

bill through the Finance Committee and to the Senate floor. I hope this bill will receive wide support.

Mr. DURBIN. Mr. President, today the Senate has taken up and will unanimously pass the Clean Diamonds Trade Act, H.R. 1584, the House companion to S. 760, which I have cosponsored. The bill implements U.S. participation in the Kimberley Process Certification Scheme, an international arrangement to respond to the scourge of conflict diamonds.

In war-torn areas of Africa, rebels and human rights abusers, with the complicity of some governments, have exploited the diamond trade, particularly alluvial diamond fields, to fund their guerrilla wars, to murder, rape, and mutilate innocent civilians, and kidnap children for their forces. Al-Qaida terrorists and members of Hezbollah have also traded in conflict diamonds.

While the conflict diamond trade comprises anywhere from an estimated 3 to 15 percent of the legitimate diamond trade, it threatened to damage an entire industry that is important to the economies of many countries, and critical to a number of developing countries in Africa.

Governments, the international diamond industry, and non-governmental and religious organizations worked hard to address this complex issue, while setting an impressive example of public-private cooperation. For the last several years, the Kimberley Process participants have been working to design a new regimen to govern the trade in rough diamonds.

I introduced several bills on this subject over the last several years, along with Senator MIKE DEWINE and Senator RUSS FEINGOLD, to reflect the consensus that had developed between the religious and human rights community and the diamond industry on the U.S. response to this issue. Senator JUDD GREGG, who had introduced his own amendments and legislation dealing with this issue in the past, joined in cosponsoring our bill, as did a bipartisan group of 11 additional Senators.

In the House of Representatives over the last several years, former Representative Tony Hall and Representative FRANK WOLF were leaders on this issue, as is Representative AMO HOUGHTON, who took the lead in introducing the House version of the bill this year.

In the bills I had sponsored in the past, my aim had been to push for the strongest possible international agreement—showing leadership in the United States and strong support in Congress for a meaningful certification and monitoring agreement. Now that an international agreement has been reached, many of my concerns have been addressed.

We have learned about the horror that has resulted when illicit diamonds fueled conflicts in Africa. Rebels from the Revolutionary United Front, RUF, funded by illegal diamonds and supported by Liberia terrorized the people

of Sierra Leone—raping, murdering, and mutilating civilians, including children.

If the fragile peace in Sierra Leone is to be maintained, profits from that country's diamonds must not fall into the hands of such brutal rebels again. Anti-government rebels in Angola and the Democratic Republic of the Congo continue to fight and are also supported by the sale of illicit diamonds.

We have learned that members of the Al-Qaida network may have bought large quantities of these illegal conflict diamonds from rebels in Sierra Leone in advance of September 11, anticipating that the United States would seek to cut off its sources of funds. An article in the Washington Post by Douglas Farah, on November 2, 2001, outlined the Al-Qaida connection and showed that Al-Qaida terrorists on the FBI's "Most Wanted" list bought conflict diamonds at below-market prices and sold them in Europe.

We have learned that the Lebanese terrorist group, Hezbollah, has participated in the conflict diamond trade and that it has been a source of funding and a way to launder funds for drug dealers and other criminals.

It is now clear that ending the trade in conflict diamonds is not only the just, right, and moral thing to do, it is also in our immediate national interest in our fight against terror.

If the crisis in Afghanistan has taught us anything, it must be that we ignore failed, lawless states at our peril.

American consumers who purchase diamonds for some happy milestone in their lives, such as an engagement, wedding, or anniversary, must be assured that they are buying a diamond from a legitimate, legal, and responsible source.

The Kimberley system will allow American consumers to have some confidence that they are buying "clean" diamonds, and will also serve our local jewelers and diamond retailers. The jewelers in our local malls and downtown shops do not want to support rebels and terrorists in Africa any more than consumers do.

I heard from a jeweler in my hometown of Springfield, IL, Bruce Lauer, president of the Illinois Jewelers Association, who wrote:

The use of diamond profits to fund warfare and atrocities in parts of Africa is abhorrent to all of us. . . . As the owner of Stout & Lauer Jewelers in Springfield, I know firsthand the importance of diamonds to my customers. A diamond is a very special purchase symbolizing love, commitment and joy. It should not be tarnished with doubt. . . . We want to be able to assure our customers unequivocally that the diamonds in our stores come from legitimate sources.

There are not many issues that can bring together Senators and Congressmen across the political spectrum; that can bring together the human rights community and the diamond industry; and that can unite leaders of every religious denomination.

The horror of what has happened to the people of Sierra Leone and espe-

cially to its children has brought us together to fight this evil by cutting off the rebel's source of support—the illicit diamond trade. Now it brings us together to fight the terrorists who have murdered our own citizens, in our own country.

The world was shocked and horrified by the murder, mutilation, and terror imposed on the people of Sierra Leone by rebels funded with conflict diamonds. The moral outcry by religious and human rights groups galvanized governments and the diamond industry to address the problem. Now is the time to close the deal and to implement the Kimberley Process Certification Scheme.

I want to say how pleased I am that the Senate came to a consensus on this bill. I am especially grateful to Senator GRASSLEY and his trade counsel, Everett Eissenstat, and to Senator BAUCUS and his trade counsel, Shara Aranoff, for their careful work in being sure that my concerns and those of other Senators and the Clean Diamonds Coalition were addressed in the bill.

I am pleased that my concerns were addressed about the possibility that the Kimberley system could be circumvented by cutting rough diamonds, by calling for a report that would flag such actions if it becomes a problem, so action can be taken.

It is very important that the United States move quickly to fulfill its promise to implement the Kimberley agreement, and this consensus bill will allow this country to do so in a timely way.

AMENDMENT NO. 529

Mr. HATCH. I ask unanimous consent that the Grassley substitute be agreed to, that the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

The amendment (No. 529) was agreed to.

The bill (H.R. 1584), as amended, was read the third time and passed.

PROSECUTORIAL REMEDIES AND OTHER TOOLS TO END THE EXPLOITATION OF CHILDREN TODAY (PROTECT) ACT OF 2003—CONFERENCE REPORT

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the conference report to accompany S. 151, the PROTECT Act.

The PRESIDING OFFICER. The clerk will report the conference report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 151), to prevent child abduction and the sexual exploitation of children, and for other purposes, having met, have agreed that the Senate recede from its disagreement to the

amendment of the House, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of April 9, 2003.)

Mr. HATCH. I rise in support of the conference report on S. 151, the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, which truly represents landmark bipartisan legislation to protect our children.

On Tuesday of this week, the House and Senate conferees met and reached agreement on this important piece of bipartisan legislation. Earlier this morning, the House of Representatives passed the legislation by an overwhelming vote of 400 to 25.

I was hoping I could come to the floor to make a statement commending the Senate for working together as we had on so many other occasions on many important issues like this important piece of legislation which is needed to protect our children.

Unfortunately, this is not a proud day for the Senate, and unless we get this bill passed, it will be a sad day.

The spirit of bipartisanship appears to me to be fading, as my Democratic colleagues seek to obstruct and delay rather than working together to solve our Nation's problems and pass this important piece of legislation. Having listened to the distinguished Senator from Massachusetts, I have hope that there will not be obstruction or delay on this bill, and perhaps there won't be as he seeks his point of order. The spirit of obstructionism that I have been worried about, which we have experienced all year long, has now reached a difficult point here. If there is a desire to stop this bill in the Senate through a point of order, or otherwise, then I think it would exhibit a willingness to sacrifice the protection of our own children for political advantages. I hope that is not the case.

If it is, I will be deeply saddened by this turn of events, and I urge my colleagues on the other side to rethink their strategy and approach to so many issues.

In particular, when it comes to this issue of protecting our children, I think we ought to get this bill done. We need to cast aside partisan disputes and quickly pass this measure and send it to the President for signature as soon as possible.

Let me take a moment to commend the House of Representatives, and Judiciary Committee Chairman SENSENBRENNER in particular, for their tireless dedication to this legislation. Chairman SENSENBRENNER has demonstrated his commitment time and time again to passing this measure quickly during this new session of Congress. Thanks to our House colleagues, we in the Senate now have an opportunity to pass not only an AMBER

alert bill, but a truly comprehensive package of measures that will protect our children from vicious criminals, pornographers, sexual abusers, and kidnapers. These types of individuals who prey on our Nation's youth are nothing less than the scum of the earth who deserve every ounce of punishment which we as a nation can fairly and justly mete out.

The problem of child abuse and child exploitation is simply mind-boggling. The recent wave of child abductions across the Nation, including the kidnapping of Elizabeth Smart in my own State of Utah, has highlighted the need for legislation to enhance our ability to protect our Nation's children against predators of all types.

I have a letter addressed to the Senate and the House of Representatives, signed by Ed and Lois Smart, Elizabeth's mother and father, as well as Elizabeth Smart, dated April 9, 2003. I ask unanimous consent that it be printed in the RECORD.

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

APRIL 9, 2003.

U.S. Senate,
U.S. House of Representatives,
Washington, DC.

AN OPEN LETTER TO THE UNITED STATES
SENATE AND HOUSE OF REPRESENTATIVES:

We wish to express our sincerest appreciation to all of you who have played such a key role in moving forward legislation that includes the National Amber Alert. We applaud those members of the conference committee who exhibited the foremost cooperation in working out a compromise that will greatly benefit every child in America.

Today, we are writing to encourage you to quickly pass this legislation so that it can be signed into law. The Amber Alert as well as other preventative measures will make an immediate difference in safely rescuing those who are abducted and in preventing crimes against children.

We can't begin to express our joy and gratitude in having Elizabeth back home. It is our hope and prayer that immediate passage will save countless families from the trauma and sorrow caused by the senseless acts of those who prey on children.

Sincerely,

EDWARD SMART.
LOIS SMART.
ELIZABETH SMART.

Mr. HATCH. Mr. President, I will take a moment to address some of the significant components of this measure. First, the PROTECT Act of 2003, which I and Senator LEAHY introduced following the Supreme Court's decision in *Ashcroft v. Free Speech Coalition*, has been my top legislative priority since last year. Congress has long recognized that child pornography produces three distinct, disturbing, and lasting harms to our children. First, child pornography whets the appetites of pedophiles and prompts them to act out their perverse sexual fantasies on real children. Second, it is a tool used by pedophiles to break down the inhibitions of children. Third, child pornography creates an immeasurable and indelible harm on the children who are abused to manufacture it.

It goes without saying that we have a compelling interest in protecting our children from harm. The PROTECT Act strikes a necessary balance between this goal and the first amendment. The PROTECT Act has been carefully drafted to avoid constitutional concerns. The end result of all of our hard work is a bill of which we can be proud, one that is tough on pedophiles and child pornographers in a measured and constitutional way.

The legislation also addresses AMBER alert, America's Missing Broadcast Emergency Response. The bill will extend the AMBER alert system across our Nation. Our entire Nation recently rejoiced with the Smart family after Elizabeth was found alive and reunited with her loved ones. Her discovery, facilitated by everyday citizens who followed this case, demonstrates the importance of getting information about these disappearances out to the public quickly.

When a child is abducted, time is of the essence. All too often, it is only a matter of hours before a kidnapper commits an act of violence against the child. Alert systems, such as the AMBER alert system, galvanize entire communities to assist law enforcement in the timely search for and safe return of child victims.

This legislation will enhance our ability to recover abducted children by establishing a coordinator within the Department of Justice to assist States in developing and coordinating alert plans nationwide. The act also provides for a matching grant program through the Department of Justice and the Department of Transportation for highway signs, education and training programs, and the equipment necessary to facilitate AMBER alert systems. I support the national AMBER Alert Network Act because it will improve our ability on a national level to combat crimes against our children.

Also, I want to take a moment to highlight another very important measure. The legislation includes the Code Adam Act, which would require Federal buildings to establish procedures for locating a child that is missing in the building. The provision is named after the son of John Walsh, the host of America's Most Wanted and the John Walsh Show. As everybody knows, John Walsh's son, Adam, was kidnapped from a mall in Florida and murdered in 1981. Retail stores around the country, including Wal-Mart, have initiated Code Adam systems in memory of Adam, and they have successfully recovered many missing children. This would implement the same system for building alerts in all Federal buildings. It is a measure I am proud to support in memory of John Walsh's son, Adam, and in honor of John Walsh's commitment and vigilance to fighting for crime victims and our children throughout the country.

On Tuesday, John Walsh attended the meeting of the conferees to discuss this legislation. Yesterday, John Walsh issued the following statement:

This incredible bill may be one of the most important pieces of child protection legislation passed in the last 20 years. I commend Senator HATCH's leadership on the Judiciary Committee and Chairman Sensenbrenner's leadership on the House Judiciary. Pushing this bipartisan legislation through is very appropriate during "National Crime Victims' Rights Week." This bill, which is a loud voice for the smallest victims—children—has sent a loud message to those who would prey upon our most vulnerable segment of society.

I also want to highlight other important measures contained in the conference report that will enhance existing laws, investigative tools, criminal penalties, and child crime resources in a variety of ways.

