion of the terrorist connection. It seems to me that after 9/11, when we attempted to strike an extraordinarily strong posture against any form of terrorism—where this body, in virtual unanimity, passed the PATRIOT Act, which empowers the Federal Government to take unusually strong steps with respect to individual privacy and individual protections—to now suddenly allow this loophole to exist that may be exploited by terrorists, seems to me astounding.

If we can have thousands of people at airports screening bags against terrorist threats, why can't we simply pass a gun show loophole amendment that will close a source of weapons that has been exploited in the past by terrorists?

I mentioned three cases in particular. I would like to elaborate, if I may.

The first is Ali Boumelhem, a known terrorist, connected to Hezbollah. He is currently serving prison time for attempting to smuggle guns into Lebanon. He was discovered by an informant. As a result of this information, Federal law enforcement agents trailed him, observed him, and saw him go to a gun show in Michigan. He purchased a weapon. He also involved his brother as a straw buyer, to purchase another weapon. He was caught after attempting to smuggle the weapons out of this country to Beirut.

It is important to note, because there has been some suggestion that he never actually purchased a weapon at these shows, that he always used straw purchasers to purchase them. As a result, it would foil our amendment, the McCain-Reed amendment.

But in a sworn affidavit, dated November 6, 2000, ATF Special Agent Cheryl Crockett testified agents assigned to the Joint Terrorism Task Force had Boumelhem under surveillance on October 29, 2000, when he went to the Grand Rapids Gun and Knife Show. One agent particularly, Edwin Edmunds, observed Boumelhem approach a table and examine an M-16 rifle upper receiver—that is, the receiver, barrel, carrying handle, and handguards. This configuration is a firearm under Federal law.

Boumelhem walked away, but then returned minutes later with a wad of

cash, which he exchanged for the M-16. He was seen leaving the gun show with a plastic bag that, in the language of the agent, "comports with the size and shape of an M-16 receiver."

Mr. Boumelhem himself purchased a weapon at a gun show. Had the McCain-Reed amendment been in effect, the individual would have been required to have conducted a background check of Mr. Boumelhem, and he would have been denied the right to buy that weapon because he had already been convicted in California of an offense that would disqualify him to purchase such a weapon.

Mr. Boumelhem was involved in a conspiracy not only to purchase weapons on his own behalf but to enlist others to purchase these weapons and to ship these weapons back to Beirut. In fact, he was finally arrested after a Federal agent searched an auto park's cargo container on a ship bound for Lebanon. They found weapons and other materiel. He was attempting to flee the country, apparently, when he was arrested by the Federal agent. He had a one-way ticket to Beirut. It appeared he was not making just a business stop but, indeed, was trying to flee the country.

Our Federal agents also had witnesses and informants who had seen Boumelhem in Lebanon with, in their words, AK-47s, M-16s, explosives, grenade launchers, grenades, rocket launchers, and rockets in his possession. The press reported the FBI has a video tape apparently showing Ali Boumelhem firing automatic weapons in Lebanon and acknowledging he is a member of Hezbollah.

This is the charge—someone who, under observation by Federal agents, used the gun show loophole to acquire an M-16. He was engaged in significant conspiracy with others before to exploit gun shows or other means. His brother said Ali Boumelhem was a frequent gun show attendee. In his own words, he said his brother said he went to "gun shows everywhere. Gun shows everywhere here, almost every week. If it's not Mt. Clemens, it's in Taylor."

Both of them were searching out gun shows all through Michigan. This individual qualifies as a terrorist. He would have been denied the right to purchase this firearm had the Reed-McCain legislation been in effect.

There are others, too, who have been indicated as terrorists and have been involved in these details. One other is the case of Muhammad Asrar. Mr. Asrar is an illegal Pakistani immigrant who has pleaded guilty to weapons and immigration charges. At a presentencing hearing, the Government sought an "upward departure" from the sentencing guidelines because of Asrar's "intent and demonstration of violent and terrorist motives." Asrar remains under investigation by a Federal grand jury on suspicion of involvement with al-Qaida. The Government has revealed that he was stockpiling guns he had illegally bought and sold

at Texas gun shows. Asrar had also obtained a pilot's license, collected pictures of tall buildings in the U.S., and tried to purchase a timeshare in a Lear jet.

Asrar was convicted of illegally possessing 50 rounds of 9 mm ammunition. As an illegal alien, it was illegal for Asrar to buy or possess guns or ammunition. He was also convicted on an immigration charge—illegally overstaying his student visa since 1988. He has admitted to having bought and sold guns at gun shows. Asrar told authorities that he had bought and sold a variety of guns at Texas gun shows over the last 7 years. These included a copy of a Sten submachine gun, Ruger Mini-14 rifle, two handguns, and a hunting rifle. None of the guns were in his possession when he was arrested on September 17.

In addition to the ammunition, authorities also found pictures of the tall buildings, as I indicated, and also pictures of the guns that he said he at one time purchased and had in his possession. He told the authorities he bought and sold guns at gun shows.

It appears he was stockpiling these weapons. The fact is, he had at least 16 guns, and possibly as many as 30 guns. He was arrested on September 11 when an informant had indicated he was behaving suspiciously. The informant indicated that Asrar had asked him whether or not he could help Asrar smuggle a foreign national across the border from Mexico, and if he would take pictures of tall buildings for him during his travels, and if he would mail letters for him from Pennsylvania.

Now, the Government is presently developing cases against this individual based on a theory that he is involved in terrorist activity. As I said, in a presentencing motions hearing, the Government indicated that it is conducting this further investigation. In their words, "We are asking for upward departure based on his intent and demonstration of violent and terrorist motives." This is the text of the open session in court:

... will testify that he, there's numerous gun transactions, there's more than what's in the presentencing report.

This is the Federal attorney:

The presentencing report contains most of the ones that are more well defined, but there's other witnesses who are a little bit more vague, but they describe more gun transactions, or gun incidents I should call them, not gun transactions necessarily. But also the presentencing report contains incidents where he's trying to buy explosives. There's also the—on September 8, Your Honor, he rented a car. He drove to Houston, Texas; he returned the car on the 11th. He met with well-known persons of middle eastern descent there in Houston. He has obtained a flying, a pilot's license. Although he was apparently completely broke, he was trying to purchase a timeshare in a Lear jet. He requested a person who was traveling to the East Coast to take pictures of tall buildings for him and send them to his brother. There's an incident, Your Honor, where approximately a year before the defendant was arrested, persons had been calling in to local

authorities saying he had been involved in gun transactions and the ATF went with, I believe it was the TABC, or some alcohol-related agency, and they went to search his property, and about a year before he was arrested. And they found no guns. When we began interviewing people after he was arrested, we looked into one, Mr. Robert Fang, who's an admitted friend of Mr. Asrar, who says, who referred back to that incident a year earlier and said that Mr. Asrar brought him a case of guns, a case of guns, I believe it was 5 to 7 guns, somewhere in there, and said, "Please hold these for me. My place is about to get searched by agents. Please keep these for me so they won't find them."

Mr. President, you have someone who is behaving extremely suspiciously, is illegally in this country, who has apparent ties to terrorist organizations—at least enough to ask the Federal authorities to ask in a presentencing that he be treated as such. Of his own admission, he frequented gun shows, and bought and sold guns. Again, I think this is a strong case for closure of the gun show loophole.

Briefly, before I yield the floor, I will mention the case of Conor Claxton. Mr. Claxton is an admitted member of the Irish Republican Army. He came to the United States—specifically Florida—because he was looking to develop an arsenal of weapons to ship back to Ireland. He testified that the IRA chose Florida because "we don't have gun shows in Ireland, and you see things here like you never imagined." He told the FBI it is common knowledge that obtaining weapons in the United States is easy.

Now, Mr. Claxton was involved in, apparently, using about \$100,000 to assemble an arsenal for the IRA. The Irish authorities recovered 46 handguns in 1999 and more than 600 rounds of ammunition hidden inside 23 packages containing toys, computers, and other goods to be shipped from the cabal of the IRA in the United States.

Claxton usually used a straw purchaser, a naturalized American citizen, Siobhan Browne, who is also his girlfriend. She acquired many of these guns. But it appears, also, because Browne indicated that Claxton "spent more than \$100,000 off the books on semi and fully automatic weapons in sales from private dealers." So there is strong evidence to suggest that Claxton himself was engaged in the acquisition directly of firearms for the purpose of arming IRA members in Northern Ireland.

Now, Mr. Claxton was ultimately charged and he was convicted along with two codefendants on the gun smuggling charge of which he was accused. He is currently serving a 56-month sentence.

Despite his admission that he was a member of the IRA, he was acquitted of the charges of terrorism and conspiracy to maim and murder. That seems to be a technicality. According to the Good Friday accord negotiations, the IRA had been dropped from the Federal Government's "Dirty 30," the list of officially recognized terrorist organizations. If the IRA had

stayed on this list, his conviction would be automatic. Because of that delisting, however, Federal authorities had to show that the weapons had been smuggled "with the specific intent to murder or maim."

A specific intent offense requires a level of proof that is significant. Even though they failed in this level of proof, Mr. Claxton's contact and his own admission of the involvement with the IRA strongly suggests that he, too, was involved in terrorist activities.

We have a situation in which, because of the gun show loophole, there is mounting evidence that criminals have access to weapons and indeed terrorists have access to these weapons. The amendment Senator MCCAIN and I will propose will close this gun show loophole without unduly burdening gun show operators. It will also not interfere with the operation of unlicensed gun dealers.

I have suggested, by pointing out specific incidents, a situation where individuals have used the gun show loophole. Let me say in conclusion that the vast majority of individuals participating in these gun shows, licensed and unlicensed dealers, are law-abiding individuals who have no intent to defeat the law. But as long as we have such a low, virtually nonexistent threshold, there will be a few—and there certainly will probably be more—criminals and terrorists who will seek to avoid the responsibilities under the gun laws.

I think it is entirely appropriate to pass this legislation to close this gun show loophole and to ensure simply that at a gun show everyone is treated the same—licensed dealers and unlicensed dealers—and that everyone knows the rules. Gun shows now will require a background check.

I retain the remainder of my time. I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, we have just heard an explanation as to why we ought to change a law on gun commerce in this country. It has largely been touted as a loophole. My contention this afternoon and my contention has always been that there is not a loophole because if there is one, it exists outside of gun shows if it exists inside of gun shows.

Gun shows are, in fact, a mirror image of gun commerce in this country. An individual can sell a gun without a federally licensed firearm permit to do so, but if he or she is in the business of selling guns, then they have to have that license.

It is also true in gun shows. When you walk through the door of a gun show, the law has not changed nor does it change. But under the McCain-Reed amendment, they are suggesting it should change and that this particular cloistered environment of a gun show ought to be something new and different.

We have heard the explanation. Let me attempt to set the record straight

this afternoon because it is important we understand that an attempt is being made to set a whole new tranche of Federal regulations against what has historically been U.S. commerce that was legal and law-abiding.

Gun shows grew out of the firearms collectors associations that were formed as part of this country's commerce in legitimate firearms in the early 20th century. Those associations remain active today and some became national and even international organizations and some sponsor gun shows.

Commercial gun shows first appeared largely after World War II. They are large, well-advertised public events in convention centers and similar facilities. Annually, some 4 million people attend gun shows. Four million people attend these kinds of efforts in gun commerce.

Behind me is a picture of a typical gun show. I have attended numerous of them over the years. You will see all kinds of displays, from educational material to actual firearms.

Gun shows provide an opportunity for people interested in gun selecting and in the shooting sports to examine and learn about many different types of firearms, as well as to buy and to sell or to trade guns, ammunition, and related materials. Notice I said "to buy and to sell or to trade guns, ammunition, and related materials." Right now if you are buying and selling and moving guns and ammunition and related material for your living and you are in the commerce of firearms, you have to be a federally licensed firearm dealer. But if you are a collector, if you are an individual and you do not commerce in guns, you do not make your living by doing commerce in guns, you do not have to be federally licensed. But you could still go to a gun show, you could still rent a table, and you could sell an occasional firearm.

