outcome will be, in that wonderful phrase of Madison, 'the defect of better motives.'

The States must be allowed to protect their rights. I should think that any Member of this body ought to defer to the courts before which this issue is now being placed.

Mr. LEAHY. Mr. President, I want to join my colleagues in voicing my strong objection to a rider that I understand may be attached to one of the remaining appropriations bills. The rider would block all or part of an ongoing federal environmental enforcement action. If what I hear is true, I am troubled on several levels. First, I think that it would set a very dangerous precedent for Congress to attempt to squash Federal enforcement actions of any kind. The procedures for testing and appealing the appropriateness and reach of enforcement actions through the court system and under the Administrative Procedures Act are well established. These procedures do not include a back door, last minute ''Hail Mary pass'' by Congress using a rider to an appropriations bill as the vehicle. In this instance, someone does not like an environmental enforcement action. If we do it here, will we attach something to appropriations bill to stop antitrust enforcement actions? How about price fixing cases? Where would this type of meddling cease?

What we may be seeing with the filing by EPA and DOJ is an enforcement action that has hit the bull's eye dead-on. And now utilities who may have crossed the line are pulling out all the stops to thwart the action.

Let's not kid ourselves about what is at stake. Many of us have drafted and introduced legislative proposals to address power plant pollution. We have turned up the heat, and the industry has taken notice. Further, the debate over electric utility restructuring is starting up again in the House of Representatives and the Senate. While there are substantial economic benefits possible under restructuring, Congress should also address environmental consequences of deregulation. In order to alert the Senate leadership of this important issue that has so far been ignored in the restructuring debate, I have asked my colleagues to join me in sending a letter to the Senate leadership requesting that the Senate include a provision to eliminate the grandfather loophole for older power plants. My colleagues from Connecticut and New York certainly knows the history of the Clean Air Act more than any of us. Senator LIEBERMAN, how do you see this enforcement action affecting the Clean Air Act loophole?

Mr. LIEBERMAN. I thank my colleague from Vermont. As you have argued in the past, the 1970 Clean Air Act Amendments assumed that one of the major sources of these pollutants—older power plants—would be retired and replaced with cleaner burning plants. Unfortunately, this has not happened. The average power plant in the United States uses technology devised in the 1950's or before. The EPA–DOJ enforcement action is now alleging that many of these generating units have been modified and are no longer entitled to their grandfathered status.

Mr. LEAHY. And, I think we are making a fair statement in saying that these grandfathered power plants will enjoy an important competitive advantage under restructuring because they do not have to meet the same air quality standards as newer plants. Many of these grandfathered plants are currently not running at a high capacity because demand for their power production is limited to the size of their local distribution area. Under restructuring, the entire nation becomes the market for power and production at these grandfathered plants and their emissions will increase. Deregulation of all utilities will drive a national race to capture market share and profit through producing the cheapest power.

Some or all of the rider may apply to plants operated by the Tennessee Valley Authority (TVA). What do we know about TVA's fossil fired power plants in Tennessee, Kentucky, and Alabama? Fifty-eight of 59 units are grandfathered, with the average startup year being 1957, 13 years before the Clean Air Act was passed. The average electricity prices for the TVA states are 6.03 cents in Tennessee, 5.58 cents in Kentucky, and 6.74 cents in Alabama. The average price nationally in 1997 was 8.43 cents. TVA sells some of the cheapest electricity, in part, because it is operating these old, subsidized grandfathered plants. In a deregulated national market, will TVA be competitive? The answer is yes.

TVA-wide in 1997 the 59 units emitted 98.5 million tons of CO2, nearly 5% of the U.S. total for power plants. If the TVA plants were all in one state that state would rank sixth in CO2 emissions. In 1997, the TVA plants emitted 808,500 tons of acid rain producing SO2. If the TVA plants were all in one state that state would rank fifth in SO2 emissions. Unfortunately we do not have comparable data for ozone producing nitrogen oxide emissions or for emissions of toxic mercury, but I think my point on emissions is made. We should not be looking for a way to unfairly exempt TVA or other grandfathered plants from environmental regulations, rather we need to be looking for the best ways to bring these old plants up to date with current technology.

Again, I want to thank my colleagues for their conviction on objecting to this rider. Congress needs to close the grandfather loophole, not attempt backdoor ways to thwart the will of the prior Congresses that enacted the Clean Air Act of 1970, and the amendments to it in 1977 and 1990.