As the chart shows—the print is small—in addition to the PROTECT Act, AMBER Act, and the Code Adam Act, the legislation would, No. 1, provide a judge with the discretion to extend the term for supervision of released sex offenders up to a maximum of life; No. 2, extend the statute of limitations for child abductions and sex crimes to the life of a child; No. 3, denies pretrial release for child rapists and child abductors; No. 4, require a mandatory sentence of life imprisonment for twice-convicted serious child sex offenders; No. 5, increase penalties for kidnapping of under 18-year-old victims by nonfamily members; No. 6, add new wiretap predicates that relate to sexual exploitation crimes against children; No. 7, increase penalties and provide prosecutors with enhanced tools to prosecute those who lure children to porn Web sites using misleading domain names; No. 8, reauthorize and double the annual grant to the National Center for Missing and Exploited Children to \$20 million each year through 2005; No. 9, authorize funding for the Sex Offender Apprehension Program to allow money to be used by local law enforcement to track sex offenders who violate terms of their release; No. 10, create a national Internet site for information regarding registered sex offenders; No. 11, establish a pilot program for national criminal history background checks and a feasibility study in order to provide a background check process for volunteers working for organizations, such as the Boys and Girls Clubs of America, National Mentoring Partnership, and the National Council of Youth Sports; No. 12, reauthorize grant programs to provide funding of child advocacy centers; No. 13, reforms sentencing for criminals convicted of crimes against children and sex crimes.

All of that is done in this particular bill. It is a very important bill, as you can see.

The bill also institutes sentencing reforms so that criminals convicted of crimes against children receive the stiff sentences they deserve. This provision, which was adopted at the conference, represents a significant compromise from the original House bill containing the so-called Feeney amendment which passed the House by

a vote of 357 to 58. Indeed, the overall House bill passed the House by an overwhelming vote of 410 to 14.

In response to concerns raised about the Feeney amendment, I worked with Chairman SENSENBRENNER, Senator GRAHAM, and my colleagues to develop a bipartisan compromise which was ultimately supported by not only all of the Republican conferees, but by Democratic conferees as well—Senator BIDEN, as well as Congressmen FROST, MATHESON, and HINOJOSA.

The compromise proposal would:

No. 1, limit, but not prevent, downward departures only to enumerated factors for crimes against children and sex offenses;

No. 2, change the standard for review of sentencing matters for appellate courts to a de novo review, while factual determinations would continue to be subject to a "clearly erroneous" standard;

No. 3, require courts to give specific and written reasons for any departure from the guidelines of the Sentencing Commission; and

No. 4, require judges to report sentencing decisions to the Sentencing Commission.

It is important to note that the compromise restricts downward departures in serious crimes against children and sex crimes and does not broadly apply to other crimes, but because the problem of downward departures is acute across the board, the compromise proposal would direct the Sentencing Commission to conduct a thorough study of these issues, develop concrete measures to prevent this abuse, and report these matters back to Congress.

For those who want to oppose these needed sentencing reforms, I remind them that the Sentencing Reform Act of 1984 was designed "to provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct."

While the U.S. Sentencing Commission promulgated sentencing guidelines to meet this laudable goal, courts, unfortunately, have strayed further and further from this system of fair and consistent sentencing over the past decade.

Let me refer to this chart. As the chart shows, during the period 1991, in the left part of the chart, to the year 2001, the number of downward departures—in other words, soft-on-crime departures, excluding those requested by the Government for substantial assistance and immigration cases along the Southwest border—has steadily climbed.

In 1991, the number of downward departures was 1,241 and rose by 2001 to a staggering total of 4,098. This chart shows the rate of downward departures has increased over 100 percent during this period—in fact, almost four times—and nearly 50 percent over the last 5 years alone.

This problem is perhaps most glaring in the area of sexual crimes and kidnapping crimes.

This chart of downward departures from sentencing guidelines for sex crimes shows that during the last 5 years, trial courts granted downward departures below the mandated sentencing in 19.20 percent of sexual abuse cases, 21.36 percent of pornography and prostitution cases, and 12.8 percent of kidnapping and hostage-taking cases. Think about it: Downward departure in these types of cases that involve our children. This many departures happens to be very disturbing and astounding considering the magnitude of the suffering by our Nation's youth at the hands of pedophiles, molesters, and pornographers.

Let me give one example of the abuse this sentencing reform will correct. In one particular case, a defendant was charged—this is a convicted child pornographer—with possession of 1,300 separate images of child pornography, depicting young children in graphic and violent scenes of sexual exploitation that were sickening and horrible. For example, one of the images showed a young girl wearing a dog collar while engaging in sexual intercourse with an adult male. This same defendant was engaging in online sexual communications with a 15-year-old girl.

The sentencing guideline for this defendant mandated—these are the sentencing guidelines the distinguished Senator from Massachusetts, the distinguished Senator from Delaware, and a number of us, including myself, passed long ago—the sentencing guidelines for this defendant mandated a sentence in the range of 33 to 41 months. Yet the trial judge departed downward to a sentence of only 8 months, citing, No. 1, the defendant's height. He was just short of 6 feet tall, and he said that would make him vulnerable to abuse in prison. No. 2, he said the defendant was naive. And No. 3, the defendant's demeanor—he was meek and mild and compassionate.

We all have common sense, but this is simply incredible and outrageous. Congress has to act, and it has to act now. The compromise sentencing reform provisions contained in the conference report are a reasonable and measured response to this problem.

The compromise proposal would simply require judges to sentence these vicious defendants in accordance with the law and not seek new areas or new legal justifications for reducing sentences for these defendants without specific authorization from the U.S. Sentencing Commission.

Contrary to the oft-repeated claims of its opponents, the compromise proposal is not a mandatory minimum. Judges handling these important criminal cases can still exercise discretion to depart downward, but only when the Sentencing Commission specifies the factors that warrant a downward departure.

The other major reform in the compromise adopted in the conference report is consistent with prevailing law, requiring de novo review of a trial judge's application of facts to law. Indeed, this is the same standard that applies to appellate review of critical motions to suppress physical or testimonial evidence. There is no reason for appellate judges to give deference to the trial judge on such questions of law.

Even after the compromise amendment, the trial judge's factual determinations will still be subject to great deference under a "clearly erroneous" standard. If a discretionary downward departure is justifiable, it is difficult to understand why anyone would be opposed to the appellate courts reviewing them under the same standard that applies to other important areas of law.

I wish to take a moment to remind everyone to focus on the problem we face: an epidemic of abuse of our children. According to the National Center for Missing and Exploited Children—these facts really are not only astounding, they are deplorable—in our country, 3.9 million of the Nation's 22.3 million children between the ages of 12 and 17 have been seriously physically assaulted, and 1 in 3 girls and 1 in 5 boys are sexually abused before the age of 18. That is unbelievable, but that is what is going on, and that is why this bill is so important. That is why we need to pass it today.

Considered in this context, we can have an honest debate about the issues, but we have an epidemic that needs to be addressed and addressed now. We simply have no greater resource than our children. It has been said that the benevolence of a society can be judged on how well it treats its old people and how well it treats its young. Our children represent our Nation's future, and I commend all of my colleagues for their tireless efforts on behalf of children and families and urge my colleagues to pass this critical legislation. Quite frankly, our Nation's children deserve no less.

I know there are some misunderstandings from the conference, but virtually everybody but a number of Democrats have signed off on this, including a number of Democrats have signed off on this conference report, knowing what it says, knowing what it means, knowing what it was represented to mean. I acknowledge some of my dearest friends on the other side feel otherwise, but I believe it was made quite clear during conference what this actually means.

I urge my Democratic colleagues to stop any partisanship or partisan gamesmanship and support this needed legislation. I do not think we should let our children or our communities down. We need to pass this legislation without delay and send it to the President.

The epidemic of downward departures in child pornography cases has created what I like to call the "Me Too" sen-

tencing pitch from the defense. In a recent case in Kansas, the judge departed from the Sentencing Commission's guideline sentence of 27-33 months in prison, and imposed only probation. As part of the reason for the departure, the court stated that it found defense counsel's argument compelling—that in 27.4 percent of cases involving possession of child pornography, sentencing courts have downwardly departed. In other words, the problem is so out of hand, that defense attorney's point to the downward departure statistics and say, "Me too, Judge, Me Too."

That is where we are. That is what we are trying to fix. I have to say I have done my best to try to accommodate both sides. I do not know how to accommodate them any differently. Even as late as today, I have tried to see if there was any possibility, but there is not any. I think those who stayed for the full conference knew exactly what was involved, and it is a bipartisan bill. That is apparent from the size of the vote over in the House.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, all of us understand the enormous human tragedy that has been suffered by families in this country who have experienced the abduction of their children. We have had tragic situations in my own State of Massachusetts. All of us know the primary importance of taking every possible step in order to make our children safer. Secondly, if they are abducted, to rescue these children. And finally, to have an appropriate kind of a penalty for those who would be involved in such an extraordinary aberration of conduct and travesty of justice and cruel action. These reasons stimulated the Senate to pass the AMBER alert bill.

We have passed it in the Senate twice already. First, we passed it once on September 10 of last year. I think many of us who supported it at that time were very hopeful we would have had speedy action by the House of Representatives and that they would have sent back to us. It did not seem to us it would take a great deal of time given the needs that are out there in the country. We could understand if the House might want to take a look at it for a few days but report back promptly. Nonetheless, we went through the session and there was no action by the House of Representatives. So, again, on January 21, 2003, it was sent over unanimously from the Senate of the United States, and no action later in January, no action in February, no action in March, and now, finally there is action in April. The House refused to act on these bills on both occasions. Instead, they sent over a conference bill loaded up with the provisions they knew would be strongly objected to in the Senate.

We are enormously supportive of the AMBER bill, but we question and won-

der why it should carry with it such extraneous kinds of material which this legislation in this conference report carries. In the final hours of the consideration of the AMBER bill in the House of Representatives, there was an amendment to the AMBER bill offered by Congressman FEENEY. In a period of 20 minutes, it was accepted without any hearings. It was a part of the conference. The Feeney amendment affected the whole issue of sentencing, not just for these kinds of heinous crimes that take place against children but also against the underlying concept of our criminal sentencing provisions, affecting every type of criminal sentence, whether we are talking about terrorists, murderers, burglars or white-collar crime.

The amendment had nothing to do with the abduction of children, but would affect all of the other circumstances. It was never very clear whether that was intended or not. What was brought to my attention and concerned me was the observation that was made by the Chief Justice of the Supreme Court. He observed the Feeney amendment will do serious harm to the basic structure of the sentencing guidelines system and seriously impair the ability of courts to impose just and responsible sentences.

We are all for the AMBER legislation. We are all for the appropriate kinds of penalties for those who are going to violate the law, but this legislation is much more. However the Feeney amendment would do serious harm to the basic structure of the sentencing guidelines system and will seriously impair the ability of courts to impose just and responsible sentences. This is not just an objection from the Senator of Massachusetts, or from the Senate Democrats, this is an objection expressed by the Chief Justice of the United States.

I was personally quite amazed that the Chairman of our committee did not believe this kind of change in the criminal justice system was sufficiently important. I am amazed that he would not support the position of some of us who were conferees who suggested that we ought to have a day of hearings to call in experts, perhaps even the Chief Justice of the United States, or Congressman FEENEY or others who might be in favor of the amendment. This would be an opportunity to understand what the implications were and whether or not it was going to undermine the criminal justice system, as the Chief Justice of the Supreme Court has suggested. But, no, that was turned down. That suggestion that we have a hearing, chaired by Senator GRAHAM of South Carolina, the chairman of our Criminal Justice Subcommittee on the Judiciary Committee was turned down. The suggestion that we might hold a hearing with the understanding that we would expedite any of the recommendations to make sure we were going to target whatever actions we were going to take on the subject matter of the AMBER circumstance, make

sure we got it right, that was rejected and turned down.

Then a second suggestion was made to ask the Sentencing Commission to study this and report back in 180 days. Then, we would have an opportunity to look at what the Sentencing Commission had recommended. We could then either accept it or reject it or take whatever action in 180 days. The House of Representatives has taken its time in sending this legislation over. We might be able to make a judgment about whether this should be done or considered in this particular way.

Over the period of these past days, just prior to going to the conference, I was amazed at the kind of additional support I received for the Chief Justice's position. I am sure the chairman of the committee received it as well.

The Judicial Conference of the United States said:

The Judicial Conference strongly opposes these sentencing provisions because they undermine the basic structure of the Sentencing Commission and impair the ability of the courts to impose just and responsible sentences. We must note our concern and disappointment with the lack of careful review.

Not 1 day of hearings; not 1 hour of consideration; 20 minutes of debate on the floor and the Senate Judiciary Committee virtually accepted it.

Then it continues along to those three chairs of the Sentencing Commission. These are individuals who have been accepted and approved by advice-and-consent votes in the Senate: Dick Murphy, Richard Conboy, William Wilkins. William Wilkins, certainly one of the important conservative jurists who has served in the Federal court system, joined in saying:

The sentencing provisions are farfetched and effectively rewrite significant portions of the Sentencing Reform Act of 1984. No hearings have been held on a number of significant provisions of the current legislation urged our rejection of it.

The Conference on Civil Rights:

The Feeney amendment would eviscerate the right to depart.