Why? Because the law outside is the same law today that is inside, and the Reed-McCain amendment would say: Oh, no, we have now established for you the raw example of the unique thing that goes on at a gun show and, therefore, it ought to be licensed. What they fail to say is, but in the back streets of America where there are gun traffickers and black market dealers, we would really like to license them, too, but, of course, they are criminals and you cannot get them licensed, and they won't play by the rules.

To suggest that guns are sometimes sold at a gun show that might enter into a criminal act, I am not going to stand here and deny that because guns that are bought from legitimate licensed firearm dealers, bought by a straw person are finding their way into misuse for criminal purposes. That is the reality of the world in which we live, but that is not the norm.

Finally, at the end of all of this debate, Senator REED acknowledged that a very large majority of those who attend gun shows are law-abiding, honest citizens who go there for all the right

purposes. But he is suggesting that we have to have this one little special dot on the legal map because it is uniquely different from everything that goes on outside of a gun show.

If you want to traffic in guns, you can set up across the street from a gun show, and yet his law would not pertain to that person. If they happen to be standing out there and open the trunk of their car and try to persuade people who come in and out of a gun show that they ought to buy from them, isn't that somehow a misconception of reality? I think it is.

Gun shows are also important venues for those interested in the general ownership of guns and the general manufacture of them. Gun rights groups frequently set up booths at gun shows and distribute literature. Attendees share information to work together to protect what I believe is their constitutionally mandated right in this country to have fair, open access to firearms. Therefore, gun shows are an important part of what we in this country call the political process.

Free speech under the first amendment—I know in going to gun shows, a lot of dialog ensues between those who are attending. Why? Because they are advocates; because they are collectors; because they are vocal in their constitutional rights.

It is estimated that more than 1,000 commercial gun shows are held each year in this country. A typical gun show will have approximately 300 exhibitors offering items for sale and educational display. The paid public attendance at an average gun show can be estimated at about 4,000 people. Generally, gun shows are held in a 2- or 3-day timeframe over a weekend. Larger shows attract exhibitors and patrons from hundreds if not thousands of miles away.

Gun shows today are regulated by State law in relation to gathering and commerce and by local ordinances as is appropriate for all large gatherings that cities would want to know about and have registered.

Let us talk about statistics. I think I can, by what I just said, establish the long tradition of gun shows in this country, some 1,000 of them starting in the early part of this century, largely following World War II.

In the mid-eighties, the National Institutes of Justice sponsored a study of how convicted felons in 12 States obtained their guns. One of its findings was that gun shows were such a tiny source of crime guns that they were not even worth reporting as a separate figure. That was in the eighties.

In 1997, the National Institutes of Justice report called "Homicide in 8 U.S. Cities" actually covered more than homicides, which put the number of crime guns from gun shows at or around 2 percent by that statistic.

In 2000, a BJS study of Federal firearms offenders, 1992 through 1998, found that 1.7 percent of Federal prison inmates obtained their guns from gun

shows; in other words, a statistic that will show up, but a very minor one in reality of the total misuse of firearms in our country.

The most recent study done by the Bureau of Justice Statistics, November 2001, found that less than 1 percent of crimes committed involving the use of firearms utilized guns obtained at gun shows, including sales by fully licensed firearm dealers at gun shows; in other words, those who were doing background checks.

This was the largest study of its kind based on an investigation of 18,000 convicted felons. According to these reports, most criminals get guns from theft, burglary, black market, friends, or family.

The one inconsistent study is misleading. In January of 1999, the Justice and Treasury Departments published the result of a study on gun shows, Brady checks, and crime gun traces, concluding that nonlicensee firearm sales at gun shows contributed to trafficking in crime guns, the use of firearms in drug crimes and crimes of violence. The study, based upon an examination of 314 ATF criminal investigations, recommended additional legislation to deal with so-called loopholes. That is where the word began to appear in 1999.

However, the study does not show that occasional gun sales by one-time sellers at gun shows significantly contributed to illegal trafficking. They made the argument, but they did not make their case. The majority, 54 percent, of investigations involved unlicensed persons who were actually dealing in firearms without the required Federal dealer license, which is a felony and may be prosecuted under the law.

What they found out is that when it did happen, it was happening by those who were already trafficking in guns. The reason they found out is they were able to arrest them because they were already violators of the law. The Federal firearms laws were at work, and that is how we got the statistics because we used the laws to investigate and apprehend the bad guys.

Twenty-three percent of the investigations involved violations of existing law by Federal licensees; for example, illegal sales to straw purchasers, persons with clean backgrounds who acquired firearms for the actual purchasers. Even the Reed-McCain bill would not screen out a straw man. Somebody with a clean record could acquire a firearm for someone else, complete the sale, take it out, and hand it off. Does this great new loophole plugger solve it? Not at all. That hole cannot be plugged when somebody lies and they happen to have a clean background.

In 23 percent of the cases where they are now citing examples, folks simply lied. They did not tell the truth, and if one does not tell the truth and they have a clean background and the NICS system cannot pick it up, then that

person is legitimate in the eyes of the law and in the eyes of a licensed firearm dealer.

The point is, in all of these crimes, under current law they were apprehended, and the vast majority of them are just that.

Now we hear a new argument: Terrorists and terrorism, and somehow the terrorists who are going to create havoc on the American public are going to go to a gun show, and he cited one buying an M-16—only that was not to do damage here, it was to do damage outside the country—and therefore we ought to put new restrictions on law-abiding citizens.

All I can say is, the great havoc that was wreaked on this country on 9/11 by terrorists was not by a gun purchased at a gun show. For the terrorists, the weapon of choice that did so much damage to our country happened to be a jet airliner and not an M-16 that was due to be exported.

Senator REED speaks the truth because these terrorists we now find, who are apprehended and behind bars, were arrested because they were operating illegally under current law in many instances. If someone lied about their background, they cannot be found, but if they are illegal and undocumented in this country, it is a violation to go to a gun show and buy a gun. So one deals with an individual purchase and not a licensed dealer. That is so rare and so minuscule that if Senator REED thinks that hole can be plugged by sticking one's finger in it, they are simply diverted to the street where they know they can acquire a gun, but the price is probably going to be a lot more.

All of that is the tragic environment in which we live, but what is important to say about the so-called "loophole" is, if one walks into a gun show and only in there a loophole exists, they can walk out of the gun show and it does not exist because they are not proposing to change current law where all commerce in firearms must be background checked.

Any individual citizen in this country can sell a firearm they own to his or her neighbor, and they do not have to do a background check—nor should they. But if they are legitimate, or if they are commercing or making their living in firearms, they are going to have to get a license and they are going to have to do a background check. That is the law, and that is the way it ought to be.

So, again, this is a political placebo for a problem that so rarely—I say rarely—exists, and it does rarely exist.

I listened very carefully to all of those he listed whom we found out to be violators of law. That is why he could list them, because they were already arrested under current Federal firearms laws, and that is why many of them are doing time.

So the answer to the problem is to stack a new law on top of law-abiding citizens at a thousand gun shows, and for the Federal Government to step

into the business of regulating commerce in this area saying that in some way it might protect the average citizen.

Again, I point to the picture behind me. There is the average gun show in America. Nearly 4,000 people attend each one, and there are over 1,000 of them. Does the loophole exist? Well, when we look at the statistics from the report that bore the name of the loophole that they are now using, we find out those statistics just do not hold up; that what happened at a gun show can happen outside a gun show.

The reality is, one simply cannot make the holes in the sieve tight enough to stop everybody. Tighten it as we will, every time we do we step much harder on the private law-abiding citizen than we do the criminal or terrorist element in the world because they know they can play outside the law because the rest of us are required to play inside the law. That is the reality of any law, whether it be a gun law or anything else. We know that.

That is the history of law. That is the history of those who choose to play outside of it and break the law, and the gun show loophole will do nothing to change that. It will simply divert the commerce outside the building instead of inside the building, if someone chooses to operate illegally or outside the law.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. May I inquire how much time is allocated to each individual side?

The PRESIDING OFFICER. The Senator from Rhode Island controls 9 minutes. The Senator from—

Mr. WARNER. May I ask that the parliamentary inquiry be done outside the time constraint? I pose this inquiry to our distinguished floor leader, the Senator from Idaho. I am reading from the RECORD of the Senate on Thursday of last week when the distinguished Senator from Idaho said the following:

I am sure there are some Members on both sides who might have amendments that were not listed to be considered for votes today and/or Tuesday. What I would ask them to do is to come to the Chamber and talk to Senator Reed and myself to see if we might work those out. Certainly, we are happy to take a look at them. There may be an opportunity late Tuesday and possibly Friday to offer additional amendments. The unanimous consent request does not preclude any Member from doing that.

I wrote the distinguished majority leader a letter on November 18 last year indicating that I wanted to offer an amendment on this bill, and I received back a reply from Mr. Schiappa, who had the authority to address this, that said it has been noted. So I have tried to diligently follow the rules and procedures by which to bring up an amendment. On Friday morning—

The PRESIDING OFFICER. If the Senator will suspend, I need to find out who yields time.

Mr. WARNER. I ask unanimous consent the parliamentary inquiry be addressed by the Chair outside the time agreement.

The PRESIDING OFFICER. Is there objection?

Mr. CRAIG. Reserving the right to object, we have a time problem. That is, at 4 o'clock we go off these two amendments that have been offered, and we go to Senator BINGAMAN. And we have a 5 o'clock deadline in which there will be a vote on the Bingaman amendment. So any time you use now, you are eating somebody's time because of the fixed times we have set before us.

I will not object to your inquiry at the moment but understand you cannot effectively allocate yourself time without changing the underlying unanimous consent, which I do not want to allow to happen for the sake of the 5 o'clock vote and the debate on the Bingaman amendment.

Mr. WARNER. Fine. Then if I could quickly ask the distinguished floor leaders—

Mr. CRAIG. Let me yield the distinguished Senator 2 minutes of time for the purposes of this question.

Mr. WARNER. I see my colleague from Michigan. He, likewise, offered an amendment on Friday morning. My understanding is his is the pending amendment following the Bingaman vote; is that correct?

Mr. CRAIG. I believe that is the unanimous consent; that is correct.

Mr. WARNER. Could I then ask unanimous consent my amendment, also offered on Friday morning in good faith, pursuant to the instructions you laid down, be the pending amendment following that?

Mr. CRAIG. Following?

Mr. WARNER. Following the Senator from Michigan?

Mr. CRAIG. Reserving the right to object, following the amendment of the Senator from Michigan?

Mr. WARNER. That is correct, whatever disposition the Senator makes on that.

Mr. LEVIN. Will the Senator yield?

Mr. CRAIG. First of all, we have a UC. I will not object to that request.

Mr. WARNER. I thank the chairman.

Mr. REED. Reserving the right to object.

MR. LEVIN. I would make inquiry.

Mr. REED. May I make a point? All of this would be subject to the underlying unanimous consent that all amendments also are withdrawn tomorrow morning.

Mr. WARNER. Could the Senator speak up a bit?

Mr. REED. I understand that under the controlling unanimous consent that all amendments are withdrawn tomorrow morning. So if your amendment was in order after Senator LEVIN, I think both amendments technically at this point would be withdrawn tomorrow morning.

Mr. LEVIN. Reserving the right to object, I would do everything I can reasonably do to obtain disposition of my amendment before 8 o'clock or whatever time it is tomorrow morning. So I ask the Senator from Virginia as to whether his unanimous consent request is that his amendment be in order following the disposition of my amendment?

Mr. WARNER. Mr. President, that is how I so stated my UC.

Mr. LEVIN. If the UC is that following the disposition of the Levin amendment the amendment of the Senator from Virginia would then be the pending amendment, I would have no objection to that, providing that is the way it is presented.

Mr. WARNER. That is correct. I hear no objection.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. I thank the distinguished Presiding Officer.

The PRESIDING OFFICER. Hearing no objection—

Mr. REED. Reserving my right once more to object again, the understanding, of course, is that all of these amendments are withdrawn tomorrow morning.