Mr. LAUTENBERG. Mr. President, I would like to join my colleagues in expressing concern about the language that would interfere with enforcement actions against several power companies. Here we have an excellent example of why we should not be addressing complex, controversial matters in last-minute amendments to spending bills. The proponents of the language assert that they have no interest in interfering with the EPA–DOJ enforcement actions. In fact, the language they have been circulating would wreak havoc on the enforcement actions. The proponents assert that they are interested merely in allowing routine maintenance to occur, but in fact their language makes no mention of routine maintenance. The proponents assert that their language would have no impact on the environment, but in fact their language would allow increases in actual emissions. They also raise the specter of drastic effects to the power industry, which we have not seen in other industries that faced similar enforcement actions.

At the very least, we should all agree that this issue is sufficiently complicated and controversial, and its impacts on public health profound enough, that it deserves to be worked out in the authorizing process. It is for problems like this that we have authorizing committees, such as the Environment and Public Works Committee on which I sit, and before which I am sure the proponents would find a sympathetic audience. It is in the daylight of the authorizing process, where we can hear from expert witnesses, where we can have public markups, and where we take the time to untangle and properly resolve these types of issues, that we should address this issue.

TEN-YEAR ANNIVERSARY OF THE FALL OF THE BERLIN WALL

Mr. KYL. Mr. President, as we work through the final days of the legislation session, we are apt to become mired in the details of our work. We can lose sight of the special opportunity we have, as legislators, to represent our fellow citizens and to conduct the business of a democratic society in the Nation's Capital.

In this spirit, I wish to draw the Senate's attention to a very special anniversary one that I hope can inspire us to bring our efforts renewed appreciation for our blessings—and our duties—as legislators in the greatest democracy in human history.

Ten years ago yesterday, the starkest symbol of human bondage in this century—the Berlin Wall—shook, cracked, and then collapsed. To be sure, it took time for all of it to by physically dismantled. Sections of it still stand, left as symbols all at once of man's capacity for evil and his insatiable drive to be free. But in one magnificent moment 10 years ago, without a shot being fired, people who had only known cold war captivity crossed the line and became free.

They were helped across by many hands: by the American people who

served by the millions in uniform and who put up trillions—trillions—of dollars to fight the cold war; by the citizens of NATO and other allied nations who made similar sacrifices of blood and treasure; by many of their fellow countrymen who over many years kept small fires of freedom burning in their hearts for the day when the wall would come down; and, at critical moments, by great leaders.

Joseph Shattan, a former White House speech writer and, now, a Bradley Fellow at the Heritage Foundation, has chronicled this leadership in his book ''Architects of Victory: Six Heroes of Cold War,'' published by Heritage, and excerpted recently in essay form in the Washington Times. He describes how six remarkable individuals—Winston Churchill, Harry Truman, Knorad Adenauer, Alexander Solzhenitsyn, Pope John Paul II, and Ronald Reagan—seized their own moment in the cause of freedom.

Mr. President, as Americans, we should on this day take special note of the two American Presidents—one Democrat, one Republican, who played such vital roles in bringing about the fall of the Berlin Wall ten years ago. Here is Shattan on Harry Truman:

Underlying Truman's policies was the conviction that Soviet totalitarianism was no different than Nazi totalitarianism. In his view, both the Nazis and the communists violated human rights at home and sought to expand their empires abroad. To secure a world where democratic values might flourish, Truman believed the United States had to contain Soviet expansionism—through economic and military aid if possible, through force of arms if necessary. Over the long run, a successful policy of containment would cause Soviet leaders to lose their faith in the inevitability of a global communist triumph. Only then could negotiations with Moscow contribute to a safer, more peaceful world.

Because the Truman administration's policy of containment set the course for U.S. foreign policy over the next 35 years, it seems in retrospect to have been a natural, even inevitable, response to Soviet aggressiveness. But it was nothing of the sort. Truman's predecessor, Franklin Roosevelt, had taken a markedly different approach toward Moscow—one aimed at cementing an enduring U.S.-Soviet friendship—and when Truman became president, he was determined to follow in FDR's footsteps, even if it meant ignoring his own instincts. But Truman gradually worked his way out from under FDR's long shadow and placed his own indelible stamp on U.S. foreign policy.

Truman's decisive break with FDR's foreign policy came in a historic speech delivered before a joint session of Congress on March 12, 1947. ''I believe it must be the policy of the United States,'' he declared, ''to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures.'' Alonzo Hamby, one of Truman's biographers, rightly called this speech ''the decisive step in what would soon be called the Cold War.''

Harry Truman's steadfast commitment to ''free peoples'' assured that the Iron Curtain would encroach no further on freedom. But it took another President to push the Wall over. Here again is Shattan on Ronald Reagan:

But while liberals frequently disparaged Mr. Reagan's intellect, the fact was that he subscribed wholeheartedly to one major truth that many of his intellectually sophisticated critics either never knew or had forgotten: Societies that encourage freedom and creativity tend to flourish, while societies that suppress liberty tend to stagnate. This was the central truth around which Ronald Reagan fashioned his political career. This was the crucial insight that he articulated with passion and eloquence and pursued with iron resolve. And this was the basis of his Soviet strategy.