American Bar Association:

This provision would fundamentally alter the carefully crafted and balanced position formed by the Reform Act without the customary safeguards and legislative process by effectively eliminating judicial departures. The Feeney amendment strikes a blow at judicial independence and sends an unmistakable message that Congress does not trust the judgment of the judges it has confirmed to offices.

Then we have the list of 618 professors of criminal law and procedure:

Although adopted by the House with certainly no public hearings or debate, the Feeney amendment would effect a dramatic unwarranted change in Federal sentencing law.

Eight former U.S. attorneys in the Southern and Eastern Districts of New York, one of the most important districts in the prosecution of crime, all, Republican—most Republican and a handful of Democrats' proposed legislation not only disregards the Sentencing Commission's unique role, it

also ignores Congress's own admonition.

Even Cato.

Business Civil Liberties, an organization affiliated with the conservative Washington Legal Foundation, also said:

It sets a dangerous precedent for further restrictions on Federal judges.

All of these groups. All within a matter of a few days.

We raised this in our conference and said we believe we ought to have the time, either for the Judiciary Committee or the Sentencing Commission, to review it if there were these kinds of observations and criticisms.

I say this to underscore why these sentencing guidelines are important. I was here in 1968 when the Brown Commission was set up on the growth of violence in our society, criminal violence. The Commission made a series of recommendations. One of them was that we ought to recodify the Criminal Code because we had so many different ways of interpreting intent—willfully, wantonly, knowingly, unwillingly, lasciviously—all different kinds of mental tests that could be distorted and misrepresented. And we did.

For the first time in 200 years, we recodified it; we took seriously the recommendations. Unfortunately, the House of Representatives failed in their responsibilities.

But one of the other very important recommendations was because of the fact that one of the important reasons this Commission said there had been the growth of crime was the enormous feeling among those inside the criminal justice system and outside of the sentencing provisions that were so wildly out of whack—the same crimes in different jurisdictions and there was no confidence, either by the victims or the defendants or any, in the justice system—that the criminal sentencing provisions were effective, that they worked, or were based upon justice.

So we went about it. We passed sentencing reform three different times in the Senate of the United States before the House of Representatives. It was finally worked out with the Reagan Justice Department. Strom Thurmond was very much involved. It was a bipartisan effort. So we were going to try to have some kind of rationality in the assigning of the penalties for crimes in this country.

It is not without its failings. We understand that. There should be strengthening and improvement. We understand that. But it has worked pretty well.

In fact, a number of States are in the process of adopting very similar guidelines. A number of the States are moving in the direction which we had established. That is enormously important. I think that is one of the things that has been effective.

In any event, when the time came for this discussion, I said: Why, if we can't at least have an examination, since there is widespread application of these

provisions, why don't we just take the provisions that apply to children, sex crimes, and say: OK, we'll let those particular provisions that happen to be particularly restrictive, we will let those apply to those kinds of conditions that are there for the crimes that are included in the AMBER legislation?

I thought we had a discussion. I thought the chairman of our Judiciary Committee—who is not the chairman of the conference—the chairman of the committee agreed. I thought he agreed. Senator HATCH repeatedly stated that at Tuesday's conference meeting that his so-called "compromise" was limited to sex crimes and children. It retained much of the underlying Feeney Amendment and dramatically limited departures in all cases.

In his own works, Senator HATCH's remarks at conference were "It's important to note . . . that the compromise is limited to those serious crimes against children and sex crimes and does not broadly apply to other crimes"—and he put in a compromise and said to the Senator from Massachusetts, on the question of having this apply to the children—this makes sense and this is what this compromise will do. This is what this compromise will do. These are the words that our chairman of our Judiciary Committee used:

It's important to note . . . that the compromise is limited to those serious crimes against children and sex crimes, it does not apply aptly to other crimes.

Page 31—what do you conclude from that? That the amendment he puts in was just as he implied, applied to children. Furthermore:

It is important to note that the compromise is limited to these serious crimes against children—serious crimes against children and sex crimes does not broadly apply to other crimes. We're not changing the whole system, which I've tried to do, at the urging of not of my friend from Massachusetts, but judges and a number of other people.

Page 37:

Now, the compromise proposal would simply require judges to sentence these vicious defendants, child criminals, I mean defendants who are committing crimes against children, in accordance with the law—[didn't have to sentence them in accordance with the law]—and not seek to find new areas or new legal justification for reducing the sentences for these defendants without specific authorization for the United States Sentencing Commission.

Do Members of this body believe that when you had a chairman of the Judiciary Committee filing an amendment, which we had not seen, and then give us assurance that that was the scope of that amendment, and then to find out that that was not true and have it apply in a number of other cases—would the members of the Judiciary Committee of the Senate feel that they have been treated fairly? No. The answer is no.

It is important to note that the compromise—

Here it is again—

is limited to these serious crimes against children and does not broadly apply to other crimes, which is what the Feeney Amendment did.

Now, look, I have to admit I had my own qualms about the totality of the Feeney amendment, and that's why I chatted with the distinguished chairman of the House Judiciary Committee, and that's why I chatted with a lot of others as we, and experts in the field, and I believe we've made a compromise here

It just goes on.

Then we received the assurances from the chairman of the Judiciary Committee, and—listen to this—Chief Justice Rehnquist is worried about the breadth and scope.

He is not worried about this. Where did he get that information? Where did you get that information, Senator HATCH? That is not an accurate statement. I don't think any Federal judge should worry about which language. They know this language is to protect our children in our society. We are limiting it to that. I am trying to solve this problem.

I could go on. The fact is, in just a cursory examination of that language, we saw that was not the case. In fact, the Hatch amendment went way beyond sex crimes and children. It retained much of the underlying Feeney amendment and dramatically limited departures in all cases and eliminated for all cases departures based on age and physical impairment, gambling dependence, aberrant behavior, family ties, military, and good works.

This is what is still in there. It establishes de novo appellate review of all departures. That applies to every single sentence. It goes to the circuit court. That says to the circuit court judges: You will look not at the trial court; look at the facts and the sentences, but you look to de novo, overturning a unanimous Supreme Court.

It applies to every case, overturning a Supreme Court decision.

It prohibits in all cases downward departures on remands of new grounds. It also chilled the departures in all cases by imposing burdensome reporting requirements on judges who depart from the guidelines. And it directed the Sentencing Commission to amend the guidelines and policy statements "to ensure that the incidence of downward departures is substantially reduced" in all cases.

In the departures, in all cases, by imposing burdensome reporting requirements—do you know what the requirements are? They have to tell someone in the Justice Department. Guess who. The Attorney General. Every time you depart from the guidelines, the Attorney General will be notified.

Talk about a blacklist for judges. The Attorney General will know. Do not think that does not send a chill into every judge, to know if he is going to make that kind of judgment, decision, in accordance with the sentencing guidelines, that the Attorney General is going to know why. Obviously, the proponents of the Feeney amendment

understood it—in order to chill that—to create a blacklist of judges. And everyone knows that list will be published. That will be made available to the committee. It will be made available in every community where the judges go.

It still applies, not just to children's issues but to all cases—does everyone understand that?—in all cases.

Then it directs the Sentencing Commission to amend the guidelines to ensure that the incidents of downward departures are substantially reduced in all cases, saying, look, we do not like these downward departures, in spite of the fact that 80 percent of them were requested by the Government and in spite of the fact that anytime you have a downward departure, that is sufficient grounds to appeal. If there is a concern, they can appeal that. If it is outside the scope of the sentencing provision, it is remanded. That is the way the system works. That is what we included. If it will be excessive, in terms of downward, there is a remedy: Go to appeals. It has worked pretty well. If not, let's go back and take a look and have a hearing.

But absolutely no—absolutely no.

So then we had spotted those raised, and we had the continued assurances from the chairman of the Judiciary Committee that we did not understand it. We just looked at this quickly and did not have a real grasp of it. This was all done in a period of about 45 or 50 minutes. We did not really understand it.

The way I have described it is the way it is. This is what happened later. At 1:30 on Wednesday morning, more than 8 hours after Chairman SENSENBRENNER adjourned the conference, Senator HATCH's office distributed a new, revised version of the Hatch substitute to the Feeney amendment. At that hour, my staff was trying to figure out what exactly was in the old Hatch substitute. It appears, after having debated the Feeney amendment, the Hatch so-called compromise amendment, my secondary amendment after having voted on the items in the final conference report, the Republican conferees decided to change a substantial portion of that conference report and then file it as a technical amendment without reconvening the conference, to have the Members vote on the new language. This procedure was, to say the least, unorthodox.

At 1:30 in the morning, the revisioners describe it as a "technical change . . . made at the request of a democratic Senator." No mention of by whom the request was made. Unless the request was for only minor changing, it was not fulfilled.

At 1:34, the revision did not limit the Hatch amendment to serious crimes against children. To the contrary, like the amendment before it and the Feeney amendment before, the 1:34 revision broadly limits judicial departures in no-child and non-sex cases in many ways.

It overturns the Koon case by establishing the de novo standard for appellate review for all cases—still in there.

It still directs the Sentencing Commission to amend the guidelines and policy statements "to ensure that the incidence of downward departures are substantially reduced."

It still chills departures by imposing the burdensome reporting requirements.

It is true that at 1:34 the revision improved the bill by limiting restrictions on enumerated departure grounds to child and sex cases only. And it strikes the early text limiting military service departures. But the very idea that the Feeney amendment and the first Hatch amendment limited military service departures in this time of war shows how poorly considered the entire legislation has been.

The modest changes made in the 1:34 revision do not ameliorate the devastating impact the Hatch amendment will have on our system of criminal justice. They do not conform the amendment to the representations made by Senator HATCH at our conference meeting. They do not excuse the travesty of a process that has led to this provision being inserted into a conference that was meant to deal with the AMBER alert bill and other provisions involving the protection of children.

In reality, the Hatch amendment had nothing to do with the protecting of children and everything to do with handcuffing judges, eliminating fairness in the Federal sentencing system. That is what the Chief Justice of the United States believes.

Our belief is that if there are changes that are necessary—and there may very well be—we ought to have those changes made in an area of the criminal justice system. If we have to change them in order to deal with terrorism, let's do it. But to do this now, to represent the changes only applied to the children and not to the other parts of the provision, is not accurate and is a serious misrepresentation of what we are doing.

I have been assured that there are provisions in this legislation that go far beyond even the conference itself. It is interesting, we established seven members of the Sentencing Commission, and we say not fewer than three judges will be members of the Sentencing Commission. That has changed, to be not more than three judges.

The idea that we have seen the number of judges who have served on the Sentencing Commission, all of whom have been approved with the advice and consent of the Senate and have been approved—the idea in the early days of the Sentencing Commission was to bring more judges in to bring greater confidence and get their involvement in the drafting of the sentencing guidelines. That was the purpose. Now they complain about the guidelines and say no more than three judges; so it will

never be more than three judges. There will always be more on the outside than judges in the drafting of the sentencing.

That was all put in at conference. If someone can show where that was in the Senate bill or the House bill—it was not there. It has important implications in terms of the makeup and the guidance in terms of the sentencing. But we found that out just in reading through the process. No justification. No explanation.

Finally, all Members can understand action here in the Senate at the times of enormous kinds of passion, when we see the circumstances of children who are abducted and what has happened to them—one cannot help but to understand that the feeling of the parents and Members is to just throw the book out and go to it. That would have been something, if the House of Representatives had done that when the facts were there last fall—then it would have been something that could have been done in January—but they did not. They waited all this time. And then, they have not only taken those actions in terms of enhanced penalties against the child abductors, all of which I was glad to support—I would have supported it, and would support it still, not the other provisions that have been included in it—but if he is truly committed to protecting the children and upholding the fairness, I would have hoped we could have at least restricted those provisions to the sentencing that applied on those circumstances, but they did not.

That is why we are caught, all of us here, in the situation where we are sufficiently concerned about the dangers that are out there in terms of the abduction of children and conflicted with the kinds of violence we are doing to the Sentencing Commission.

It is a lousy way to legislate, Mr. Chairman, and I deplore that we are in this circumstance. But we will just have to see what steps are available to us in the remaining time.

Mr. President, I would like to address the question of a judge's authority to depart from the guidelines.

While this legislation alters the grounds on which a judge may depart in certain child-related cases, it does not alter the basic legal authority of a district court to depart from the guidelines under 18 U.S.C. 3553 in other cases. Judges retain ultimate authority to impose a just sentence within statutory limits, and today we reaffirm that departures are an important and necessary part of that authority.

As one of the authors of the Sentencing Reform Act, I can say that Congress did not intend to eliminate judicial discretion. We recognized that the circumstances that may warrant departure from the guideline range cannot, by their very nature, be comprehensively listed or analyzed in advance. In interpreting the Act, both the Supreme Court and the Sentencing Commission have emphasized this

point. This is not a partisan position. Judicial authority to exercise discretion when imposing a sentence was and is an integral part of the structure of the Federal sentencing guidelines and indeed of every guideline system in use today. In the eloquent words of Justice Kennedy, when he wrote for a unanimous Supreme Court to uphold the district court's authority to depart downward in Koon:

The goal of the Sentencing Guidelines is, of course, to reduce unjustified disparities and so reach toward the evenhandedness and neutrality that are the distinguishing marks of any principled system of justice. In this respect, the Guidelines provide uniformity, predictability, and a degree of detachment lacking in our earlier system. This, too, must be remembered, however. It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue. We do not understand it to have been the congressional purpose to withdraw all sentencing discretion from the United States district judge.