Mr. LEVIN. Reserving the right to object now, Mr. President, that assumes they have not been disposed of prior to tomorrow morning or according to some modification of the pending unanimous consent agreement. I am not willing to agree that my amendment will still be pending tomorrow at that hour, nor am I willing to agree that we could not work out some modification of the unanimous consent agreement, which is now pending, to allow for the disposition of my amendment at some point before or after that appointed hour tomorrow morning.

Mr. CRAIG. Mr. President, with that discussion I understand the unanimous consent is still operative? Until I understand clearly where we are, so that none of this language in any way undererodes the underlying unanimous consent, which means that all amendments that might be up but have not yet been disposed of by the opening of business on Tuesday morning fall, I would have to object at this point because that underlying agreement cannot be eroded.

Mr. WARNER. Mr. President, at this time I am not trying to seek in any way by my UC to modify that request. It is simply that I be considered after the disposition of the Levin amendment. It is a very simple procedural request.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. CRAIG. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, it is so ordered.

Mr. CRAIG. I yield to the Senator from Virginia for an inquiry.

Mr. WARNER. Madam President, I thank my distinguished colleague. I think we clarified among ourselves the parliamentary situation of this matter. I therefore ask, at the conclusion of the disposition of the Levin amendment, whatever that may be, is the amendment by the Senator from Virginia in order?

The PRESIDING OFFICER. Yes.

Mr. WARNER. I thank the distinguished Presiding Officer. I thank my colleagues.

I rise today in support of the Feinstein/Warner amendment to reauthorize the assault weapons ban.

Signed into law in 1994, the assault weapons ban placed a 10-year prohibition on the domestic manufacture, transfer, or possession of semi-automatic assault weapons and the transfer and possession of high capacity ammunition clips. The 10-year ban ends on September 13, 2004. Consequently, unless Congress and the President act prior to September 13, 2004, weapons like Uzis and AK-47s will once again be produced in America, and more and more often, these weapons will fall into the hands of criminals who lurk in our neighborhoods.

For a number of years, President Bush has indicated that he supports renewing the assault weapons ban for another decade. Although his administration has not presented a bill to date, it recently reiterated his support for the renewal. Consequently, we introduced a bill, S. 2109, that achieves his goal: extending the law, without any changes, for another 10 years.

The Feinstein/Warner amendment that we debate today is the exact text of S. 2109.

Some in the Senate, myself included, opposed the ban a decade ago, fearing it would do little to reduce crime, and could threaten the Constitutional rights of law-abiding gun-owners and hunters.

However, a decade of experience has provided us with key facts. The assault weapons ban has made our communities safer. Recent Department of Justice records indicate that the use of banned assault weapons in crimes has declined measurably—by 65 percent in one analysis—since the measure took effect.

Moreover, it is clear that the assault weapons ban has in no way challenged legitimate gun-owners' rights. Let me state, without hesitation, the vast majority of gun owners are law-abiding citizens who responsibly keep their guns. As a gun-owner myself, I have long been a supporter of the Second Amendment. I remember well the day my father gave me my first gun, and I have spent most of my life around guns, both with antiques and in hunting.

The assault weapons ban only bans a small percentage of all weapons—those military-style assault weapons, that have no hunting or sporting purpose,

and that are just used to create mass destruction.

Furthermore, our world has changed dramatically from 10 years ago. September 11, 2001, has taught us many lessons; among them that terrorism lurks in our own cities and communities. Given the current world situation, it defies logic to let a good law expire, and in so doing let suicidal terrorists and others simply walk up to a counter and buy these weapons for potential attacks.

It is for these reasons that my thinking on the assault weapons ban has evolved over the last 10 years, and for these reasons that I join with Senator FEINSTEIN in sponsoring legislation to extend the assault weapons ban another 10 years.

Not only does President Bush support the continuation of these protections; men and women of law enforcement across the Nation join him, because, being on the front lines, they know it makes communities safer. I note that several sheriffs and chiefs of police, all across Virginia, have written to me indicating their support for reauthorizing the assault weapons ban, as has the Virginia State Lodge of the Fraternal Order of Police.

Now, over my 25 years plus in the United States Senate, I have always tried to stand up for what is right, regardless of politics. I believe that is why the good people of the Commonwealth of Virginia have given me their trust and elected me to represent them in the United States Senate.

I know that reauthorizing the assault weapons ban is the right thing to do.

I urge my colleagues to support this important amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Madam President, could I once again determine how much time is available to all the participants?

The PRESIDING OFFICER. The Senator from Rhode Island has 9 minutes; the Senator from California, 6 minutes; the Senator from Idaho, 37 minutes.

Mr. REED. Madam President, I ask unanimous consent that at 3:35 Senator SCHUMER be recognized for 5 minutes, from the time of Senator FEINSTEIN.

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

Who yields time?

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

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. REED. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. REED. Madam President, I listened quite attentively to my colleague, the Senator from Idaho, talk about gun shows and the need or lack of necessity to close the gun show loophole. It struck me there is something quite a bit different between a private

sale and a sale through a gun show. Again, not the law but the logic. Most private sales involve people who know each other. In fact, for a home sale you invite the person into the home to offer them the sale of a weapon. It is quite different from a gun show, as the picture indicated. These are huge events. These are supermarkets for firearms. No individual has the knowledge of the perhaps hundreds or even thousands of people who might come up to them and offer to purchase a weapon. In that case, the very particular specialized case of a gun show, the need for a background check seems obvious. That is why we insist that Federal licensed firearms dealers conduct such a check.

To argue that this is some aberration, that this gun show loophole amendment we are proposing somehow turns the law on its head, is completely wrong. Again, here is a situation where these unlicensed sellers have very little, if any, knowledge of the thousands of people who come up to them, which of those people is a terrorist or a criminal seeking to exploit the gun law. That is what has happened. These individuals I referred to have been captured and prosecuted. But there are, I am sure, many others who avoid capture and prosecution.

There are those today in this situation. Anyone could. Anyone listening today—I hope they don't take this as direction or guidance—but understanding that, they could walk up to an unlicensed dealer, find an unlicensed dealer and ask to purchase a weapon and do that.

Again, the cases seem compelling. Nigel Bostic and two accomplices were arrested for buying 239 firearms at 11 Ohio gun shows. Here is a team of people systematically using gun shows to acquire 239 weapons which they then sold to criminals in Buffalo, NY. One was recovered in a homicide. I don't know how many others were involved. That is just one example, and there are more examples than this.

It seems to me this makes obvious sense that we cannot have a situation where there are two standards, for a licensed dealer and for an unlicensed dealer at the same place, in a public setting, in a place that is advertising the sale of guns. This is not a situation where you are at home or you have a weapon in your garage that you would like to sell to someone who came by. You have a friend. You were talking at the local doughnut shop and discovered that you and your friend have an interest in common, firearms, and you decide: Come back to my place; I'll show you a weapon.

That is not a gun show, and our amendment does not reach those activities.

It is clear, it is logical, it is consistent, it is fair, and it sets a common standard.

This amendment will not disrupt gun shows. California has a statute that not only requires background checks at all sales but a 10-day waiting period for

gun shows, and they still have gun shows. In fact, I am told their gun shows are quite popular and quite successful. This amendment is about common sense. It is about dealing with problems which we know exist—Columbine showed us that—and the arrest of criminals who are engaged in conspiracies to exploit the gun show loophole. We have evidence of terrorists—real terrorists—who are aware of this who have tried to use it.

I don't think we can be so sanguine as to say we know how terrorists will attack us, that they will always choose an airline or they will always choose explosives. They will choose the way that is most disruptive to our life and which will cause the most damage. That could involve in some way, shape, or form exploiting the gun show loophole.

I urge my colleagues to support this amendment.

I yield the floor, retaining the remainder of my time.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

Mr. CRAIG. Madam President, we know a great deal about gun shows. We know thousands of Americans go there each year—law-abiding citizens who are collectors, who are avid sportsmen, hunters, and target shooters. They go for information. They go to access collections of libraries of gun manuals. Many people who respect firearms and collect them like to have the manuals on how they were manufactured, and the ballistics of particular firearms. All of those are available at gun shows.

What is most important is to try to plug a loophole which I argue clearly does not exist today, or it exists outside of gun shows, because we are all operating under the same law whether you are inside the door of a gun show or outside the door of a gun show.

Senator REED mentioned three terrorists and talked about how they had used a gun show. They were apprehended, they were prosecuted, and they were convicted under existing law. Did they break the law? Yes. That is how they were apprehended and convicted. It appears the law is working and working quite well at this moment. In fact, we are more aware today of terrorist activity and undocumented people in our country's activities than we ever were before, and it took a tragic event to cause that to happen.

I received the amendment about 3 hours ago, and I did not have a chance to look at it in detail as it relates to the original amendment introduced by Senator MCCAIN and Senator REED. I

must say considerable change has been made. Of course, the Senator admitted that. But there is a great deal left in the bill which I think dramatically alters the nature of gun shows and the bureaucracy and the Federal involvement in the law-abiding commerce of firearms that we are not talking about.

The McCain-Reed 24-hour wait is in fact a smokescreen. The bill provides the wait may be reduced to 24 hours if a State applies for the privilege of improving its records after the fact, after it happened. In other words, if it happened and when it happened, then only may accommodate, but with no real incentive for States or the Federal Government to improve records even though we are pushing hard to make that happen. It is a complicated and expensive process. There is no reason to think the 24-hour check would ever be achieved. Even if a State did switch to 24 hours, the change is strictly optional and could be reserved for an anti-gun State government—well, you know in this instance you are going to get the irregular application of the McCain-Reed law if it were to become law.

With a 3 business-day period still allowed to check out-of-State records, a few large States could drag down the whole scheme for all transfers across the country. In other words, the Federal bureaucracy reigns supreme against a legitimate action of commerce that today is regulated only by Federal law as it relates to licensed dealers specific to their action and only those who make their living commercing in a law-abiding way in firearms.

The McCain-Reed amendment makes no instant check improvements, unlike S. 890, and the Senator referenced that. The bill provides no funding to criminal upgrades. Hopefully, we can get that accomplished in the near future. I am certainly in favor of that—the carrot and the stick—to make States comply so the NICS background check is legitimate, is effective, and certainly has within its recordkeeping the range of violations of law that makes an individual ineligible for acquiring a firearm.

McCain-Reed gives no priority to gun shows. Remember, we are talking about a weekend event. Yet if the system were active, there is no priority to move that check to the front of the list to make it happen in those areas where there might be a question—and there oftentimes are. It does not mean a person is a violator of the law or has within his or her background something, but there possibly is a triggering that needs further investigation.

Does this offer the priority? No, we know it does not. Sometimes law-abiding citizens travel hundreds of miles, if not thousands of miles, to some of these gun show events, some of the larger ones in the country, and to not be able to transact their commerce and leave with reasonable time involved just does not make a lot of sense. They

can do it outside the door of the gun show; they cannot do it inside the door of the gun show. Today, how you act is legal based on your adherence to law. That transaction can occur inside or outside the door of the gun show.

Most importantly, McCain-Reed ignores the real problem. Multiple government studies have proven that gun shows are not the source of crime. But because there was once a crime report that mentioned the word "loophole," all the romance of that word, somehow out there they can catch the ear of the American public suggesting that here is a hole that all types of criminals and terrorists are getting through to gain access to firearms.

The Bureau of Justice Statistics reports in "Firearm Use By Offenders Found" that less than 1 percent of U.S. crime guns come from gun shows. The 2001 study was based on an interview of 18,000 prison inmates and is the largest such study ever conducted by the Government under legitimate polling and informational-gathering terms.

That is a pretty significant figure, 1 percent—a significant figure if you want to compare that to establishing a whole new bureaucracy and controlling over 1,000 legitimate gun shows on an annual basis.

The Bureau of Justice Statistics study is consistent with a previous study. The 2000 study, "Federal Firearm Offenders," as reported in 1992 and 1998, found that 1.7 percent of Federal prison inmates obtained their guns from a gun show.