Underlying Mr. Reagan's approach to the Soviet Union was his profound (his critics would say ''childlike'' or ''simplistic'') faith in freedom. Mr. Reagan simply knew that there was no way a closed society like the Soviet Union could prevail against an open society like the United States once the open society made up its mind to win. And Mr. Reagan, years before he became president, decided that the United States would win the Cold War . . . The military buildup, the support of anti-communist movements worldwide (better known as the ''Reagan Doctrine''), the Strategic Defense Initiative, the covert assistance to the Polish trade union Solidarity, the economic sanctions against Moscow—all were meant to force an already shaky Soviet system to embark on a course of radical reform. These reforms (perestroika, glasnost) soon acquired a momentum of their own, and eventually brought down the Soviet Union.

Mr. Reagan's approach to foreign policy was unprecedented. The traditional U.S. strategy was to seek to contain Soviet power and hope that, at some unspecified point in the future, containment would convince the communist ruling class to abandon its expansionist course. By contrast, Mr. Reagan sought not merely to contain the Soviets but to overwhelm them with demonstrations of U.S. power and resolve that left them with no alternative but to accept the choice he offered them: Change or face defeat.

His success proved that great leadership does not depend on intellectual or historical sophistication. What is needed, above all, is the right set of convictions and the courage to stand by them. Mr. Reagan's beliefs about freedom and tyranny were uniquely rooted in the American experience, and his courage reflected the quiet self-confidence of the American heartland. His was truly a U.S. presidency that changed the world.

Much has changed in 10 years. Yes, we still have walls to tear down—on the Demilitarized Zone in Korea, around the island of Cuba, and everywhere that people around the globe still struggle for peace and freedom. But the Cold War is over. Freedom won. As we watch the many celebrations underway today—in Berlin, all over Europe, and elsewhere in the world—let us honor Cold War heroes, and rededicate ourselves to the cause of freedom they championed. And, my colleagues, as we conduct the people's business, let us seek to renew an abiding reverence for the freedom that brings us here.

THE INTERSTATE TRANSPORTATION OF DANGEROUS CRIMINALS ACT

Mr. LEAHY. Mr. President, the recent escape of convicted child murderer Kyle Bell from a private prison transport bus should serve as a wake-up call, to the Congress and to the country. Kyle Bell slipped off a TransCorp America bus on October 13, while the bus was stopped in New Mexico for gas. Apparently, he picked the locks on his handcuffs and leg irons, pushed his way out of a rooftop vent, hid out of sight of the guards who traveled with the bus, and then slipped to the ground as it pulled away. He was wearing his own street clothes and shoes. The TransCorp guards did not notice that Bell was missing until nine hours later, and then delayed in notifying New Mexico authorities. Bell is still at large.

Kyle Bell's escape is not an isolated case. In recent years, there have been several escapes by violent criminals when vans broke down or guards fell asleep on duty. There have also been an alarming number of traffic accidents in which prisoners were seriously injured or killed because drivers were tired, inattentive, or poorly trained.

Privatization of prisons and prisoner transportation services may be cost efficient, but public safety must come first. The Interstate Transportation of Dangerous Criminals Act requires the Attorney General to set minimum standards for private prison transport companies, including standards on employee training and restrictions on the number of hours that employees can be on duty during a given time period. A violation is punishable by a $10,000 fine, plus restitution for the cost of recapturing any violent prisoner who escapes as the result of such violation. This should create a healthy incentive for companies to abide by the regulations and operate responsibly.

I commend Senator DORGAN for his leadership on this legislation and urge its speedy passage.

NATIONAL MISSILE DEFENSE REPORT

Mr. COCHRAN. Mr. President, a report on the National Missile Defense program has been completed and will be released shortly by a panel of experts which is chaired by retired Air Force General Larry Welch. The director of the Defense Department's Ballistic Missile Defense Organization requested this report which examines the National Missile Defense program and makes several recommendations for improvement.

Many will remember that General Welch and his panel issued a previous report last year which examined aspects of both the National Missile Defense program and several Theater Missile Defense programs.

Generally speaking, the newest Welch Report is a helpful critique of the National Missile Defense Program. Given the importance of this program, additional knowledge of its inherent risks will help BMDO to structure and run the best program possible.

In particular, I support the report's emphasis on giving the BMDO program manager, as well as the Lead Systems Integrator, increased authority in running this program.