According to *Koon v. United States*, 518 U.S. 81, 113 (1996).

In *Koon*, the Supreme Court held that a sentencing judge may depart based on a factor identified by the Sentencing Commission, or even based upon a factor discouraged by the Commission, as long as the discouraged factor nonetheless justifies departure because it is present in some unusual or exceptional way. Similarly, a sentencing judge may always depart when a factor, unmentioned in the guidelines, takes the case outside the heartland of cases covered by the guidelines.

I do not agree that there is an epidemic of leniency in the Federal criminal justice system. I do not regard the current rate of non-substantial assistance departures as excessive. There is no such thing as an excessive departure rate—the question is whether any particular departure is warranted or unwarranted. That is a question for appellate courts, not Congress. One of the reforms embodied in the Sentencing Reform Act was the appealability of sentences. The government was given the power to appeal downward departures under the act. Were downward departures “excessive” presumably the government would have brought more appeals than it has.

The Sentencing Reform Act recognized that departures are a healthy and necessary component of a just guideline system. In 2001, when we exclude those districts with departure policies designed to address the high volume of immigration caseloads, the non-substantial assistance departure rate is merely 10.2 percent. This reflects the proper exercise of judicial discretion, by Article III judges, who have been appointed by presidents of the United States and confirmed by the Senate, in conformance with the mandate that Congress gave them in 18 U.S.C. §3553(b).

Indeed, the vast majority of downward departures granted by judges

today are those sought by the government, most to reward substantial assistance in the prosecution of crime. And, while departures have increased somewhat of late, government initiated departures lead the rising departure rate.

I am gratified that the concerns voiced by the Federal Judicial Conference, the American Bar Association, and others concerning the high rate of downward departures requested by prosecutors have been recognized in the version of the Feeney Amendment approved by the conference committee. The bill now requires that the Sentencing Commission:

. . . review the grounds of downward departure that are authorized by the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission; and promulgate, pursuant to section 994 of title 28, United States Code (A) appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures are substantially reduced.

I welcome this call for a thorough and impartial review of all downward departures, whether requested by the prosecution or the defense. Only a review embracing all downward departures will provide the Commission the information necessary to fulfill the mandate of this legislation.

A district court may depart from a guideline range whenever the unusual circumstance or combination of circumstance of a case take it outside of the “heartland” of cases covered by the relevant guideline. Other than in certain child-related cases, this legislation does not limit or lessen the myriad potential grounds for departure currently available to district courts in making sentencing decisions nor is it intended to discourage departure decisions when the unusual circumstances of a case justify a sentence outside the recommended range. It also is not intended to transfer authority over sentencing decisions from judges to prosecutors.

In that light, I must express my deep concern for the provision of the legislation that requires the Commission to report to the Judiciary Committees of the Congress and even to the Attorney General confidential court records and even “the identity of the sentencing judge.” I do not believe that this provision serves any legitimate interests of the Congress. I do not believe that authorizing disclosure of this information to the executive branch is warranted. I have deep concerns that this provision lacks the respect owed by the Congress to a co-equal branch.

I remain convinced that his legislation is flawed and results from a hasty and unreliable process that ill serves us. It is my view that the directive to the Commission “to promulgate . . . amendments . . . to ensure that the incidence of downward departures are substantially reduced” is inappropriate. It puts the cart before the horse and is based on faulty numbers of the incidence of departures that have been

relied upon by some proponents of the legislation. The better course would be for the Commission to study and report on the question. Because the Feeney amendment was presented without discussion or debate and at the last possible moment, Congress was deprived of balanced and full information concerning the issue of whether departure decisions are made in inappropriate instances. Even without the opportunity to respond in detail to the amendment, the Commission did produce statistics and information that refute the reliability and credibility of the information used in promoting the notion that departures decisions are made too frequently or inappropriately. Indeed, a fact that was withheld by proponents of the amendment, close to 90 percent of departure decisions are made at the request of or with the support of the government and that number may be even higher.

For these reasons, I hope and expect that this legislation will not unduly restrict departures or impede the appropriate development of guideline departure common law. And we need to review the entire system in light of these changes to make sure that we are letting judges carry out their responsibility to impose just and responsible sentences.

I ask unanimous consent that the following letters in opposition to the proposal be included in the RECORD.

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

SUPREME COURT OF
THE UNITED STATES,
Washington, DC.

Hon. PATRICK LEAHY,
U.S. Senator, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: I am responding to your letter of March 31, 2003, that requested the views of the Judicial Conference of the United States on a number of specific provisions of a sentencing-related amendment to H.R. 1104. By now you will have received Ralph Mecham's letter, dated April 3, which was sent to other Judiciary Committee members as well, expressing the concerns of the judiciary about the amendment. More specifically, the Judicial Conference:

1. Opposes legislation that would eliminate the courts' authority to depart downward in appropriate situations unless the grounds relied upon are specifically identified by the Sentencing Commission as permissible for the departure.

2. Consistent with the prior Judicial Conference position on congressionally mandated guideline amendments, opposes legislation that directly amends the sentencing guidelines, and suggests that, in lieu of mandated amendments, Congress should instruct the Sentencing Commission to study suggested changes to particular guidelines and to report to Congress if it determines not to make the recommended changes.

3. Opposes legislation that would alter the standard of review in 18 U.S.C. §3742(c) from "due deference" regarding a sentencing judge's application of the guidelines to the facts of a case to a "de novo" standard of review.

4. Opposes any amendment to 28 U.S.C. §994(w) that would impose specific record keeping and reporting requirements on fed-

eral courts in all criminal cases or that would require the Sentencing Commission to disclose confidential court records to the Judiciary Committees upon request.

5. Urges Congress that, if it determines to pursue legislation in this area notwithstanding the Judicial Conference's opposition, it do so only after the Judicial Conference, the Sentencing Commission, and the Senate have had an opportunity to consider more carefully the facts about downward departures and the implications of making such a significant change to the sentencing guideline system.

I believe these Conference positions respond to most of the questions posed in your letter. Please note, however, that the Conference did not specifically oppose the provisions mentioned in your third and fourth questions. These provisions would amend U.S.S.G. §3E1.1 and promulgate new policy statement U.S.S.G. §2K2.23. The Conference considered these provisions in adopting its opposition to direct congressional amendments of the sentencing guidelines. The Conference did not take positions on the provisions noted in your seventh and eighth questions. These would primarily affect the Department of Justice.

As stated in the April 3 letter, the Judicial Conference believes that this legislation, if enacted, would do serious harm to the basic structure of the sentencing guideline system and would seriously impair the ability of courts to impose just and responsible sentences. Before such legislation is enacted there should, at least, be a thorough and dispassionate inquiry into the consequences of such action.

Sincerely,

WILLIAM H. REHNQUIST.

JUDICIAL CONFERENCE
OF THE UNITED STATES,
Washington, DC, April 3, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S.
Senate, Dirksen Senate Office Building,
Washington, DC.

DEAR MR. CHAIRMAN: This provides the views of the Judicial Conference of the United States with regard to Section 109 ("Sentencing Reform") of S. 151, the "Child Abduction Prevention Act," as passed by the House of Representatives on March 27, 2003. The Judicial Conference strongly opposes several of these sentencing provisions because they undermine the basic structure of the sentencing system and impair the ability of courts to impose just and responsible sentences.

At the outset, we must note our concern and disappointment with the lack of careful review and consideration that this proposal has received. While it constitutes one of the most fundamental changes to the basic structure of sentencing in the federal criminal justice system in nearly two decades, the review by Congress to date consists of a hearing at the subcommittee level in the House of Representatives on only part of Section 109 and limited debate on an amendment on the House floor. The Senate has held no hearings on this legislation at all. Neither the Judicial Conference nor the Sentencing Commission has been given a fair opportunity to consider and comment on this proposal. In our opinion, provisions that would have a significant impact on the administration of criminal justice should not be resolved without careful study and deliberation. The risk of unintended consequences should not be taken on such an important matter.

Section 109(a) of this bill would amend 18 U.S.C. §3553(b) to restrict courts' authority to depart downward from the sentencing guideline range to those situations specifi-

cally identified by the Sentencing Commission as grounds for downward departures. The Sentencing Reform Act of 1984 created a system of prescriptive sentencing, but Congress wisely recognized that any system that provides for sentencing based upon fixed sentencing factors should include a means to impose a just and responsible sentence on the rare defendant whose offense is not addressed by those sentencing factors. The means chosen was to allow for either upward or downward departures if the court finds "an aggravating or mitigating circumstance of a kind, or to a degree, not adequately considered by the Sentencing Commission." This system recognizes that a court should possess the authority to consider unforeseen circumstances it deems relevant to sentencing determinations, and we urge the current system be retained.

Sections 109(b), (g) and (i) make specific changes to existing sentencing guidelines to among other things, restrict the bases for downward departures. The Judicial Conference opposes direct congressional amendment of the sentencing guidelines because such amendments undermine the basic premise in establishment of the Commission—that an independent body of experts appointed by the President and confirmed by the Senate is best suited to develop and refine sentencing guidelines. We recommend instead that the Sentencing Commission be directed by Congress to study the amendment of any particular guideline and either adjust the guideline or report to Congress the basis for its contrary decision.

Section 109(d) would alter the standard of appellate court review of departure decisions from "due deference" regarding a sentencing judge's application of the guidelines to a "de novo" standard of review. In *Koon v. United States*, 518 U.S. 81 (1996), the Supreme Court interpreted the "due deference" standard to require appellate courts to review district court departure decisions for abuse of discretion. The Judicial Conference opposes rescission of the current standard, which recognizes that district judges are better positioned to decide departures, and the substitution of de novo review, which would not adequately guide courts in subsequent departure cases that, by their very nature, are not amenable to useful generalization.

Section 109(h) would amend 28 U.S.C. §994(w) to require the chief judge of each district to assure that certain sentencing records, including the judgment, statement of reasons plea agreement, indictment or information, and presentence report, are forwarded to the Sentencing Commission. Current law, by contrast, requires the sentencing court or other officer to transmit to the Sentencing Commission a "written report of the sentence" and other information as determined by the Sentencing Commission, recognizing that the Commission is best able to determine the information it needs to fulfill its statutory responsibilities. We oppose this additional burden upon the courts.

This section would further require the Commission, upon request, to provide these newly specified documents to the Senate and House Judiciary Committees. This provision raises two serious concerns. First, presentence reports are retained within the control of the courts and the Department of Justice in order to protect the safety and privacy of individuals identified in the course of criminal prosecutions and sentencings. In the absence of strict accommodations to protect this sensitive information, we believe this practice should be retained. Second, we oppose the systematic dissemination outside the court system of judge-identifying information in criminal case files. The Sentencing Commission compiles and releases annually comprehensive

statistics on all federal sentences. Among other things, this data provides for each court the percentage of defendants who receive substantial assistance departures and the percentage of defendants who receive other downward departures. We urge Congress to meet its responsibility to oversee the functioning of the criminal justice system through use of this and other information without subjecting individual judges to the risk of unfair criticism in isolated cases where the record may not fully reflect the events leading up to and informing the judge's decision in a particular case.

In the event that Congress determines to go forward with this legislation, we urge that, at the least, the Judiciary Committees await the results of ongoing studies into downward departures being conducted by the Sentencing Commission and the General Accounting Office. To underline this point, an Associate Deputy Attorney General testified to a House Judiciary subcommittee why the "disturbing trend" in downward departures in non-immigration cases on grounds other than substantial assistance to the government justified "long overdue reform" in sentencing procedures. The Department of Justice statement cited statistics to prove this point; that is, these downward departures rose from 9.6 percent of cases in FY 1996 to 14.7 percent of cases in 2001. The fact is that there were 5,825 more non-substantial assistance downward departures in FY 2001 than in FY 1996. Of the increase, 4,057 occurred in the five southwest "border court" districts and 1,755 occurred in the other 89 United States district courts. In other words, the "border" districts accounted for almost 70 percent of the increase. The "disturbing trend" is not a national trend, but one more vivid measure of the crisis in the administration of criminal justice on the border. S. 151 recognizes that high downward departures in the border courts are a special circumstance and cannot be eliminated. By no means do "border court" problems and statistics support the elimination of this type of downward departures in all other district courts.

It is also important to note that, popular conceptions notwithstanding, the fact that a defendant is granted a "downward departures" does not mean that the defendant was not punished adequately for the crime. Eight-five percent of defendants granted non-substantial assistance departures in FY 2001 were sentenced to prison.

Finally, we strongly recommend that, after the data on downward departures is compiled and analyzed, hearings be held so that the views of the various entities with interest in federal criminal sentencing can be carefully considered with regard to the ramifications of his proposal. Congress should not alter the sensitive structure of the sentencing system without reasonable certainty as to the consequences of such legislation.