Similarly, the National Institute of Justice, 1997 study, "Homicides In Eight United States Cities" reported less than 2 percent. All of the studies are hovering in that 1 to 1½ percent range on the average. Those are the realities of what we are dealing with.

We are today trying to drag down a very important law in this country or the very important effort to change law in this country to protect legitimate commerce and legitimate manufacturers and those who are licensed gun dealers by cluttering up, in my words, S. 1805 in a way that might drag it down.

The McCain-Reed bill, S. 1807, masquerades as reform, imposing bureaucratic restrictions aimed at shutting down gun shows without fixing real problems on the national instant background check.

The Senator deserves credit. We have worked together to try to make those improvements. I want a background check. I want no law-abiding citizen to be blocked from acquiring a gun or making it difficult to do. For those who have in their background those kinds of records that violate the law, we want to check them and keep them out of the business of owning a gun.

Despite changes from the Lautenberg juvenile justice amendment of 1999 that is based on the new compromise bill like its parent, S. 890 fails to address gun shows most significant concern and would create, again, massive liability

for gun show promoters who would likely drive gun shows into extinction.

The rhetoric is one thing. No, we are not out to close gun shows. The practical application is another. Gun show promoters who play by all the rules, if you have substantially put them at risk by liability, they will step back. Again, you close another door for the legitimate citizen who would attempt to acquire a firearm in a logical way.

McCain-Reed creates massive bureaucratic redtape. That is reasonable to assume. Certainly the author of the amendment can say one thing, the ATF in its administration and the regulations that would be written would be quite another.

McCain-Reed turns what can oftentimes be a casual conversation into a gun show sale. Let me give an example. If you are a gun show active participant, you go, attend, you like to walk around and look at the displays; you see a firearm you like. But you decide not to buy it at that time. But you know a given dealer has it, or an individual in this case, because a dealer—you would obviously be protected by the Federal law and the need for a background check. This is an exhibitor, a collector, who is not required by law to adhere to that standard.

Some weeks later you have convinced your wife that maybe that is really the firearm you ought to own and you pick up the phone and call him because you took their business card and you buy the weapon. Is that a transaction of a gun show? I don't think it is clear in the McCain-Reed amendment. Is that person, by that telephone call, in violation of the law? He may not be, but if the person who owns the gun says, great, I will sell it to you, come over and pick it up, or I will arrive at a point in time where we can meet and exchange the necessary purchase to do so, are they in violation of the law? I don't know. This unenforceable system makes it arguable whether that is the kind of thing that would happen.

Those are some of the preliminary questions I have at first glance at this amendment that we saw several hours ago which is different from what has been originally produced over the years that certainly would have created substantial bureaucratic redtape. At the same time, there is a simple premise here that we ought not ignore. We are now setting gun shows apart as a separate and unique form of commerce for law-abiding citizens in the exercise of their second amendment rights. All that can go on inside the door of the gun show can go on outside the door of the gun show.

So if that is the basis of the argument that step one is to control the inside, I have to believe the desire is step two sometime down the road, to work aggressively to control the outside. That is why I and others who believe in our constitutional rights and our second amendment rights believe the current laws that are on the books are adequate to effectively police the le-

gitimate and legal commerce of firearms in our country. That is why I hope Senators will vote this amendment down. We want to keep S. 1805 clean.

The President and the administrative policy statement urged us to keep this bill clean so it can become law this year instead of simply fall because the goal of those who are gun control advocates in the Senate would load it up in a way that it would be too heavy to move back through the Senate and back through the House or through a conference.

I yield the floor and suggest the absence of a quorum if all time can be taken equally from both sides.

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

The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. REED. Madam President, I make a parliamentary inquiry and ask how much time is remaining for the various parties.

The PRESIDING OFFICER. The Senator from Rhode Island has 3½ minutes; the Senator from California, 5½ minutes; the Senator from Idaho, 19 minutes.

Mr. REED. Madam President, just very briefly, I would like to respond to two points that the Senator from Idaho made. One is the suggestion that the Federal study of the felons indicates a very low number of people who have used gun shows to get weapons.

I would be very curious to study State prisons because it is in the State prisons you find more people who are convicted of crimes such as homicides and armed robberies and burglaries. Federal laws usually encompass more white-collar criminals, although there are a significant number of criminals in jail under Federal drug trafficking charges.

But I think the studies we have seen suggest, very strongly—and the ATF has suggested very strongly—that gun shows are a source of a significant number of weapons.

I also point out, in response to the Senator from Idaho, the suggestion that this is going to disrupt gun shows, create very difficult matters of interpretation so that individuals will be so confused that gun shows will wither on the vine, I think that could not be further from the truth.

Let me point out that States have already stepped up and passed legislation to close this loophole, to require everyone who is selling weapons at a gun show—regardless of their license status—to involve a background check on a potential purchaser.

In North Carolina, in 2003, there were 76 gun shows. I am told, actually, North Carolina is ahead of the rest of the country in developing their data

system for instant checks. So there is one example where a State has closed a gun show loophole, but gun shows continue to thrive. In fact, North Carolina has the distinction of having the most gun shows in the year 2003, from our records. I am sorry, Wisconsin had 88. So they eclipsed them. And Florida had 111. But North Carolina is among the top 10, at least.

I think that is an example to demonstrate this will not undermine gun shows. It will not impose undue burdens on individuals, people who wish to sell weapons and people who wish, honestly and legally, to acquire them. So I believe this amendment is compelled by the evidence we have seen.

Now, the Senator from Idaho has indicated the law has worked. It certainly did not work for that police officer in Garland, TX, who was killed by a weapon that apparently flowed through people exploiting the gun show loophole. And it certainly did not work for the 13 children at Columbine High School.

I think we can make it work. I think we can make it work if we adopt the Reed-McCain amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be charged proportionately to all sides.

The Senator from Idaho.

Mr. CRAIG. Madam President, time is running on both sides, and running out rapidly, because at 4 o'clock Senator BINGAMAN will have the floor for the purpose of offering an amendment.

So I want to make some concluding remarks, at least for today, as it relates to the gun show loophole amendment.

I think, clearly, we have established that there are well over 1,000 gun shows commercially in this country that are registered and abide by the law, some 300 exhibitors on the average, and some 4,000 people who attend each show on a regular basis. And the law that is currently on the books outside of the gun show is appropriately and legally and necessarily on the books inside the gun show.

So how does the word "loophole" appear? Well, it appeared out of a special study that said, yes, rarely but on occasion—those are my words, not the study's words—does somebody get a gun out of a gun show that is used by them or someone else in the commission of a crime. And the answer is, yes, around 1 percent. Oh, therefore, there must be a loophole.

Well, there is a loophole, and it is also outside of a gun show, if you want to argue it from that standpoint. It is called the back streets and the alleys and the car trunks and the drug traffickers who deal in this illicit commerce for not good will, but for profit. Usually many acquire their firearms who then use them in the commission of a crime in another way.

Here is our problem with any kind of failure to do instant check. That is, the

3-day waiting period is still in place. We know that. Gun shows, by their own activity, are a 2-day event. If you drive 100 miles or 200 or 300 miles to a show, you want to buy a gun that day. You want an instant background check. There is a waiting period involved in normal commerce—I should put it this way: the Lautenberg amendment allowed a 3-day waiting period, the same as current law. That is the only uniqueness I know to a gun show. It is like a flea market, from the standpoint that you go there to buy, not to look and think and buy later. You need instant capability to say yes or no. You are legitimate in that commerce. We are working hard to get there with federally licensed firearm dealers.

Also, I argue those who are collectors and casual dealers at gun shows should not be tied to that law because they are not involved in major commerce. Those are some of the complications involved in this type of restriction.

Then the last argument I place is a great frustration. Much of what we do is impulse buying. But, then again, much of what we do isn't impulse buying. If you are buying a \$200 or \$300 or \$400 or \$500 item, sometimes you have to go home and talk to somebody else about that kind of acquisition. So if you do and days later you call the individual who may not be—well, if he or she isn't a dealer, they are not required to comply with the background check, but are very legitimate and honest.

The question is, if their amendment were law, would you in fact be causing that person to violate the law or forcing that individual to find a way to do a background check when they were the collector or the casual seller of a particular firearm? Those are, I believe, legitimate questions that speak to the complication and frustration of stepping into a commerce in which there are no Federal regulations today, other than existing Federal law that governs the sale of firearms by licensed dealers.

Those are our concerns. Once again, I appeal to my colleagues to turn down this amendment with a no vote, to keep S. 1805 clean, so we can get it to the President's desk, hoping it will become law.

I understand Senator CORNYN is on his way to the floor and hopes to speak for a few moments on this issue. We hope he will be able to get here before 4 o'clock when our time runs out on this particular amendment.

Mr. REED. Madam President, I am informed Senator SCHUMER will not be arriving to the floor. Since there was a unanimous consent that allocated 5 minutes to him from Senator FEINSTEIN's time, I ask unanimous consent I be given any time remaining of Senator FEINSTEIN and Senator MCCAIN.

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

Mr. REED. How much time will that be?

The PRESIDING OFFICER. That will be 4½ minutes.

Mr. REED. Madam President, one of the factual points that has to be stressed again and again is the national criminal background check system is very efficient and rapid. Ninety-one percent of background checks take less than 5 minutes, so 91 percent of the checks involved in the sale under our amendment, by an unlicensed dealer, would be expedited in a matter of minutes—less than 5 minutes. And 95 percent of these checks take less than 2 hours. This is not a burden that is going to undermine the ability of a licensed or unlicensed dealer to operate at a gun show, or for a gun show to operate at all.

The evidence before us suggests that in States which have not only instant checks on all sales but also background checks, and sometimes even waiting periods, gun shows continue to operate. Again, this is not going to cause an undue burden on individuals who want to acquire a weapon.

The other factor I think has to be pointed out again is surveys of gun owners overwhelmingly support the idea of a background check applying to all sales at these shows. In a recent survey, 83 percent of gun owners said it makes sense. Again, the public nature of a gun show—the inability for an individual to screen his customers is quite different than a private sale or a transfer of a weapon between family members, and quite different than the transfer of weapons among people in a hunt club.

That is all protected in our amendment, because there is knowledge who you are dealing with. Here, you could have literally hundreds of thousands of people come to your booth, look at a weapon, and say I would like to buy. If there is no background check, how does that conscientious seller know if he is dealing with a criminal?

That is why I think the overwhelming number of gun owners and attendees at gun shows suggests this amendment would be helpful, not hurtful. And I agree. I urge my colleagues, when we lay the amendment down tomorrow and when we vote, to support this amendment. It provides a commonsense approach to ensuring there is an even and level playing field so everybody who is participating in a gun show on both sides of the transaction knows there will be a background check. I think it is particularly important because we already have evidence of individuals who are criminals who have exploited this loophole, and terrorists—three we know by name—and, frankly, they are not in the business of broadcasting their names. They understood the loophole, sought to exploit it and indeed, in some cases, they were successful—momentarily successful.

We owe it to the safety of the public to ensure this gun show loophole is closed. The McCain-Reed amendment will do that. I urge my colleagues to support it tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I understand my colleague has reserved the balance of the time to be granted to both Senators FEINSTEIN and MCCAIN.

Mr. REED. No. Senator SCHUMER will not be here. I asked to be given the remaining time to allocate to anybody who may come to speak.

Mr. CRAIG. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Idaho has 11 minutes, 50 seconds. The Senator from Rhode Island, 45 seconds.

Mr. CRAIG. Thank you, Madam President.

"Momentarily," but they were caught. That is how my colleague just referred to those three terrorists he highlighted as a major reason to establish a new bureaucratic hurdle for law-abiding citizens. How were they caught? They violated the law. They violated the current law that governs the sale of firearms, that controls, or hopefully controls, illegal aliens from acquiring firearms, and all the rest of it. That is a recordable fact.