We appreciate your consideration of the views of the Judicial Conference on this significant legislation. If you have any questions regarding these views, please do not hesitate to contact me at 202/273-3000. If you prefer, you may have your staff contact Michael W. Blommer of the Office of Legislative Affairs at 202/502-1700.

Sincerely,

LEONIDAS RALPH MECHAM,
Secretary.

U.S. SENTENCING COMMISSION,
Washington, DC, April 2, 2003.

Subject: S. 151/H.R. 1104, the "Child Abduction Prevention Act."

Hon. ORRIN HATCH,
*Chairman, Senate Committee on the Judiciary,
Hart Office Building, Washington, DC.*

Hon. PATRICK LEAHY,
*Ranking Member, Senate Committee on the Judiciary,
Dirksen Office Building, Washington, DC.*

DEAR SENATORS HATCH AND LEAHY: We, the voting members of the United States Sentencing Commission, join in expressing our concerns over the amendment entitled "Sentencing Reform" recently attached to the Child Abduction Prevention Act of 2003, H.R. 1104, 108th Cong. (2003) (hereinafter "H.R. 1104"). In the past, with an issue of such magnitude, Congress has directed that the Commission conduct a review and analysis which would be incorporated in a report back to Congress. The Commission is uniquely qualified to serve Congress by conducting such studies due to its ability to analyze its vast database, obtain the views and comments of the various segments of the federal criminal justice community, review the academic literature, and report back to Congress in a timely manner. Indeed, such a process is contemplated by the original legislation which established the Commission over 15 years ago. See 28 U.S.C. §994(o).

It is the Commission's understanding that the impetus for this proposed amendment to H.R. 1104 was congressional concern over the increasing rate of departures from guideline sentences for reasons other than substantial assistance. We share this concern. In fact, the Commission is undertaking an expansive review and analysis of all non-substantial assistance departures. That work has already yielded important preliminary data.

Based on this preliminary data, it appears that there are a number of factors that need to be examined and understood before drawing conclusions on the non-substantial assistance departure rate. One such factor is the impact on the non-substantial assistance departure rate resulting from policies implemented in a number of districts in an effort to deal with high volume immigration caseloads. For example, in 2001, the overall non-substantial assistance departure rate was 18.3 percent. If those districts with departure policies crafted to address these high volume immigration caseloads are filtered out, the non-substantial assistance departure rate is reduced to 10.2 percent.

In addition to the impact of the problems unique to districts with high volume immigration caseloads, other factors deserve analysis:

(1) the impact, if any, of departures for reasons other than substantial assistance that are the subject of plea agreements and the extent of judicial oversight of such plea agreements;

(2) the extent to which courts depart for reasons identified by the Sentencing Commission and specified in the guidelines as compared to factors unmentioned in the guidelines;

(3) the extent, if at all, of disparity in departures within circuits and districts and whether such disparities may be unwarranted;

(4) the advisability of creating different grounds for upward and downward departures;

(5) the extent of appeals of departures; and
(6) whether there are particular offense types that reflect unwarranted rates of departure.

When Congress created the Sentencing Commission as part of the Sentencing Reform Act of 1984, it did so with the idea that

the Sentencing Commission would establish policies that would provide certainty and fairness in sentencing and would avoid unwarranted sentencing disparities among defendants. See 28 U.S.C. §991(b)(1). Congress also recognized, however, that guideline sentences would not fit all cases and instructed the Commission to maintain sufficient flexibility in the drafting of guidelines to permit individualized sentences when warranted by mitigating or aggravating factors not otherwise taken into account. See 28 U.S.C. §991(b)(1)(B). Based on this congressional policy, the Commission developed the concept of permitting courts to depart either upwards or downwards in unusual or atypical cases that fell outside the "heartland" of a particular guideline. The Commission adopted the departure policy not only to carry out congressional intent but also in recognition of the limits of adopting a perfect guideline system that would address all human conduct that might be relevant to a sentencing decision. Such a policy also was important in order to give feedback to the Commission as to whether a particular guideline should be reexamined because of an unusually high upward or downward departure rate. These departures have developed over time and have been adjusted throughout the history of the guidelines with the benefit of input from Congress, the federal criminal justice community, and considerable sentencing data.

We would note that there are numerous non-substantial assistance departures, both upward and downward, that appear in other than Chapter Five of the Guidelines Manual. The proposed amendment to H.R. 1104 deletes many of these departure provisions. For example, Chapter Four provides for a departure if the court finds that a defendant's criminal history category significantly either under- or over-represents the seriousness of a defendant's criminal history. See USSG §4A1.3. Similarly, USSG §2B1.1 in Chapter Two provides for a departure either up or down if the court determines that the offense level, which is primarily determined by the amount of the loss, either substantially under- or over-states the seriousness of the offense. Were the proposed amendment to be adopted, it would bar a court from downwardly departing in an appropriate case in each of the above examples.

The amendments being proposed in this legislation change not only departure guideline policy, but also alter the traditional way in which guideline revisions are implemented. The Commission would respectfully suggest that in order for the Commission to fulfill its statutory purposes as well as be of assistance to Congress in addressing its concern with respect to increased departure rates—a concern which the Commission shares—Congress might instead direct the Commission to review departures, recommend changes where appropriate, and then report back to Congress within 180 days. Such an approach would be in accordance with the procedure set forth by Congress when it established the Commission as well as with historical precedent. See 28 U.S.C. §994(o).

Thank you for your consideration of our concerns.

Sincerely,

DIANA E. MURPHY,
Chair.

RUBEN CASTILLO,
Vice Chair.

JOHN R. STEER,
Vice Chair.

WILLIAM K. SESSIONS, III,
Vice Chair.

MICHAEL O'NEILL,
Commissioner.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Utah.

Mr. HATCH. Mr. President, I don't know anybody on the Senate floor who can roar better than my "lion" friend from Massachusetts. He is a great Senator. And he certainly feels very deeply on this issue. Apparently I have irritated him, and I feel sorry about that, but he is totally wrong in what he says. I can see why he might feel that way.

Now, let me just say this, that I believe the letters that he was referring to, with regard to the courts of this country complaining about this, were before the compromise we enacted in this particular conference report. I got a lot of complaints, too. That is why I tried to make the change and worked it out with Chairman SENSENBRENNER and others in the House who were not very happy to make the change.

My friend called and said: Can you do something in this area? I said I would try, which I did. And we came up with the Hatch-Graham-Sensenbrenner amendment. I apologize for my voice, but I have semi-laryngitis. But we came up with the Hatch-Graham-Sensenbrenner amendment, which I believed moved this in the right direction and I thought would please my friend from Massachusetts, but it did not.

Now, it needs to be pointed out that this is a bipartisan conference report. On the Senate side, we voted for this report 5 to 2, meaning it was bipartisan. On the House side, they voted in larger numbers for this report.

I have to mention that neither the distinguished Senator from Massachusetts nor the distinguished Senator from Vermont signed the conference report, so they did not agree with it. And I understand that they are upset about the language in the report. I cannot help that.

But we are talking about only 2 percent of the cases that are affected by this departure language—only 2 percent of all the cases. I thought I did a pretty good job in getting it done.

I have to mention one other thing: the distinguished Senator from Massachusetts talking about a blacklist for judges, because he claims that these reports have to be sent to the Attorney General.

Well, remember, sometimes Attorneys General are Republican and sometimes they are Democrat. I think most Attorneys General really try to do a good job. I know the current one is trying to do his best job against crime in this society. The current Attorney General approved and was for the original Feeney language—which we changed—and so were many Members of the House. They were not happy with this change.

Let me just make some points here that are important. It is not surprising that the American Civil Liberties Union, the Federal Public Defenders, the American Bar Association, and the Judicial Conference have opposed the Feeney amendment.

One seriously wonders what would have been heard from the ABA, the ACLU, the Leadership Conference on

Civil Rights, and others if upward departures—in other words, making it tougher on crime—had grown at the absurd and dizzying rates that downward departures have.

Can anyone seriously believe that they would have been asking for more time to study this issue if upward departures had gone out of control, like these downward departures, that are skyrocketing?

So everybody in our country understands, we have judges on the bench—not many, but enough—who, in these child molestation, child degradation, and child pornography cases—these children's criminal cases—who are continually reducing the sentences recommended by the Sentencing Commission for these criminals who are hurting our children.

Look at this chart. Since 1991, when there were 1,241 downward departures—or lesser sentences for these types of people—we are now up to 4,098 in 2001. And I am sure it was much higher for 2002 and that for 2003 it will be much higher.

Can anyone seriously believe that these liberal groups would be asking for more time to study this issue, as is being asked for here? I suspect there would be a loud, steady drumbeat for swift legislative action by Congress to stop such an outrage—not more time for the Sentencing Commission to study the issue—that is, if the upward departures, in other words, the tougher on crime departures, were followed by the courts. Well, that isn't the case. These are downward departures, making it easier on these pedophiles, sex criminals, child rapists, child pornographers.

I further suspect that these groups would not have waited as long and as patiently as we have in watching downward departures increase steadily year after year, making it easy on criminals who do these types of things to our children.

Additionally, I am not surprised the Judicial Conference is opposed to this amendment, if it is.

It is important to note, however, the compromise is limited to these serious crimes against children and sex crimes. But because the problem of downward departures is acute across the board, the compromise proposal would direct the Sentencing Commission to timely conduct a thorough study of these issues, develop concrete measures to prevent and limit this abuse—this abuse of downward departures, making it easy on child molesters—and report these matters back to Congress.

In fact, to place this matter in historical context, in debate on the Sentencing Reform Act, the distinguished Senator from Massachusetts observed, with respect to the Judicial Conference and sentencing disparity, the following:

With all due respect to the Judicial Conference, the judges themselves have not been willing to face this issue and to make recommendations and to try and remedy this situation.

He acknowledges that some judges are out of control on these issues. And I think this chart shows they are out of control in children's cases, and it is time to stop it. That is what this bill does.

Along these lines, consider the following disparity, demonstrating the increasing undermining of the sentencing guidelines by some of these judges. The average downward departure rate for nonsubstantial assistance cases in the Fourth Circuit is 5.2 percent, while in the Tenth Circuit it is 23.3 percent. The average downward departure rates are making for easier sentences for these sex criminals. It is this type of sentencing disparity that risks turning our criminal justice system of sentencing into—to borrow yet another phrase from Senator KENNEDY on this issue—"a system of roulette."

I urge support for this conference bill. It squarely increases punishment for child-related crimes and ensures that those who commit these crimes are incarcerated accordingly. And it says the game is over for judges: You will have some departure guidelines from the Sentencing Commission, but you are not going to go beyond those, and you are not going to go on doing what is happening in our society today on children's crimes, no matter how softhearted you are. That is what we are trying to do here. We are tired of it. I am tired of having children abused. This bill will go a long way toward stopping that kind of abuse.

Let me talk about departure rates and the amounts for child-related crimes. The conference report addresses the glaring penalty gaps that exist in the sentencing guidelines. The bill represents a compromise from various points of view. I did my best to try to get a compromise that I hoped my colleagues on the other side would be happy with.

They are not, some of them. But I have to say that the distinguished Senator from Delaware was. He voted with us on this conference report, as he should have. I believe others on the committee should have also. For instance, there was one view that believed all downward departures should be banned, all of them. That was a view by some. The Feeney amendment, approved in the House before conference, moderated that view by merely limiting departures. I cosponsored an amendment in the conference with Chairman SENSENBRENNER and Senator GRAHAM that we have been talking about that went even further by limiting departures related to crimes victimizing children. This bill puts a stop to the very troubling practice of certain trial courts which depart from the sentencing guidelines in crimes involving children and sex crimes.

The following very troubling statistics related to child crimes demonstrate why this is necessary. According to the Sentencing Commission's 2001 Sourcebook of Federal Sentencing Statistics, trial courts reduce the sentence of those convicted of sexual

abuse of children from the guidelines over 16 percent of the time. Think of it. Why do we have these sentencing rules to begin with if they are not going to be followed, especially in these children's cases?

On average, child courts reduce the sentences of those convicted of sexual abuse by an astonishing 63 percent from the guideline range. I would think my colleagues would want to put a stop to that kind of inappropriate decision-making by some judges. For those convicted of pornography and/or prostitution-related offenses, trial courts departed from the recommended guidelines over 18 percent of the time, reducing these defendants' sentences by a staggering 66 percent. Think about it. We are going to let that continue just because some of these groups don't like it or want to be more compassionate towards these criminals? This many departures and this amount of sentencing reductions are astounding given the trauma inflicted on victims of these particular types of offenses, and require us in Congress to step in and ensure the sentences in these areas remain uniform and consistent with national expectations.

Let me add an overall perspective to this compromise. The compromise agreed to in conference will affect only crimes against children and sex crimes; that is, sexual abuse, pornography, prostitution, and kidnapping/hostage taking. These types of cases represent only 2 percent of the Federal criminal caseload. This is only 2 percent of the cases that would have been affected by the original Feeney amendment—they all would have been affected by the original Feeney amendment—and only 2 percent of the cases that would have been affected by the version that passed the House by an overwhelming 357 to 58 vote. And we have complaints about this?

Hopefully in the future the Sentencing Commission will more closely monitor these types of disparities and will step in to fix these problems in a timely manner. However, when they do not, it is incumbent upon the Congress to do so. That is precisely what this bill does. We say in this bill: We are sick of this, judges. You are not going to do this anymore except within the guidelines set by the Sentencing Commission. There will be downward departures, but they will meet the guidelines and not just be off-of-the-top departures like the 190 pound man, five feet 11, almost six feet tall, who had committed a child crime and got reduced 400 percent or more.

It is absurd to suggest the Sentencing Commission should be given time to study this issue. The Sentencing Commission has been aware that Congress was greatly concerned about this problem since the year 2000, even before then. Indeed, these very issues were squarely raised with the Sentencing Commission during the Senate hearing in October 2000. Both Senators Thurmond and SESSIONS di-

rected many questions at the commissioners and others about their concerns that trial judges systematically undermine the sentencing guidelines by creating new reasons to reduce these sentences.

Indeed, Senator SESSIONS expressed his concerns about the troubling trend of departures based on novel and creative reasons directly to the chair of the Sentencing Commission.

Senators Thurmond and SESSIONS were assured the Sentencing Commission intended to address this issue by including it in a larger report due November 2002, addressing how well the guidelines were accomplishing the statutory purposes of sentencing. It is now 6 months beyond the due date, and no such report has been produced. In fact, the Sentencing Commission announced just this past March it has completed portions of the report on cocaine sentencing and surveys related to Federal judges.

However, as to the departure issues raised at the Senate hearing, the Sentencing Commission continues to study the issue, 2 years, 3 years later. It is apparent this issue, while an obvious priority to the Congress, is simply not a priority to the Sentencing Commission. And we have done something about it in this conference report that has bipartisan support. After having decided we can no longer be held hostage to the schedule set to study this issue by the Sentencing Commission, only to watch it unilaterally change, action is now even more necessary.

It has now been over 2 years since Congress highlighted this problem in an oversight hearing. Further delay would effectively abdicate our responsibilities as legislators and politically accountable members of our society, something the Sentencing Commission and the ACLU and the ABA and other groups are not.

With regard to the Hatch-Sensenbrenner-Graham compromise amendment, this amendment limits, but does not prevent, downward departures only to enumerated factors for crimes against children in sex offenses including, one, kidnapping; two, kidnapping involving a minor victim; two, sex trafficking of children; three, sexual abuse crimes; four, sexual exploitation and other abuse of children; five, transportation for illegal sexual activity and related crimes; and, six, obscenity. Changes in the standard for review of sentencing matters for all cases in Federal courts to a de novo review while factual determinations would continue to be subjected to "a clearly erroneous" standard.

We require the courts to give specific and written reasons for any departure from the guidelines. That is a logical thing to do. We require the judges to report sentencing decisions to the Sentencing Commission. They don't like that because that means more work. I have to confess, I sympathize somewhat with these judges because they are being paid less than a number of

law review graduates in their first year in private practice. The fact they don't want to increase their workload, I don't blame them for that. But it seems to me in this case, it is certainly justified.

Contrary to the oft repeated claims of the opponents, the compromise proposal is not a mandatory minimum. Judges handling these important criminal cases can sometimes exercise discretion to depart downward, but only when the Sentencing Commission specifies the factors that warrant a downward departure, only when they have the right to do so as listed by the Sentencing Commission. That seems to me just a gimmick. Yet we have had all this fuss and bother over this.

Requiring de novo review of a trial judge's application of the facts to the law is totally reasonable. This is the same standard that applies to appellate review of critical motions to suppress physical or testimonial evidence. There is no reason for appellate judges to give deference to the trial judge in such questions of law.

Even after my compromise amendment, the trial judge's factual determinations would still be subject to great deference under a "clearly erroneous" standard. If a discretionary downward departure is justifiable, it is difficult to understand why anyone would be opposed to the appellate court's reviewing them under the same standard that applies to other important areas of law.

I hope my colleagues are not obstructing this bill, because they are upset they didn't get their way in the conference—when, in fact, they were defeated 5 to 2 on these issues. To suggest the conference report suffers from a procedural flaw, I think, is going way too far. They argue, incredibly, that the Hatch-Sensenbrenner-Graham amendment to the Feeney amendment to the House bill was improperly modified in conference. That is simply ridiculous and we all know it. What occurred was straightforward.

In response to Democratic concerns raised about the drafting of the Hatch-Sensenbrenner-Graham amendment to the conference report, we made a number of technical changes to comport with Democratic Senator BIDEN's understanding of the amendment, as well as concerns raised by a Congressman during the conference, as to the meaning of one particular provision. In good faith, my staff addressed these technical drafting issues and made certain revisions to comport with these Democratic suggestions.

Senator BIDEN was right. I agreed with these changes. Senator BIDEN agreed with these changes as well. He voted for the conference report. Keep in mind these changes had the effect of cutting back on the restrictions contained in the Feeney amendment as it applies to sentencing decisions by judges to ensure that the restrictions apply only in a limited category of cases. In the end, Democratic members

to the conference report—Senator BIDEN and Representatives FROST, HINOJOSA, and MATHESON—all supported the conference report.

For some Democratic members to now complain about the process is simply unfair, and I question those positions. I would like to refer to the transcript my colleague was referring to because he believes I represented one thing when in fact I meant another.

Let me start with line 759:

Chairman HATCH. The proposed amendment would, and I hope my colleague from Massachusetts will listen carefully to this—Ted, if I could get you to listen to this.

Senator KENNEDY. Yes.

Chairman HATCH. Because, hopefully, this will help some of your concerns.

The proposed amendment would limit, but not prevent, downward departures only to enumerated factors for crimes against children and sex offenses, including: one, kidnaping at Section 1201; two, sex trafficking of children, Section 1591; three, sexual abuse crimes, Chapter 109(a); four, sexual exploitation and other abuse of children, Chapter 110; and five, transportation for illegal sexual activity and related crimes. That's Chapter 117, and also Chapter 71, dealing with obscenity, I've been informed.

It will change the standard for review of sentencing matters for appellate courts to a de novo review, while factual determinations would continue to be subject to the "clearly erroneous" standard.

It would require courts to give specific and written reasons for any departure from the guidelines.

It will require judges to report sentencing decisions to the Sentencing Commission.

The Sentencing Reform Act of 1984 was designed, as Congress wrote in the text of that bill, "to provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct."

Now, while the United States Sentencing Commission promulgated sentencing guidelines to meet this laudable goal, courts have strayed further and further from this system of fair and consistent sentencing over the past decade.

The rate of discretionary downward departures, excluding downward departures for defendants' cooperation, has increased virtually every year since 1991.

But now Chairman SENSENBRENNER—and I don't know whether the Senator from Massachusetts was there at the time; maybe he was not there. Chairman SENSENBRENNER made it very clear. He said:

Now there are several other issues that I think have got to be addressed. First of all, with respect to the standards of appellate review, that applies to all cases and it is a de novo review.

That is what we understood.

This is in direct response to the Supreme Court's decision in the case of Koon v. United States. Now, you may recall this involved a conviction for a civil rights violation of one of the police officers accused of beating up Rodney King, which we all saw on TV.

The point is, I think everybody else there recognized what the Hatch-Sensenbrenner-Graham amendment was meant to be. I feel badly that my colleague feels like he was misled, because

I don't think I misled him. I think the language I just read shows I didn't. I acknowledge and I express sorrow that he feels the way he does. I feel badly he feels the way he does because I would never deliberately mislead a colleague under any circumstances. I might make a mistake or forget something I might have said earlier, or something like that, but I would never deliberately mislead a colleague. I certainly didn't in this case. I don't think anybody there understood it the way it is being seen through the eyes of some on the other side.

I think to blow up this conference report over this is not only a mistake, it is a failure to recognize the tremendously irritating and damaging downward departure situation going on in the country today—letting these criminals off with regard to children's crimes.

I would add that the Reno Justice Department argued in the Koon case for a de novo standard for appellate review. This was the right argument to make.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Let me finish first. It was a position supported by the Congressional Black Caucus. I have a copy of that letter. Let me read it:

As members of the Congressional Black Caucus, we are writing to you because of our concern about the sentencing of Officer Laurence Powell and Sergeant Stacey Koon by Judge John Davies in the Rodney King civil rights case.

We are troubled that the sentence for the crime was reduced to 30 months upon the court's consideration of mitigating facts. Such a reduction for mitigating factors may be appropriate in other circumstances. However, we feel that the defendant's special status as police officers, with special duties owed to the public, should have militated against such a significant reduction.

As you well know, the maximum possible penalty was ten years and fines of up to \$250,000. Your federal prosecutors were asking for seven to nine years. Our federal sentencing guidelines recommended minimum sentences in a range of four to seven years in prison.

Instead, Judge John Davies made broad use of subjective factors. He stated that he read only letters addressed to him from the friends and families of Officer Powell and Sergeant Koon. He argued that much of the violence visited on Rodney King was justified by King's own actions. However, these officers were convicted on charges of violating Rodney King's civil rights. We believe these mitigating factors did not justify so large a reduction given the defendants' special responsibilities as police officers.

In addition, Judge Davies did not afford proper weight to the racist comments made over police radio by those convicted on the night of the beating in discounting race as a motivation for the beating. He similarly failed to take into account the remarkable lack of remorse shown by Officer Powell and Sergeant Koon since their conviction.

People of good will all over this country and of all races were heartened when Officer Powell and Sergeant Koon were convicted by a jury of their peers, a verdict made possible by the Justice Department's resolve to file civil rights charges and by the phenomenal performance of federal prosecutors. With

these severely reduced sentences, however, we are sending a mixed message. Are police officers going to be held responsible for excessive use of force or not?

We think what has been lost, in all this, is that police officers have an enhanced responsibility to uphold the law.

Notwithstanding Judge Davies' authority to modify the sentencing guidelines, most experts agreed that the minimum four to seven years sentence should have been followed in this case.

We realize that the trial judge is afforded sufficient latitude in sentencing, but we urge the Department of Justice to appeal these sentences. We need to reexamine these sentences so that justice can finally be done in this difficult, painful case. Only then can we begin to put this behind us.

It is signed by a large number of good Members of Congress.

What we have proposed is that there should be de novo review. We set a standard that is not an easy standard to overcome. We have shown that we have an outrageous situation in this country where a number of judges have been giving extra downward departures far in excess of what anybody in their right mind would think they should do.

This is happening in criminal cases where children are victims, and we are trying to stop that because we think there has to be responsibility here. We believe that in these child molestation cases, pornography cases, prostitution cases, child rape cases, and kidnaping cases the sentencing guidelines ought to be followed.

Nothing says these judges cannot follow the downward departure guidelines if they so choose in their discretion as the trial judges, but they can no longer conjure up reasons outside the guidelines to reduce criminals' sentences.

Basically, that is what the conference report says. I would think everyone in this body would vote for this conference report. I think it does it right and does what we said it would do in the conference, and it does what a bipartisan majority in the House and the Senate said it should do. Frankly, I believe that is right.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Yes.

Mr. DURBIN. From the outset, the underlying legislation, the Amber alert legislation, the virtual pornography legislation passed through the Senate unanimously twice. There is no controversy concerning the underlying legislation; the controversy that has arisen came up because of an amendment offered by Congressman FEENEY of Florida which found its way into the House version of the bill and then became a subject matter in the conference.

I ask the Senator from Utah this: There appears to be a legitimate difference of opinion, but a very important difference of opinion, about the chart that he has brought to the Chamber. I received, and I believe he also received, a letter from the president of the American Bar Association yesterday. The American Bar Association president wrote to us talking about the

so-called downward departures where a decision is made by a judge to impose a sentence below the recommended minimum. He said:

In fiscal year 2001—

The last year shown on the Senator's chart—

of 19,416 downward departures awarded Federal defendants, approximately 15,318 came on Government motion.

Put another way, in 2001, 7 percent of downward departures in the United States were requested by the prosecutor, by the Government.

I know the Senator from Utah sees it differently, but I would like to ask him in good faith—this is a good-faith question—many of us are concerned about sentencing guidelines, whether they are too strong or too weak and whether we should reassess them. I think that was the reason the Senator from Massachusetts offered that approach in the conference. Would the Senator from Utah, in an effort to try to bring together what he has asked for, bipartisan support, to give us his promise that he would look into a hearing relative to the sentencing guidelines so that we can finally bring to rest these questions of fact behind the downward departures and whether we need to look anew at some of these sentencing guidelines.

Many of us think that hearing and conversation is long overdue. If the chairman of the Senate Judiciary Committee would agree to such a hearing, that might move us closer to the adoption of this conference report.

Mr. HATCH. I personally believe we can do that. We did have a hearing in 2000. The hearing was extensive and led to this legislation. By the way, the number on the chart excluded departure requests made by the prosecutors under Section 5K1.1 of the Guidelines, when a defendant provides "substantial assistance" to the government. We counted 4,098 downward departures excluding the so-called "5K1.1 motions" made by the government. The number of downward departures has risen from 1,241 in 1991. Any Senator should see that this increase is the reason for our concern.

I do not disagree with the distinguished Senator. I think it would be good to find out what the Senator wants to know, and that is, if I understand him correctly, he is asking for a hearing on downward departures.