Did they acquire the firearms at a gun show? Maybe they did. Were they caught? Yes. Does it mean the loophole stops that, that the sieve is so tight nothing falls through? I don't think it means that. If the desire is there to acquire the gun, then they simply stand at the door. The person or persons involved, if they are not licensed federally regulated firearms dealers, can step outside and, in a different transaction, sell that weapon. That is the tragedy today of any commerce, especially by those seeking to acquire illegally and seeking to do harm with that which they acquire—whether it be explosives or a firearm of any kind. So walk into a gun show and say I would really be interested in selling that firearm. But if you would meet me outside somewhere, maybe I could buy it. I would hope 100 percent of those who are registered would never do that and 99.9 percent of them won't because they are law-abiding citizens and would not. If there is a loophole, there is another one, and that is the reality of what we are trying to deal with.

Finally, let us understand that we have been able to reduce crime rates in this country and we have been able to save lives in this country when we said if you use a gun in the commission of a crime, you do the time. No questions asked. You are not plea-bargained back to the street. You are not granted leniency. If you use the gun, you do the time.

Time and again where that principle has been used, commission of a crime with the use of a firearm drops dramatically. The fellow who was robbing the 7-Eleven stores in Richmond with a baseball bat and caught was asked by the authorities why he didn't use a gun. He said: Because if I did, they would have put me in prison. Because in Richmond they were absolute in the prosecution of the law. So he chose another weapon to intimidate the operator of a 7-Eleven store.

Does the law work? You bet it works if it is enforced. We are finding out all new kinds of things about terrorists, and the reason we are tragically finding them out is because we were lax in our country. Gun shows are not the chosen venue by which the terrorist element acquires lethality, and we know that to be a fact. We know less than 1 percent, or around that figure, of firearms that might be sold at gun shows somehow find their way into criminal activity. Oh, and that is a reason to set up a whole new Federal bureaucracy, a brand new hurdle over which we ask the law-biding citizens to adhere? I think not.

The wonderful thing about law-abiding citizens is they obey the law. Sometimes they are very frustrated by it, but they obey the law. Thank goodness most of the citizens in our country believe so strongly in obeying the law.

All of the examples, I believe, Senator REED has given and the reason he can report on them is because the examples are of people who broke the law, were apprehended by the law, and did the time or were convicted and are serving time. That is the reality of what we are about.

I am one of the coauthors of the NICS Instant Background Check System, and I am going to push to get it as accurate as we possibly can, and we ought to apply that to all federally licensed firearm commerce. But to suggest to the individual, whether they are inside the gun show or outside the gun show, that if you are not in the business of selling a firearm, you, too, must comply, I don't think that is the case. I hope my colleagues will agree with me.

May I ask how much time is remaining?

The PRESIDING OFFICER. Six minutes 10 seconds.

Mr. CRAIG. Madam President, the Senator from Texas having arrived, I say to him I have 6 minutes left in the allocated time under the unanimous consent agreement and would be happy to yield to the Senator for the use of that time.

I yield to the Senator from Texas all but 30 seconds of my remaining time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. Is it the Chair's understanding this amendment is just to be submitted?

Mr. CORNYN. To clarify, I send an amendment to the desk to be filed.

The PRESIDING OFFICER. The amendment will be received.

The Senator from Texas.

Mr. CORNYN. Madam President, this amendment is the gun owner privacy protection amendment. This amendment actually will not change the laws that currently exist, but it will continue a temporary provision that was included in the omnibus appropriations bill that will otherwise expire at the end of this fiscal year.

I believe when it comes to protecting the American people, the instant background checks that are required upon the sale of firearms are a very important part of protecting the public. Principally, I believe it is important because it does, on a near instantaneous basis, determine who can legally purchase a firearm and who cannot. Indeed, it is a Federal crime for a convicted felon, or some other person who cannot legally possess a firearm, to purchase one and, conversely, for the retailer to sell it. This provides an instantaneous piece of essential information when it comes to compliance with the law.

Of course, we know the primary threat, in terms of public safety, comes from when career criminals illegally use firearms to commit crimes, which they do typically from the time they get up in the morning until the time they go to bed at night.

This would provide for the continuation of this privacy protection that was contained in the omnibus appropriations bill.

It is specific. What this would require is 24 hours after a sale takes place to a lawful gun owner—that is, there is no reason to limit or otherwise be concerned about the legality of that sale; it is as if the gun were sold to you, me, Senator REED, or Senator CRAIG—that it would be required to be destroyed. The purpose of this, of course, is to determine the sale takes place to somebody who can legally purchase the gun and is no threat to the public safety.

The purpose of the instant background check is not—I repeat not—for the Government to maintain a permanent record of who owns firearms. That invasion of personal privacy is not justified by any sound public policy of which I am aware, and I think it would be altogether appropriate for those records of instant background checks to lawful purchasers be destroyed, as is currently the law, after no more than 24 hours.

I emphasize this does not change the requirement that dealers must keep records of all firearms sales. Under current law, these records must be retained for up to 20 years to help trace firearms purchases, and dealers must still comply with all Bureau of Alcohol, Tobacco, Firearms and Explosives trace requests in the course of a criminal investigation.

Finally, for any instant background check that reveals a potential sale to an unlawful purchaser, those records would be retained, as they are under current law, and they would not be subject to destruction after 24 hours.

I submit to my colleagues this would be altogether an appropriate way of protecting the privacy of gun owners of an important corollary to the instant background checks which I believe have protected the American people from felons and others who cannot legally purchase or even possess firearms, which is the policy of the current law.

I yield back the remaining time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I thank the Senator from Texas for what I think is a very sensible and responsible amendment as he proposed it. I wish it could become part of S. 1805. It will not have that opportunity at this time. I do believe in protecting law-abiding citizens and not allowing our Federal Government to develop a paper trail of the kind that has no value other than to know what a private law-abiding citizen may own in relation to a firearm.

These records ought to be destroyed, as the Senator clearly spelled out, in a 24-hour period. That is what is important about it. We are not going to be able to get to this particular segment of the issue at this time. I hope we will have the opportunity to do so.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Just very quickly because I have very little time, this amendment does not create a new Federal bureaucracy. The national instant criminal background check system exists. We simply are applying it to unlicensed dealers at gun shows.

Second, I have heard much this afternoon about the law working. It has worked occasionally to punish terrorists and criminals who have used violence and weapons, but it has not worked as effectively to prevent harm to people who have been killed, the most obvious and most notable, 13 young people at Columbine High School. The Reed-McCain, McCain-Reed amendment can help prevent, we hope, this violence that so often strikes our communities.

I yield back my time.

The PRESIDING OFFICER. Under the previous order, the Senator from New Mexico is recognized.

Mr. BINGAMAN. Madam President, what is the pending business?

The PRESIDING OFFICER. The Levin amendment is currently pending.

Mr. BINGAMAN. Madam President, I ask unanimous consent that amendment be set aside.

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

AMENDMENT NO. 2635

Mr. BINGAMAN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant journal clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] for himself and Mr. CORZINE, proposes an amendment numbered 2635.

Mr. BINGAMAN. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify the definition of reasonably foreseeable)

On page 9, strike lines 1 and 2, and insert the following:

product, when used as intended or when used in a manner that is reasonably foreseeable, provided that the term "reasonably foreseeable" means the reasonable anticipation that harm or injury is likely to result.

Mr. BINGAMAN. Madam President, my amendment would correct one of the most obvious problems with S. 1805. In fact, what it would do is to amend S. 1805 so that the bill would do more of what its proponents claim they want to do.

The proponents of S. 1805 say its purpose is to bar frivolous or junk lawsuits against gun manufacturers and dealers. They define these frivolous suits as situations in which the manufacturer and the dealer have done nothing wrong, but situations where although they have done nothing wrong they are being sued when a perfectly good gun, but in a perfectly legal manner, is misused by a criminal to cause damage that neither the manufacturer nor the dealer intended or could have foreseen.

I have some sympathy with that concern. In my view, there ought to be some protections against frivolous cases, but S. 1805 bars much more than frivolous cases. It also bars cases where the injury is caused by an act or omission of the manufacturer or dealer where the gun was defectively designed or manufactured and where that defective design or manufacture was what caused the injury.

The National Rifle Association has distributed a statement opposing my amendment. In that statement they say that S. 1805 does not prohibit reasonable suits in product defect cases where the firearm or ammunition is used in a reasonably foreseeable manner.

That statement is blatantly false. S. 1805 says a person can bring a suit for injury caused by a defective product if the injury is reasonably foreseeable, but then it goes on to say it is only reasonable to foresee injuries that occur when in all other respects the gun is used in a lawful manner. In other words, we should not expect a manufacturer of a gun to anticipate that anyone would ever be injured from the use of that gun while some other law might be violated.

This is contrary to common sense. It is analogous to saying that a car manufacturer could only be held liable for a defective steering system in the car if the driver were in all other respects obeying all traffic laws when the injury occurred. If the driver happened to be speeding or had an expired license, then suit for the defective steering system would be barred. That means all suits against the manufacturer/dealer, not just by the driver of the car but by anyone else who was injured, a pedestrian or a passenger in the car, would be barred if we were to apply the same logic that we are applying in this bill to automobile manufacturers as well.

Let me explain a real-life situation where this problem occurred in my home State and in our largest city of Albuquerque. In 1993, there were three teenage boys, 14, 15 and 16, who were hanging out together at the house of the parents of the 14-year-old. Sean Smith was his name. They decided to go out for something to eat, and while they were out they were approached in a parking lot to see if they would be willing to buy a gun along with some ammunition for that gun, and the price quoted to them was \$40.

The 15-year-old in the group, whose name was Michael, examined the gun's chamber and saw that it was empty. He took the ammunition magazine and he inserted it in the gun since it was being offered as part of the package deal. He inserted it in the gun and he bought the whole thing. Then they went back to Sean's house to continue to waste time.

At the house, Michael took the magazine back out of the gun and they continued to pass the gun around while they were doing various other things. All three of these teenagers thought the gun was unloaded since the magazine had been taken out of the gun again.

While they were passing this gun around, one of the boys, as he later said, stupidly pulled the trigger and accidentally shot Sean, the youngest of these three teenagers, who was talking on the telephone across the room. A bullet hit him in the mouth. It seriously injured him.

Sean and his parents filed suit against the manufacturer and distributor, claiming that the gun was defectively designed in that there was no warning that the gun might still be loaded even though the magazine had been removed and there was no safety device on the gun to prevent it from being fired when the magazine had been removed.

The trial judge dismissed the case, but the New Mexico Court of Appeals said the case should have been allowed to proceed, and they reinstated the case. In doing so, they made a very key distinction. In their opinion, they said:

This is not a case where the plaintiffs are arguing that this gun was per se defective and capable of being misused. This is a case where the plaintiffs are saying that the design of a gun was defective and that the designers and manufacturers should have foreseen that an accident like this could happen.

The court said that the jury should have been allowed to determine whether this kind of injury was foreseeable with a gun designed in this way.

If S. 1805, as it currently exists on the Senate floor, is enacted without my amendment, this suit by Sean Smith and his parents will be banned, and similar suits will be banned.

This is not just my opinion. This is the opinion of the Congressional Research Service. In a memorandum to me last week, they stated that for this case to avoid the bar that is imposed by S. 1805, the plaintiffs would have to

show two things. No. 1, they would have to persuade a jury that the injury was reasonably foreseeable, but second, they would have to show that in no other respect was the misuse of the weapon either criminal or unlawful.

The Congressional Research Service concludes that there is a New Mexico criminal statute prohibiting the negligent use of a deadly weapon, and that this statute was violated here so that in their view the suit would be barred under the language of S. 1805.

The truth is, in virtually every State in this country there is a criminal statute prohibiting the negligent use of a deadly weapon. So what S. 1805 is saying is, if a person is injured by the negligent use of a gun, then the Congress is declaring that the designer, manufacturer, and dealer cannot be sued even if the injury was the result of the negligence of that designer, manufacturer, or dealer.

Congress is saying that regardless of the facts of the case, we in Congress are deciding that all such injuries are not reasonably foreseeable by those potential defendants.