Mr. DURBIN. If the Senator will yield further.

Mr. HATCH. Yes.

Mr. DURBIN. I hope that we can have a hearing that might go beyond that specific question and to the broader question about sentencing guidelines today.

Mr. HATCH. I would certainly ask the Subcommittee on Crime to do that.

Mr. DURBIN. I say to the Senator from Utah, there have been many times that I have voted for stiff penalties, as he has, for crimes, but I can also tell the Senator from Utah that I have visited, for example, the Federal

women's prison in Illinois, and I have seen some situations there that I think are awful. They are miscarriages of justice for these women to be sentenced to 5, 10, 15, 20 years because of an angry boyfriend snitching on them and really assessing liability against them.

Mr. HATCH. Let me interrupt the Senator for one second. I agree with the Senator. I have seen the girlfriend courier go to prison for 10 years when she did not even know what was in the package, or at least claimed she did not, while the boyfriend, the drug dealer, pleaded State's evidence and gets off. Frankly, I do not like that either.

I think we should hold hearings on this, and I will be happy to recommend it to the Crime Subcommittee or if it should be elevated to the full committee, we can perhaps do that. I appreciate the distinguished Senator's willingness to try and help us resolve this today because this bill needs to pass. I do not see how anybody can refute what I have been saying here. I do not see how anyone would not want to get tougher with sentencing with regard to these sexual crimes, especially when they have gone way outside the downward departure limits the Sentencing Commission gives them. We do not stop trial judges from granting downward departures, but they should be done in compliance with the purposes of the sentencing guidelines.

Mr. DURBIN. If I may respond to the chairman of the committee, I do not think the Senator would have any argument from any Member of the Senate, nor would we be here this moment, if he just confined the changes in conference to crimes involving children, sexual molestation. I think he will find unanimous approval of that. The fact we have gone in to de novo review to these departures applies to all crimes. That is why I am asking we take a look at the broad expanse of the sentencing guidelines.

Mr. HATCH. I am not willing to redo this bill because the conference is over. A vast majority has supported it in the House—a huge majority—and a bipartisan majority on the conference. But I am certainly willing to look at it. If we need to modify what we have done here today, I will certainly look at that.

I feel badly the distinguished Senator from Massachusetts feels he was misled, but I do not see how he was misled. I can see there was an ambiguity if one did not look at the whole record. He may not have been there when we decided to use Chairman SENSENBRENNER's language, which was clear and specific. I thought mine was clear, but Chairman SENSENBRENNER's language was more clear than mine. I think everybody there understood.

The distinguished Senator from Massachusetts and the distinguished Senator from Vermont, the ranking member, the Democrat leader on the committee, refused to sign the conference report over perhaps this misunderstanding, but it is a misunderstanding, not a desire by me to do something that is improper.

I thank the distinguished Senator for his comments here today. Those are good points he made, and we will see what we can do.

Let me make a couple other comments before I finish. Let me provide some additional examples of sentencing departure abuse and why we want to change this and why this bill makes a very good step in the right direction.

In one case, a defendant who was convicted of possessing child porn images, over 280 images, more than 10 of which were clearly identified as prepubescent children, was sentenced to serve 13 months in prison and 14 months in home detention, even though the defendant's lawful guidelines sentencing range was 27 to 33 months in prison. Think about that.

At sentencing, the defendant threw in the kitchen sink and moved for a departure on multiple grounds. He argued that his status as a former prison guard rendered him as particularly susceptible to abuse in prison. He argued that he needed rehabilitation and treatment. I have no doubt. He argued his age and his wife's age, his extraordinary family responsibilities, and his military and work histories justified a departure. He argued he was entitled to a "super" acceptance of responsibility and argued his conduct was aberrant. Although the Government opposed all grounds of downward departure, the court imposed an illegal split sentence and allowed the defendant to spend 14 months of his 27-month sentence in the home.

Without explaining how many guideline levels it was departing, the court credited the defendant's claim that he was the only one who could take care of his wife, who had degenerative arthritis and had back surgery but nonetheless continued to work as a night janitor—his wife, that is. The court also credited the defendant's claim that, based on his service in the military and his civilian career in law enforcement, his criminal acts were aberrant. Remarkably, these winning arguments enabled the defendant to spend over half of his 27-month sentence in the home.

Now let me state why we need this reporting requirement to the Attorney General that the distinguished Senator from Massachusetts has inappropriately characterized. It is no secret that the Attorney General is in charge of every aspect of prosecuting cases in the Federal courts. Therefore, he has a direct interest in the disposition of criminal cases. Now let me give you a specific example as to why we need this reporting requirement.

There is a Federal judge who routinely violates the Sentencing Commission guidelines because he believes the Sentencing Commission erroneously calculated the sentencing guidelines. He does not depart much, just a little reduction in a sentence here and a little reduction there. But the fact is, he routinely does it. Now

the Attorney General may not have the resources to try to appeal each and every time this judge violates the sentencing guidelines. However, if an Attorney General is aware of someone routinely abusing this provision, this reporting requirement will allow him to monitor this and take action when appropriate. That is why we have the requirement in there.

Now let me give you another illustration, some more examples of what is going on here and what we are trying to correct with this bill.

A child pornographer was sentenced this year in Montana. Prior to sentencing, the court raised on its own motion that the defendant suffered from diminished capacity. The court ruled that this young man had extraordinary family responsibilities and that he suffered from a diminished mental capacity. The judgment notes, in part, United States Sentencing Guidelines section 5(k)(2)(13), diminished capacity: Defendant was extremely addicted to child pornography and the testimony of efforts established that defendant had a significantly impaired ability to control his behavior that he knew to be wrong; that the extent to which the reduced mental capacity contributed significantly and substantially to the commission of the offense. The Court departed downward 8 offense levels from offense level 18 to offense level 10. This reduced the guideline range from 27 to 33 months to just 6 to 12 months.

The trial court placed Clark on probation for 5 years.

I want to emphasize again a disturbing fact here about child pornographers. A Bureau of Prisons study shows that 76 percent of child pornographers and those who had been convicted of traveling in interstate commerce to commit sex acts with minors admitted to undetected sex crimes with an average of 30.5 child sex victims. Think about that. These child sexual predators, if you averaged them, admitted to undetected sex crimes with an average of 30.5 child sex victims. Can anyone really say that tougher penalties and sentencing reforms are not needed when it comes to these horrible crimes?

Does anyone believe that judges should be allowed to grant downward departures based on reasons that are not contemplated within the Guidelines themselves?

Now we have supporting letters for this conference report from the Department of Justice, the National Sheriffs' Association, the Law Enforcement Alliance of America, Major County Sheriffs' Association, Fraternal Order of Police, and the National Association of Assistant U.S. Attorneys.

One of the criticisms that has been raised about the conference agreement is that it limits the membership of Sentencing Commission to no more than three Federal judges. Currently, the law requires that the Sentencing Commission be comprised of at least three Federal judges. The hearings be-

fore the House and Senate Judiciary Committees showed that trial judges have downwardly departed from the sentencing guidelines to a level beyond what was originally intended. There may be an appearance of conflict of interest when judges, desiring to preserve judicial discretion, serve on the Sentencing Commission whose mission it is to ensure uniformity in sentencing, which necessarily means less judicial discretion.

Currently, judges outnumber other voting members of the Sentencing Commission. Because so, there is a potential for at least an appearance of a conflict of interest.

Now, I do not argue that there is a conflict or that they are acting improperly. I am proud of those who have served. But there is a different attitude in the courts, as Senator KENNEDY has suggested. He has all kinds of letters from judges who do not like this. It means more work to them.

This change will, hopefully, restore the appearance of balance in the Sentencing Commission and eliminate any conflict between the commissioners' desire to retain judicial discretion and uniformity in sentencing.

Now, the National Center for Missing and Exploited Children, the NCMEC, expressed its thanks to the House of Representatives and Senate conferees on agreeing to the language included in the conference report of the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act 2003. This was released April 9. NCMEC also expressed its hope that both Houses of Congress would move swiftly to approve the report and enact these important provisions into law. Children throughout the United States will be safer because these key leaders of the House and Senate were able to come together and reach consensus on so many vital issues—Robbie Callaway, chairman of the National Center for Missing and Exploited Children.

I ask unanimous consent that the comments in this press release, along with a letter from Robbie Callaway, who is with the Boys and Girls Clubs of America, along with the National Sheriffs' Association, along with the Law Enforcement Alliance of America, and Major County Sheriffs' Association, the Federal Law Enforcement Officers Association, the U.S. Department of Justice, be printed in the RECORD.

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

APRIL 9, 2003.

NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN COMMENDS SENATE AND HOUSE CONFEREES

ALEXANDRIA, VA.—The National Center for Missing & Exploited Children (NCMEC) expressed its thanks to the U.S. House of Representatives and U.S. Senate conferees on agreeing to the language included in the conference report of the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003. NCMEC also expressed its hope that both houses of Congress would move swiftly to approve the report

and enact these important provisions into law.

“Children throughout the United States will be safer because these key leaders of the House and Senate were able to come together and reach consensus on so many vital issues,” said Robbie Callaway, Chairman of the National Center for Missing & Exploited Children.

“NCMEC is particularly pleased that the Conferees finalized language for a true national implementation of the AMBER Alert,” said Ernie Allen, President and Chief Executive Officer of NCMEC. Allen added, “this legislation ensures that AMBER Plans become a resource for every state and every community, and that they are implemented in a consistent, meaningful manner.” The conferees provided funding for notification systems along highways for alerts, as well as funding grants so that states may implement new technologies to improve AMBER Alert communications. Such monies will benefit not just abducted children but every member of the community when an emergency develops, whether weather-related, terrorism, or any other.

NCMEC also applauded important changes in attacking the insidious, expanding problem of child pornography. NCMEC also thanked Congressional leaders for allowing the U.S. Secret Service to provide forensic and investigative support to NCMEC to assist in efforts to find missing children.

Finally, NCMEC commended Congress for taking a tough, serious look at the problem of sex offenders against children and how they are handled by the criminal justice system. Important provisions like changes in the term of supervision for released sex offenders, eliminating the statute of limitations for child abductions and sex crimes, mandating minimum prison sentences for those who kidnap children, punishing those who participate in child sex tourism, and other important changes will strengthen society's ability to cope with these serious crimes and keep children safe.

NCMEC, a private, 501(c)(3) nonprofit organization, works in cooperation with the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention. NCMEC was established in 1984 as a public-private partnership to help find missing children and combat child sexual exploitation. It has assisted local law-enforcement agencies on more than 87,000 missing child cases, helping to reunite more than 71,000 children with their families. Today, the organization reports a 94-percent recovery rate. For more information about NCMEC, call 1-800-THE-LOST, or visit www.missingkids.com.

APRIL 9, 2003.

U.S. SENATE, HOUSE OF REPRESENTATIVES, Washington, DC.

An Open Letter to the U.S. Senate and House of Representatives.

We wish to express our sincerest appreciation to all of you who have played such a key role in moving forward legislation that includes the National Amber Alert. We applaud those members of the conference committee who exhibited the foremost cooperation in working out a compromise that will greatly benefit every child in America.

Today, we are writing to encourage you to quickly pass this legislation so that it can be signed into law. The Amber Alert as well as other preventative measures will make an immediate difference in safely rescuing those who are abducted and in preventing crimes against children.

We can't begin to express our joy and gratitude in having Elizabeth back home. It is our hope and prayer that immediate passage will save countless families from the trauma

and sorrow caused by the senseless acts of those who prey on children.

Sincerely,

EDWARD SMART,
LOIS SMART,
ELIZABETH SMART.

BOYS & GIRLS CLUBS OF AMERICA,
Rockville, MD, April 10, 2003.

The Hon. ORRIN HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN HATCH: I am writing to express the gratitude of Boys & Girls Clubs of America to you and the other Senate and House Conferees for the conference report on the PROTECT Act. We are hopeful that final passage will come quickly so that critically important provisions such as the AMBER alert system are enacted.

Along with the AMBER system, we are particularly pleased with the bill's efforts to take on the problem of child pornography, the reauthorization of the National Center for Missing and Exploited Children, and national criminal background screening for youth serving organizations. We are confident that these provisions will make America's children safer, and there is nothing more important than that.

We were pleased to work with your committee as well as the House Judiciary Committee, and know you will continue to call upon us if we can be helpful in this regard.

Sincerely,

ROBBIE CALLAWAY,
Senior Vice President.

NATIONAL SHERIFFS' ASSOCIATION,
Alexandria, VA, April 4, 2003.

Hon. ORRIN HATCH,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: I write today to discuss the importance of H.R. 1104, the Child Abduction Prevention Act and I am asking for your support of the legislation and for your support of the Fenney Amendment. Passage of this legislation will protect our children against predators.

The House version of the bill has several provisions that protect children. Sheriffs especially support the AMBER Alert provision. AMBER is a highly successful tool for law enforcement and its adoption nationally will enhance our ability to recover children who have been kidnapped. It also provides citizens with a clear means of providing information to law enforcement about these cases.