I said that this conclusion contradicts all common sense. Let me also point out in addition to that the tort laws of our States say you can sue people for injuries they suffer if the injuries were caused by the negligence of the person you are suing and the person should have reasonably foreseen those injuries would occur. This is also black letter law, well recognized by the American Law Institute in their restatement of torts, their Second Restatement of Torts, which I think is universally recognized as an accurate statement of the law in this country.

In section 302(a) of that restatement of torts, the ALI, the American Law Institute, says:

An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the negligent or reckless conduct of another or a third person.

Then, in 302(b), they go on to say:

An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal.

S. 1805 redefines what is reasonably foreseeable for companies that are in this particular business—this particular business being the designing, the manufacturing, and the selling of guns. It says that we may want to require auto manufacturers to foresee that producing a defective steering system could injure people, even people who are riding in cars where the driver is violating another law, but we will not require that gun manufacturers foresee that producing a defective gun may injure people unless, in all other respects, there are no laws being violated.

So my amendment is very simple. It states gun manufacturers should be held to the same standard of care as

other manufacturers are; that is, auto manufacturers, lawnmower manufacturers, manufacturers of toasters. It defines “reasonably foreseeable” the way it is universally defined in the tort law. That is the reasonable anticipation that harm or injury is likely to result.

We should not be passing a law to shield gun manufacturers from the standard of care that all other manufacturers are required to meet. As written, S. 1805 carves out special protection for a special interest group. This is not the equal justice under law that we all give speeches about on the Senate floor. This is not fair to the victims of gun violence and gun accidents, such as Sean Smith and his family in Albuquerque. When an injury such as this occurs, they should have some redress in the courts. Without my amendment, they will not. I urge my colleagues to support the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I understand Senator SESSIONS will be to the floor momentarily to join with me in debating the Bingaman amendment. But for the moment let me suggest that the Bingaman amendment would modify very clearly the definition of “reasonably foreseeable” in product defect cases in such a way that would undermine, clearly, the purpose of S. 1805 and undo the Daschle amendment, the very corrections that the minority leader thought were necessary to be made and to which I and others agreed.

Rather than leave criminal and unlawful misuse out of the definition of reasonably foreseeable use, like S. 1805 and the Daschle amendment, the amendment of Senator BINGAMAN would define the term “reasonably foreseeable” in product defect cases to mean the reasonable anticipation that harm or injury is likely to result.

S. 1805 exempts product defect cases from qualified civil liability actions. The bill, in other words, allows actions for physical injuries or property damage resulting directly from a defect in design or manufacture of the product when the product is used as intended or in a manner that is reasonably foreseeable. As it relates to product defect cases, the term “reasonably foreseeable” does not include any criminal or unlawful misuse of a qualified product, other than possessory offenses.

The Daschle amendment simply made a technical change by including this definition of reasonably foreseeable in the section on product defect cases.

In other words, current product liability law still pertains. S. 1805 does not erase this. The substance, however, remains the same as I have said. That is, both S. 1805 and the Daschle amendment make clear that criminal and unlawful misuse of a qualified product is not included in use that is reasonably foreseeable.

Tort law has long recognized the principle that criminal acts and others

are not foreseeable, that a person can generally assume others will obey the law. As one authoritative treatise stated:

There is normally much less reason to anticipate acts on the part of others which are those which are merely negligent, and this is all the more true where, as is usually the case, such acts are criminal.

Under all ordinary and normal circumstances, in the absence of any reason to expect the contrary, the actor may reasonably proceed under the assumption that others will obey the criminal law.

A Maryland court, in the case of *Valentine v. On Target*, quoted this when it ruled that a victim of a criminal shooting could not sue a gunshop for a murder committed by a gun stolen from the dealer's display case.

Again, here, as in product defect cases, the criminal and unlawful misuse of a product is not included in the definition of reasonably foreseeable.

Senator BINGAMAN's amendment, by including this language, would strike these longstanding principles of tort law and, as lawmakers, it is important to recognize these principles of law in S. 1805, and that is exactly what we do. Although the legislation does not prohibit reasonable suit in product defect cases where a firearm or ammunition is used in a reasonably foreseeable manner, there is also no open door for antigun activist lawyers to claim that firearms are defective products just because they can be used in crime. For this reason I certainly urge that my colleagues oppose the Bingaman amendment. In fact, it strikes to the very heart of that which Senator DASCHLE and I proposed in a very bipartisan way, to make this legislation as broadly acceptable as it is.

The case that the Senator is referring to, no matter how sympathetic, still involves a violation of the law for something such as negligent homicide or the negligent handling of a weapon. Again, criminal or unlawful behavior is not foreseeable. This is established in longstanding principles of tort law, as I said, and here, in product defect cases, these principles similarly apply.

The Senator's amendment again would strike language, as I said, from S. 1805, that clearly restates what we believe to be current law and an important part of the law.

The practical effect of this definition is that it would bar many valid product liability suits involving accidental shootings.

For example, in *Smith v. Bryco*, as he mentioned, a 15-year-old unintentionally shot his friend when he pulled the trigger of an illegally purchased handgun after removing the magazine. He thought the gun would not fire without the magazine and did not realize that a bullet may remain in the chamber. His parents sued the manufacturer under strict product liability and negligence theories asserting that the handgun should have incorporated a warning, chamber-loading indicator,

or a magazine-out safety. Under S. 1805, cases like this one would likely be dismissed because they involve some violation of law—certainly in this case—other than a possessory offense such as negligent homicide, negligent handling of a weapon, or similar offense.

Those are the fundamental issues. I certainly urge my colleagues to oppose the Bingaman amendment.

We will vote on this amendment at 5 o'clock. I hope others might come to the floor for purposes of debate on this amendment.

I see Senator SESSIONS entering the Chamber now and he wished time on this important amendment.

Let me also repeat that clearly part of the Bingaman amendment goes to the very heart of the definition as it relates to "reasonably foreseeable" in the law. We think that is critically important. That is why Senator DASCHLE and I teamed to make sure this law was, as I expressed it to be on Wednesday and Thursday and Friday of last week, a very narrow approach toward dealing with the kinds of junk or frivolous lawsuits we have seen filed now well over 30 times across this country in which law-abiding gun manufacturers and dealers have spent hundreds of millions of dollars defending themselves, only to have, in most instances, these cases thrown out of court. We would hope as they enter the courthouse door and the arguments are placed that the judge, based on S. 1805, can make reasonable decisions as to whether this case ought to go forward or whether it meets the definition of what we are proposing.

May I inquire how much time remains?

The PRESIDING OFFICER. Twenty-one minutes 17 seconds. The Senator from New Mexico has just under 18 minutes.

Mr. CRAIG. I yield 10 minutes of my time to Senator SESSIONS.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I thank the Senator from Idaho for his leadership on this issue. We really do need to deal with the question of excessive lawsuits in America and try to restore the classical understanding about fault and who is at fault and who ought to be responsible when bad things happen. The legal system has never understood that somebody has to pay every time somebody is hurt. What the legal system has always contemplated is that people who do wrong get sued, not the people who do right. People who are responsible for the activity are the ones who are subject to the lawsuit—not the person who is the victim of the activity.

I just had a number of doctors from Alabama in my office. They feel so strongly that lawsuits are driving up the cost of their doing business and their insurance rates. Every time we come in with a proposal to constrict that and reduce it, we have all kinds of

complaints at the margin about this or that would be wrong and how it could be harmful.

As a young law student in Alabama, we had courses on common law pleadings. I think Massachusetts and Alabama were the last two in the Nation that still had that. You had to plead with specificity in replevin and trover and trespass. It goes back to the English days. You had to say exactly what your cause of action was and why you were entitled to relief. If you did not state it properly, the judge threw it out before trial. It became so complex that it was abused. So we went to the more common law pleading like every other State had done. But I think we have gone too far the other way.

I want to share this story that was in Saturday's Washington Times about an incident that occurred in Maryland. The story is as follows:

Sometime after closing on Friday night, March 16, and Saturday night, March 17, 2001, thieves broke into Back River Supply's Glyndon plant, owned by the Geckle brothers. They made off with equipment, including saws, a laser and a fax machine. Most ominously, they took a gun.

Matt and Tony called the police and filled out the requisite reports. On March 18, they tried to install a security camera, but could not get it to work. Matt (who told the Baltimore Sun he was worried that the burglars would steal the company computers, which were needed to operate the plant) decided that he would stay over on Sunday night to drive off the burglars if they decided to come back for a third evening in a row. Tony reluctantly agreed, and the pair brought their rifles with them.

Early on the morning of March 19, the burglars returned. Tony, armed and standing guard, ordered them to stop, but says the intruders ran toward him in the darkness.

He fired and killed one of the burglars. No criminal charges were brought. That should have been the end of it. Unfortunately, the Steinbach estate has now filed a lawsuit demanding \$13 million from Geckles and Back River Supply company. The lawsuit contends that the 4-year-old child of the criminal has suffered because of his father's death.

One of our Senators—Friday, I believe it was—in carrying on the debate here talked about a circumstance in which someone stole a weapon from a gun dealer and went out and committed a crime with it and said that something was wrong if we would keep the victim of this criminal act from suing this gun dealer. But in these circumstances, the gun dealer is a victim of a crime.

How did we get to the point where we are suing criminal victims instead of the person who sold the gun and committed a criminal act? What are we doing having burglars suing people who are defending their property? This is contrary to the rule of law on which our American Republic was founded. It is contrary to the Anglo law that we inherited from England. It is contrary to our traditions. Somebody said: Well, police officers might want to sue a gun

dealer or a gun manufacturer if a criminal got a gun and shot one of them and that we ought not to stop that. But I don't know police officers who want to sue the gun manufacturer when a criminal shoots them. They carry on their hip a gun made by a gun manufacturer every day.

This bill, to its credit, is moving forward. Our amendment, which was agreed to, will allow officers not on active duty to carry guns so they can be available to help defend American citizens if they come upon someone in trouble from a criminal act.

I guess what I want to emphasize—and I express my appreciation to Senator CRAIG and others who have brought this liability bill—is they are not doing something wrong. They are changing the law as it has historically been. They are dealing with a situation in which a group of activist attorneys or a group of activist politicians—sometimes mayors, sometimes DAs—are filing lawsuits in jurisdictions that are less friendly to guns than other jurisdictions. They are seeking million-dollar verdicts against perfectly innocent manufacturers who have complied with the law, who have done everything the Federal Government has said they should, has sent the guns down to a dealer who has a whole complex series of rules that he must comply with before selling a gun. And if a person does that, they still want to sue because of an intervening criminal act.

I have dealt with this, as I said on the Senate floor the other day, in defense of a lawsuit. Under the law, a person is not expected to foresee and, therefore, be liable for an intervening criminal act. It is just not right. But if a gun dealer has a gun and sells it loaded, and it goes off and injures somebody, he should be sued. If a gun manufacturer produces a gun that blows up and knocks somebody's eye out, they ought to be sued. But if the gun performs according to its manufacturer's requirement, and a criminal uses it to harm somebody, then they should not be sued. That has always been the law.

I do not know where we have gotten to this idea that we are going to politicize the law to the extent that we are to go against lawfully and regulated businesses. Another Senator in the debate said if we cannot pass it, somebody has to stand up and do something about these guns. If it is not done by the legislature, we ought to let them do it by lawsuits.

That is the very definition of activism. We are the people elected to pass gun laws. We have had a lot of debate on that. People have disagreements about where we should draw the line, about what is legal or illegal. That is the way it should be. We are accountable to the people. If we do something wrong, we can be voted out of office. It is in a lot of political campaigns on both sides, what a Senator or Congressman did with regard to gun rights in America. That is what we are paid for.

To have a judge who is elected to decide lawsuits or a mayor in some city

that is hostile to guns twist the law around to carry out a political agenda that affects the whole United States and changes the law in that fashion, not voted for by elected representatives, is not good policy.

I thank the Senator from Idaho. We had many, many examples of these kinds of lawsuits that are unwise, not sound as a matter of public policy. This legislation fundamentally is designed to deal with that and to say that we are not going to have frivolous lawsuits brought. We are not going to have individuals who comply with the law in this highly regulated environment and do what they are supposed to do, comply with the Government regulations, have them sued because of what a criminal did. It does not make sense, not correct.

I wanted to share those remarks, and I reserve the remainder of my time.

Mr. BINGAMAN. Will the Senator yield?

Mr. SESSIONS. I am delighted to yield.

Mr. BINGAMAN. From what the Senator has said, he is on my side and should support my amendment.

Where a gun is designed and manufactured in such a way that a person would be misled in believing it was unloaded when, in fact, it was still loaded, and a teenager got ahold of that gun and accidentally shot his friend, would the Senator agree under those circumstances that the designer or manufacturer of that gun could be held liable if the jury found that the injury that resulted was reasonably foreseeable?

Mr. SESSIONS. I say to my distinguished colleague from New Mexico, who has grown up with guns as I have, the first principle of a firearm is you assume it is loaded. Yet you have to be very knowledgeable of that fact.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BINGAMAN. I yield additional time to the Senator.

Mr. SESSIONS. If the dealer handed a customer a gun that was loaded, perhaps that dealer could be held liable. I think probably they should. The dealer should have checked before they handed it to them. But I don't think you want a circumstance where you say a gun that does not clearly show whether or not it is loaded creates a liability. We have never had that before.

I have never had a gun that I know of that shows clearly whether it is loaded or not. You have to open it up to see if it is loaded.

My time has expired.

Mr. BINGAMAN. If the Senator will respond on my time, in this case, the gun in question, a pistol these kids bought, and when they bought it they looked in the barrel—he was 15 years old—he looked in the chamber, saw there was no bullet in there, he got the magazine and put it in because he was buying a magazine along with the gun. They went back home and he took the magazine out and they were passing it

around. He assumed when he took the magazine out the bullets also all came out. They all assumed that, these three boys.

Now, in fact, they were wrong. One of these bullets had stayed in the chamber and then there was the accidental shooting of one of the boys.

The parents of this boy who was shot went to court and said, either you should have had some kind of warning that having a magazine out did not mean the gun was unloaded or you should have a safety which provided if the magazine was out you could not pull the trigger, one of the two.

The issue before our court in New Mexico was, shouldn't the jury be able to decide that; should the jury be able to decide whether the injury that resulted here was reasonably foreseeable. But does the Senator think in that circumstance it is appropriate for the jury to make a decision?

Mr. SESSIONS. I say this to the Senator. The Senator has to understand, and everybody does who deals with a firearm, you have to be careful. You cannot assume because you put a clip, a magazine, in it and take it out that a cartridge has not been put in the chamber.

You want the manufacturer of this gun to be liable for the action of one of those kids with regard to another one who was reckless or negligent?

That is what I am saying. I am not saying the other person who handled the gun in an unsafe manner should not be liable if they did. But I don't think the manufacturer should be liable for that.

Of course drawing these lines, as the Senator knows because he is skilled and knowledgeable in these matters, is difficult, but having a clear line about what we are going to allow in this country under classical rules of law is what we ought to strive for more. I think your amendment is just chipping away and pushing further in this instance about which you feel strongly.

Mr. BINGAMAN. I thank the Senator for his response.

Madam President, how much time remains on my side?

The PRESIDING OFFICER. There are 14 minutes and 10 minutes 29 seconds on the other side.

Mr. BINGAMAN. Madam President, let me respond to a few points the Senator from Idaho made, and also the Senator from Alabama.

The first point that the Senator made that I will respond to is the Senator from Idaho said the bill as it now stands represents longstanding principles to tort law. The quote he gave us was from Prosser and Keeton's Treatise on the Law of Torts. All who have been to law school know that Prosser on torts is the accepted authority. The quote he gave was: An actor may proceed upon the assumption that others will obey criminal law.

What he failed to say, if you go on in that same paragraph, that: A defendant may still be held liable for not taking

precautions for foreseeable, intentional, or criminal acts which the defendant might reasonably anticipate.

The case I have been focused on was not a criminal act in the traditional sense. This was an accident. This 15-year-old boy did not intend to shoot his friend who was sitting across the room talking on the telephone. He did shoot him. He shot him in the mouth. It was accidental. But because our State legislature and virtually every State legislature in the country has said that the negligent use of a deadly weapon is a crime, then essentially they have said negligence is the same as criminal activity in this instance.

The position which the Senator from Idaho is taking is that since negligence is the same as criminal activity, we are determining as a matter of law here—if we pass this law without my amendment, we are determining as a minority of law that it is not reasonable to assume that any teenager with a gun might act in a negligent fashion.

I don't know how many in Congress have had teenagers in their house but that is just not a commonsense, reasonable position to take. We all know that at times kids act negligently. Grownups act negligently. Everyone does at times.

The question is not whether the person acts negligently but whether an innocent person who was in that room at the time that negligent activity occurred should be barred from suing for a defective product.

Now, the Senator from Alabama says he would not allow suits against a manufacturer because, in his view, this was not something which would justify that. That should be decided by a jury. That is exactly what our court of appeals in New Mexico said. That is the law of the State of New Mexico. This bill is going to override that. This bill is going to say, it does not matter what your juries think, we in the Congress are saying these guns are not defective, even if the design of the gun results in this type of an injury.

The Senator from Alabama said the people who do wrong are the ones who should get sued. I agree with that. That is exactly what my amendment tries to provide. It says let's make a determination as to whether the designer and the manufacturer of this gun did something wrong when they designed it and manufactured it; and, if so, let's allow them to be held liable.

That is exactly what we do in the case of automobile manufacturers. That is exactly what we do in the case of lawnmower manufacturers. It is exactly what we do in the case of manufacturers of every other item that we have in our country.

We are saying, in this bill, look, we are going to hold gun manufacturers to a lower standard than everybody else. I do not understand why it is in the public interest for us to hold gun manufacturers to a lower standard of care than everybody else who manufactures anything in our country. That does not compute with me.

I think, clearly, the better course is to allow the State law of New Mexico and of most States to prevail, to allow the courts to use traditional principles for what is foreseeable to determine who will be held liable. In fact, in this case, the Court of Appeals of New Mexico was right. This case should have been allowed to proceed—should still be allowed to proceed, I would say, because this case has still not been completed. This case will be barred, if we pass this legislation, and the Smith family—Sean Smith and his parents—will be denied recovery, not because Sean was acting negligently, because he was not, because his 15-year-old friend was acting negligently. And the New Mexico Legislature has said that the negligent use of a deadly weapon is, in fact, a crime.

So I think my amendment is a small change in the underlying bill which would dramatically improve it, in my opinion, and would cause it to still deal with the frivolous cases that the Senator from Idaho and the Senator from Alabama and all are worried about.

I am not trying to protect frivolous cases. There is all this reference to how we have activist attorneys going after innocent manufacturers. That was what the Senator from Alabama said. Frankly, I do not doubt that there are some innocent manufacturers. I do not doubt there are some activist lawyers. In this case, we had a lawyer representing a family that had been injured, through no fault of their own, and they have a right to go to court. That is all I think we should maintain.

So I hope my amendment will be agreed to and that all Senators will support it.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Let' see. Madam President, I have 10 minutes remaining?

The PRESIDING OFFICER. Ten minutes 22 seconds.

Mr. CRAIG. Madam President, I yield 5 of those minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

ORDER OF PROCEDURE

Mrs. HUTCHISON. Madam President, I thank the Senator from Idaho for allowing me to do something I have traditionally done every year I have been in the Senate, actually taking a tradition that Senator John Tower started. I ask unanimous consent to speak as in morning business to read the letter from William Barret Travis from the Alamo at the time they were under siege.

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

THE LETTER OF WILLIAM BARRET TRAVIS AT THE ALAMO

Mrs. HUTCHISON. Madam President, at the Alamo, in San Antonio, 184 Texas rebels, led by William Barret Travis, made their stand against Santa Ana's vastly superior Mexican army. On the second day of the siege, Feb-

ruary 24, 1836, Travis called for reinforcements with this heroic message.

Just to put this in context, the war for independence from Mexico was being fought through the last several months and would eventually end because of the valiant stand at the Alamo, at the battle of San Jacinto. These 184 men were looking at what they thought were 6,000 Mexican soldiers marching on them. They were asking for reinforcements.

They did not get those reinforcements, but they, nevertheless, fought to the last death. They held them for so long that it gave Sam Houston time to then get his troops lined up and to form the line on which they would take their stand; and that was near Houston, TX. It was the battle of San Jacinto.

But this letter was dated February 24, 1836:

Fellow citizens and compatriots: I am besieged by a thousand or more of the Mexicans under Santa Ana—I have sustained a continual bombardment and cannonade for 24 hours and have not lost a man—the enemy has demanded a surrender at discretion, otherwise, the garrison are to be put to the sword, if the fort is taken—I have answered the demands with a cannon shot, and our flag still waves proudly from the wall—I shall never surrender or retreat.

Then, I call on you in the name of liberty, of patriotism and of everything dear to the American character, to come to our aid, with all dispatch. The enemy is receiving reinforcements daily and will no doubt increase to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible and die like a soldier who never forgets what is due to his own honor and that of his country—Victory or Death—William Barret Travis, Lt. Col., Commander.

So, Madam President, this is something that is celebrated in Texas on March 2 of every year. That is the date of the signing of the Texas Declaration of Independence from Mexico.

My great-great-grandfather signed that declaration of independence, along with the first two Senators who eventually served Texas when, 10 years after it won its independence and had become a nation, then joined the United States as a State. And the first two Senators were Sam Houston and Thomas Jefferson Rusk. I hold the Rusk seat. He was the secretary of war and signed the Texas Declaration of Independence alongside my great-great-grandfather. They were both delegates from my mother's hometown of Nacogdoches, TX.

So, Madam President, I thank you. And I certainly thank the Senator from Idaho for allowing me to keep this tradition.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I thought it was important that the Senator from Texas be allowed to keep the tradition. My only observation is, if that fight had occurred under modern law, and with gun control advocates, it would not have been a gun fight; it would have been a knife fight.

But I do thank my colleague. That was an awfully important part of Texas history that became American history.

I retain the remainder of my time and yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Madam President, I rise in support of the Bingham amendment. I would just note, if I could, my understanding is this amendment would clarify that the manufacturer or the seller of a firearm would still be liable for the foreseeable injuries to a consumer who purchases a firearm, just like the producer of a toaster or a lawnmower or car seats or any other product, for that matter.

I also want to take a moment to speak on behalf of an amendment that is going to be offered and probably voted on tomorrow; and that is, with respect to gun shows, an effort, on the part of Senators McCain and Reed to close what many of us believe is a loophole.

By way of full disclosure, this past weekend I have been working with my youngest son, who is an eighth grader in a school back in Delaware. In school, he has a genealogy project. He has to not only tell his life story, but he has to tell the story of both sides of his family—his parents' ancestors—all the way back to North Carolina and Germany, and places like that.

One of things we came across, in looking through the genealogy, is that about 150 years ago, one of the things that was going on in the Carper family, in West Virginia, was the development of something called the Carper rifle.

It turned out to be a firearm that bears my family's name and was thought to be a weapon people were anxious to have a long time ago. In fact, we still trade a few from time to time. My dad was a big hunter and fisherman. I also like to fish and take my boys. My sons are Boy Scouts and they are being introduced to weapons as they go through their training. Occasionally, we will do some trap shooting. I remember my dad being a gun collector, too. I remember visiting him and my mom in Florida where they had lived for some time. I remember looking at his gun collection. He had enough for a small army in their home in Seminole, FL. He had rifles, shotguns, and even a musket or two, and handguns as well. He used to say, with some humor, if anybody tried to break into this house, it would be the last time they tried to do it. All I know is nobody tried to break into their house.

My dad also liked people. He was a claims adjuster for Nationwide Insurance Company. In the course of his work, he worked with troopers, police, law enforcement officers. He had a great affection for them and the work they did. I am like my father in some ways and different in some ways. We share an affection for the outdoors and also for people. We have a strong respect for the second amendment of the Constitution, believing people ought to

have a right to bear arms and own arms.

We have a situation in Delaware, as in about 30-some other States, where folks can go to a gun show—and people are not able to buy guns under Delaware law. But you can show up at a licensed dealer and they call in to the State Bureau of Investigation, and in a minute or two they will know whether you are eligible to buy a gun.

That same person can go to a gun show in my State and if they deal with a licensed dealer, within a couple of minutes, they know whether the person may or may not buy a weapon. If not, they are told you cannot buy a weapon. Yet somebody can go as far from me as to the reporter right here, who is not a licensed dealer, and that same person who cannot purchase a gun in my State will purchase a gun. It happens in my State and in dozens of other States around America.

My law enforcement officers want to see a change. They want to see it stopped. All of our major law enforcement agencies in Delaware, from Dover, to Wilmington, to Newcastle, would like to see that loophole closed. Tomorrow when we vote on the gun show loophole amendment from Senators MCCAIN and REED, I plan to vote for it. It is good, commonsense legislation. I hope it will carry the day tomorrow when we vote.

I thank the Senator from New Mexico for allowing me to have this time.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Madam President, I ask unanimous consent that the time from 9:30 a.m. to 11:15 a.m. tomorrow be equally divided between the two leaders or their designees; provided further, that the time from 11:15 to 11:25 a.m. be under the control of the Democratic leader or his designee, and the time from 11:25 to 11:35 a.m. be under the control of the majority leader or his designee.

Mr. REID. Madam President, I will not object to this. But everybody within the sound of my voice should understand these times will not be changed tomorrow. We are working under very tight time deadlines. For anybody who wants an extra minute here or there, or to have a vote later, there will be objection and that will not happen.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CRAIG. Madam President, I thank Senator REID for reinforcing the UC and the time constraints we are under tomorrow as we vote on several key amendments.

How much time remains on my side?

The PRESIDING OFFICER. There are 4 minutes 16 seconds remaining.

Mr. CRAIG. I thank the Chair.

Let me say I don't question the sincerity or the desire with which the Senator from New Mexico comes to the floor to offer his amendment. I must tell you I think he is rewriting current law to fit a situation in his State, or

attempting to do so. What we have always said here is individuals are responsible for their acts, not a third party or, in this case, the third party is responsible and not the gun manufacturer. It is my understanding all three of these young people were minors; they acquired the gun off the street. You have heard the Senator from Alabama talk about the knowledge of handling a firearm and the tragic mistake some make when they assume it is empty. Any of us who have ever taken a course in firearms knows that, first and foremost, that is the one assumption you never make. That gun has to be presumed to be loaded until you yourself establish by visual contact it is not.

The Bingaman amendment would modify the definition of reasonably foreseeable in product defect cases in such a way it would undermine clearly the purpose of S. 1805 and undo the Daschle amendment we worked in compromise and balance to bring. Rather than leave criminal and unlawful misuse out of the definition of reasonably foreseeable use, like S. 1805 and the Daschle amendment does, the Bingaman amendment would define the term reasonably foreseeable in product defect cases to mean the reasonable anticipation that harm or injury is likely to result.

We don't think that is how this argument ought to be approached. Again, there is this great desire in our country that somehow the individual cannot be held responsible, that somehow it was somebody else's fault. The case the Senator speaks of is, without question, tragic. That I don't dispute, and my heart goes out to the families in those kinds of incidents, where young people become involved in the misuse of a firearm and it takes someone's life or injures them. We hope that does not happen.

Again, we have to go back to the underlying principle of responsibility, and in the case of well and long-established court law, it is the individual who is responsible, and if their act causes injury, they are responsible. Certainly, that is the intent and the very narrow character of S. 1805.

There are lawsuits filed for the purpose of changing public policy in our country or simply, if you will, draining down the resources of a company that someone believes should not be in business, even though historically we have said that is a law-abiding, responsible business to be in in our country. In this case, it is a business that was spoken to by our Founding Fathers in the second amendment.

We think those who play by the Federal rules, whether they be a manufacturer or a dealer, ought to be exempt from these kinds of lawsuits, unless under product liability and other law they clearly are in violation. But the third party is the one who takes the action, causes the crime that is the criminal act. Why do we want to reach back through the courts and go after

the law-abiding individual or company? That is the issue at hand. I know the Senator speaks to a specific version of that, but at the same time that is the reality with which we deal here.

I hope my colleagues, when we vote at 5 or soon after that, will object to the Bingaman amendment in support of a clean S. 1805.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, how much time do I have?

The PRESIDING OFFICER. Two minutes, 18 seconds.

Mr. BINGAMAN. Madam President, to me, this amendment is a question of whether we are going to hold gun manufacturers and designers and dealers to the same standards we hold all other manufacturers in this country. Or are we instead going to pass a law that says, look, everybody else has to be held to a high standard, but if you are designing, manufacturing, or selling a gun, you can forget about that high standard; you have a much lower standard. That is exactly what this bill does without my amendment. It holds manufacturers to a much lower standard.

I don't think that is the best public policy. I think we are making a major mistake in this regard. In this circumstance, the case I have talked about for the last hour, where you have three teenagers, one of whom acts negligently and another of whom is injured as a result of that, there is no doubt that 15-year-old who acted negligently should be subject to liability for what he did. I am not suggesting he should not be subject to liability. All I am saying is a good argument can be made that if this gun had been properly designed, there would have been some warning the gun still was loaded or could be loaded even though the magazine was out, or there would be some safety mechanism on the gun to keep it from being fired when the magazine was out. In either case, this injury would have been avoided.

All I am saying is that under New Mexico law, as our courts have interpreted New Mexico law, an American has a right to go to a jury and argue that this injury was reasonably foreseeable by the manufacturer and, therefore, the manufacturer should be liable for the damage that was done by this defectively designed gun.

I believe we ought to maintain that ability. This bill, S. 1805, undercuts that ability and basically bars those lawsuits. That would be a big mistake.

I urge my colleagues to support the amendment I have offered. I believe it would dramatically improve this legislation and actually bring it into line with traditional tort law.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFFEE). The question is on agreeing to amendment No. 2635.

Mr. BINGAMAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. McCONNELL. I announce that the Senator from South Carolina (Mr. GRAHAM), the Senator from Arizona (Mr. MCCAIN), the Senator from Alaska (Ms. MURKOWSKI), and the Senator from Ohio (Mr. VOINOVICH) are necessarily absent.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from New Jersey (Mr. CORZINE), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Massachusetts (Mr. KERRY), and the Senator from New Jersey (Mr. LAUTENBERG) are necessarily absent.

I further announce that if present and voting, the Senator from Delaware (Mr. BIDEN) and the Senator from Massachusetts (Mr. KERRY) would each vote "yea".

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

The result was announced—yeas 28, nays 59, as follows:

[Rollcall Vote No. 23 Leg.]

YEAS—28

Bingaman	Feinstein	Murray
Byrd	Fitzgerald	Nelson (FL)
Cantwell	Harkin	Reed
Carper	Hollings	Sarbanes
Chafee	Inouye	Schumer
Clinton	Kohl	Stabenow
DeWine	Leahy	Warner
Dodd	Levin	Wyden
Durbin	Lieberman	
Feingold	Mikulski	

NAYS—59

Alexander	Daschle	Lugar
Allard	Dayton	McConnell
Allen	Dole	Miller
Baucus	Domenici	Nelson (NE)
Bayh	Dorgan	Nickles
Bennett	Ensign	Pryor
Bond	Enzi	Reid
Breaux	Frist	Roberts
Brownback	Grassley	Rockefeller
Bunning	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Chambliss	Hutchison	Smith
Cochran	Inhofe	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stevens
Conrad	Kyl	Sununu
Cornyn	Landrieu	Talent
Craig	Lincoln	Thomas
Crapo	Lott	

NOT VOTING—13

Akaka	Graham (FL)	McCain
Biden	Graham (SC)	Murkowski
Boxer	Kennedy	Voinovich
Corzine	Kerry	
Edwards	Lautenberg	

The amendment (No. 2635) was rejected.

Mr. CRAIG. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, S. 1805, which we are in the midst of debating, is good legislation and I am a cosponsor of this bill. It will help curb frivolous litigation against a lawful American industry and the thousands of workers it employs. Imagine if General Motors were to be held liable for every accident caused by a reckless or drunk driver. Likewise, businesses legally engaged in manufacturing, importing or selling firearms should not be liable for the harm caused by people who use that firearm in an unsafe or criminal manner. This legislation does carefully preserve the right of individuals to have their day in court with civil liability actions for injury or danger caused by negligence or defective product, a standard in product liability law.

Adding amendments such as an extension of the assault weapons ban threatens the chances of this important legislation ever becoming law. This bill is too important to be saddled with "poison pill" amendments.

Four years ago, in the midst of the 2000 election, I said that my goal in fighting criminals was to enforce, not repeal, existing laws. And, indeed, in Virginia we have seen that incarcerating violent felons is the best crime reduction policy. I would support reauthorization of the assault weapons ban in its current form if this legislation had proven effective in reducing violent crime. I have reviewed the thoughtful claims and extensive assertions of proponents and opponents of this law. I have concluded, after a review of the evidence, that this symbolic ban of 19 firearms chosen for cosmetic reasons is a meaningless, toothless law that has virtually no impact on crime. I have decided, therefore, to vote against extension of the assault weapons ban.

Police reports and Federal felon surveys have consistently shown that so-called assault weapons are used in only 1 to 2 percent of violent crimes. Crime victim surveys indicate the figure is only one-quarter of 1 percent, 0.25. Murders with knives, clubs and hands outnumber those with assault weapons by over 20-to-1.

Put another way, notwithstanding this 10-year ban of 19 firearms, criminals continue to commit criminal acts, they just do so with other weapons; with other guns, knives or objects.

The simple fact is that the assault weapons ban only attacks the cosmetic features of a gun, banning some guns even though they function exactly the same as hundreds of other semi-automatic firearms.

It is also worth noting that we are not talking about the fully automatic firearms or machine guns that many Americans view as assault weapons—the Uzi and the AK-47—they were already banned by previous laws. Nor are we talking about any firearms that are readily or easily converted to fully automatic firearms. Sale of such fire-

arms is already banned under current federal law.

I recently watched a CNN interview that showed an individual firing a gun that was banned under the 1994 law and a gun that is readily available today. Both guns produced the same results with the same impact. The only difference is that one had a different type of grip, stock or bayonet lock than the other. Therefore, the banning of these accessories is purely cosmetic. The focus should be on criminals not guns, and it should be on programs that work, like Project Exile and the Abolition of Parole.

I am also concerned that by reauthorizing this gun ban legislation, it will serve as a platform inviting added restrictions on Second Amendment rights. The current law, then, only makes sense if the ultimate goal it is to ban more and more guns in the future, something I cannot support. This can be seen in several proposals and amendments now before Congress to expand the current assault weapons ban proposals that permanently ban a large number of guns that citizens lawfully use for competition, hunting or self-defense. I have a long and consistent record of supporting the rights of Virginians and Americans to protect their families and themselves, and I am committed to protecting those rights of law-abiding American citizens.

MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators permitted to speak for up to 10 minutes each.

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

COMBATING SEXUAL ASSAULT OF U.S. SERVICEWOMEN IS CRITICAL

Mr. DASCHLE. Mr. President, last week members of the Senate Armed Services Committee heard deeply disturbing testimony about unspeakable acts of violence committed against at least 112 of our military personnel deployed in Afghanistan and the Iraq theater. Unfortunately, the acts of violence discussed in the committee were not committed by the Taliban or terrorists, but by fellow American troops who have sexually assaulted their female counterparts. This egregious situation is unacceptable.

Back home in South Dakota, I have met so many female soldiers who have proudly volunteered to serve this Nation. Like their male colleagues, they demonstrate tremendous patriotism and love for America. They also share the strong sense of duty and pride in being a member of our great military. They deserve the country's and their fellow soldiers' wholehearted respect.

Sadly, the Armed Services Committee testimony suggests that too many of our women soldiers must be concerned not just about combating