However, there are additional sections in the House bill that are equally important to sheriffs. Specifically, NSA supports the Fenney Amendment, which limits the practice of downward departures from federal sentencing guidelines. The amendment would put strict limitations on departures by allowing sentences outside the guidelines range only upon grounds specifically enumerated in the guidelines as proper for departure. This eliminates ad hoc departures based on vague grounds, such as "general mitigating circumstances." The amendment also reforms the existing grounds of departure set forth in the current guidelines by eliminating those that have been most frequently abused.

Sheriffs also support provisions like "Lifetime Monitoring" of sex offenders and the "Two Strikes and You're Out" for repeat child molesters. These provisions are needed to protect our kids from sexual predators. Child molesters are four times more likely than other violent criminals to recommit their crime. A typical molester will abuse between 30 and 60 children before they are arrested, as many as 380 children during their lifetime. The Two Strikes and You're

Out provision will save thousands of kids from going through this torture. Each repeat molester represents hundreds of victims with shattered lives. We can break the chain of violence with simple, straightforward proposals like Two Strikes and You're Out and Lifetime Monitoring.

The National Sheriffs' Association welcomes passage of this legislation. We look forward to working with you to assure its swift enactment.

Sincerely,

WILLIAM T. FERRELL,
President.

THE LAW ENFORCEMENT ALLIANCE
OF AMERICA,
Falls Church, VA, April 3, 2003.

Senator BILL FRIST,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR MAJORITY LEADER FRIST, On behalf of the more than 75,000 Members and supporters of the Law Enforcement Alliance of America (LEAA), I write to request your prompt attention and support for conference and passage of H.R. 1104, "Child Abduction Prevention Act" and S. 151, the "Protect" act.

The House recently passed S. 151 with the text of H.R. 1104. The provisions in this legislation are vital protections that address clear and present dangers in America's laws to keep our children safe. Judges will be given the power to enforce supervision of convicted sex offenders for as long as is necessary and child rapists and abductors will be barred from pre-trial release. It would fund important grants to local law enforcement for tracking down wanted sex offenders and provide for mandatory 20 year sentences for strangers that kidnap kids.

The legislation would help fund a national AMBER alert system, put a two strikes rule for child molesters and double the funding for the National Center for Missing and Exploited Children.

LEAA is sure you'll agree that this legislation gives our judges, prosecutors and cops tough tools to fight back at some of America's most horrible criminals. LEAA respectfully asks that you do everything in your power to speed the process for passage of this legislation.

Sincerely,

JAMES J. FOTIS,
Executive Director.

MAJOR COUNTY SHERIFFS' ASSOCIATION,
Pontiac, MI, April 4, 2003.

Hon. ORRIN HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATOR HATCH: On behalf of the Major County Sheriffs' Association (MCSA), thank you for your legislative efforts to protect our children from sexual crime and abduction and to toughen penalties against those who commit these horrific acts.

Collectively, the MCSA membership represents over 100 million people throughout the United States. As elected Sheriffs and law enforcement officials, we take seriously our responsibility of protecting and serving our citizens, especially our children. In that regard, we encourage your efforts to move forward on legislation which safeguards our children from the hands of those who inflict irreversible harm and pain through crime and sexual abuse, specifically House Bill 1104 and Senate Bill 151.

In addition, the MCSA also supports the language set forth in the Fenney Amendment as passed in House Bill 1104, sponsored by Congressman James Sensenbrenner, which limits downward departures from federal sentencing guidelines. When the perpetrator makes the decision to commit the crime, they must accept the consequences of their

actions which should include swift, unwavering penalties. We hope the results of the conference committee scheduled to meet next week will include the Fenney Amendment.

Thank you for your attention and consideration to this important issue. We look forward to working with you on this legislation and any other measure that protects and provides for the safety of our children. Please feel free to call upon me for additional information or comment.

Sincerely,

MICHAEL J. BOUCHARD,
Oakland County Sheriff, Legislative Chair.

FEDERAL LAW ENFORCEMENT
OFFICERS ASSOCIATION,
Lewisberry, PA, April 7, 2003.

FLEOA SUPPORTS H.R. 1104—CHILD ABDUCTION
PREVENTION ACT

DEAR MEMBERS OF CONGRESS: On behalf of the 19,000 men and women of the Federal Law Enforcement Officers Association (FLEOA), we ask that you support H.R. 1104 and pass this important piece of legislation to protect the children of our nation.

The "Child Abduction Prevention Act" will enhance Federal penalties for convictions related to kidnapping, sexual abuse and murder of children. It will also create a national amber alert communications network regarding abducted children to aid in their recovery. The "Amber Alert System" is an important tool to assist law enforcement in obtaining leads from the public to assist in a quick recovery of abducted children.

We must protect the children of our nation, for they are our future. The "Elizabeth Smart Case" has demonstrated to all of us, the need for this important piece of legislation. As Federal law enforcement officers, we ask that you give us the necessary tools contained in this legislation to assist us in investigating these crimes against our children.

If there are any questions, I can be reached at 717-938-2300.

Sincerely,

ART GORDON,
National Executive Vice President.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, April 4, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We write to urge that the House-Senate Conference Committee quickly reach agreement on the differing versions of S. 151 and promptly send to the President a strong child protection bill that will comprehensively strengthen the Government's ability to prevent, investigate, prosecute, and punish violent crimes committed against children.

The House-passed version of S. 151 includes language that would codify the Administration's ongoing efforts to support AMBER Alert programs by providing for national coordination of state and local AMBER Alert programs and by establishing Federal grant programs for States to support AMBER Alert communication systems and plans. The Senate previously passed very similar legislation, S. 121, by a unanimous vote. The Department strongly supports these AMBER Alert provisions, which should be included in the final version of S. 151.

Both the House and Senate versions of S. 151 include provisions designed to revise and strengthen the nation's child pornography laws in light of Ashcroft v. Free Speech Coalition, 122 S. Ct. 1389 (2002). The House version's child pornography provisions are modeled on an Administration proposal that overwhelmingly passed the House last year

as H.R. 4623. The Senate's version is likewise a very strong measure, which also has received the Administration's full support. On this score, the two bills overlap very significantly in approach, if not always in wording. We are confident that the relatively modest differences between the two versions of these provisions can be readily resolved, and we would be pleased to offer technical suggestions in that regard. Swift enactment of these important child pornography provisions would be an important step in protecting children from abuse by ensuring effective child pornography prosecutions.

The House version of S. 151 also includes a number of important measures designed to enhance the Government's ability to investigate, prosecute, and punish violent crimes against children. These measures include: Extending the length of supervised-release terms for offenders and establishment of a rebuttable presumption in favor of pretrial detention; Enhancing law enforcement tools for identifying and apprehending offenders, by including child exploitation offenses as wiretap predicates and by eliminating the statute of limitations for certain offenses; Increasing penalties to more accurately reflect the extreme seriousness of these offenses, especially repeat offenses; Enhancing the Government's ability to punish offenders who travel abroad to prey on children; and Providing the States with additional tools and assistance to pursue these common goals.

The Department has previously testified in strong support of these provisions, and urges the Conference to include them in the final bill.

We also wish to express our strong support for Congressman Feeney's amendment to the House version of S. 151. The Feeney amendment added section 109 to the bill, which is designed to address a number of deficiencies in federal sentencing policy—deficiencies that have proven particularly serious with respect to child victim offenses.

The amendment would address the longstanding—and still growing—problem of “downward departures” from the Federal Sentencing Guidelines—i.e., sentences that are significantly more lenient than those mandated by the Guidelines. The consistency, predictability, and toughness that Congress sought to achieve in the Sentencing Reform Act (which established the Guidelines System) is being undermined by steadily increasing downward departures:

The rate of downward departures on grounds other than substantial assistance to the government (i.e., cooperation in investigating other criminals) has climbed steadily every year for the last several years. The rate of such departures in non-immigration cases has climbed from 9.6 percent in FY 1996 to 14.7 percent in FY 2001—an increase of over 50 percent in just 5 years.

Using the measure recently suggested by the ABA as a benchmark—i.e., excluding downward departures based on substantial assistance and excluding those from Southwest border districts (which use departures to process large numbers of immigration cases)—the rate of downward departures nationwide has more than doubled over the ten years from FY 1991 to FY 2001, going from 5.5 percent to 13.2 percent.

The ratio of such downward departures to upward departures has climbed from 11:1 to a staggering 33:1 in just the last five years.

Far from being “highly infrequent”—as required by the Guidelines Manual—departures based on grounds not specifically mentioned in the Guidelines amounted last year to over 20 percent of all downward departures.

The rates of such sentencing leniency vary widely from district to district: the average downward departure rate in the Fourth Cir-

cuit is 4.2 percent; in the Tenth Circuit, it is 23.3 percent.

The rates of downward departures in cases involving certain offenses is nothing short of scandalous. For years, downward departures in child pornography possession cases have ranged between 20 percent and 29 percent nationwide. (In FY 2001, it was 25.1 percent.) Often, these departures are based on much-abused grounds, such as “aberrant behavior” and “family ties.” And some of the grounds of departure employed in such cases have been as creative as they are outrageous: for example, a 5'11", 190-lb. child pornography defendant—who has accessed over 1,300 pornography pictures and begun an Internet correspondence with a 15-year-old girl in another State—was granted a 50 percent downward departure in part on the ground that he would be “unusually susceptible to abuse in prison.” *United States v. Parish*, 308 F.3d 1025 (9th Cir. 2002) (rejecting Government's appeal and affirming the sentence).

The Feeney amendment would enact several reforms to ensure that the Guidelines are more faithfully and consistently enforced:

The bill would make it easier for the Government to appeal illegal downward departures by requiring appellate courts to undertake a de novo review of departure decisions. There is nothing unusual at all about applying a de novo standard of review to a mixed question of law and fact such as the decision to depart. Indeed, in most other contexts, appellate courts apply a de novo standard of review to mixed questions of law and fact, such as suppression issues (probable cause, voluntariness of a statement, etc.). It makes no sense to have a de novo standard of review only for mixed questions that generally favor the defendant.

The bill would require the Sentencing Commission to provide effective guidance concerning downward departures by prohibiting such departures on grounds that the Sentencing Commission has not affirmatively specified as permissible. Under the amendment, numerous authorized grounds of downward departure are preserved, and the Commission retains very broad discretion to add new factors to the list of authorized grounds of downward departure (with the exception of a few much-abused grounds of downward departure, such as “aberrant behavior,” that are eliminated by the amendment). Departures based on grounds not specified by the Commission were always supposed to be “highly infrequent,” and the amendment simply requires the Commission to do its job of affirmatively regulating the availability of departures. Moreover, the existence of such unfettered departure authority has made Government appeals of improper sentences more difficult. See, e.g., *United States v. Blazeovich*, 38 Fed. Appx. 359 (9th Cir. 2002) (rejecting Government's appeal of downward departure in child pornography case, because there is “essentially no limit on the number of potential factors that may warrant departure in child pornography case, because there is “essentially no limit on the number of potential factors that may warrant departure,” with the exception of those few factors that the Sentencing Commission has proscribed).

The bill would strengthen existing requirements for judges to explain the basis for their departures, thereby facilitating appellate review.

The bill would also limit a defendant to one bite at the apple by generally precluding a second downward departure after a successful Government appeal. There are too many cases in which, on remand, the district court simply re-imposes the same illegal sentence on a different theory, thereby necessitating a second government appeal. See, e.g., *United*

States v. Winters, 174 F.3d 478 (5th Cir. 1999) (reversing second imposition of the same illegal sentence in civil rights prosecution against corrections officer); *United States v. O'Brien*, 18 F.3d 301 (5th Cir. 1994) (reversing district court's imposition, after Government successfully appealed prior downward departure, of an even more lenient sentence in drug case).

The Feeney Amendment would also enact a number of additional measures to strengthen the penalties applicable to those who prey upon our nation's children:

Under current Sentencing guidelines, a defendant is required to receive an enhanced penalty for engaging in multiple acts of prohibited sexual contact with minors, but the enhancement does not apply if the defendant repeatedly abused the same victim. This irrational and unjust disparity would be explicitly eliminated by the amendment.

The amendment would require that child pornography sentences be enhanced based on the number of such images possessed by the defendant. The current Sentencing Guidelines fail adequately to account for the volume of the material, with the result that an offender who sent one image of child pornography over the Internet receives the same treatment under the Guidelines as an offender who set up a website containing thousands of images. The amendment would instead require that sentences be sharply enhanced for offenses involving large numbers of images.

The problem of ignoring the Guidelines in favor of ad hoc leniency is well known and has already been the subject of much study. In October 2000, a Senate Judiciary Subcommittee, under the leadership of Senator Thurmond—one of the original architects of the Sentencing Reform Act—held a lengthy hearing on the problem and received extensive evidence examining downward departure rates from many different angles. The data are already out there, the problem is clear, and further inaction would be a travesty. Indeed, the Feeney Amendment was adopted only after the House Judiciary Committee held two hearings over the last year to review a variety of possible solutions to the growing leniency problem, including mandatory minimums, a total ban of downward departures in certain classes of cases (a position previously endorsed by the Department on several occasions), and a de novo review standard for departure appeals (which had been specifically included in H.R. 1161, as introduced). Based on the extensive record already before the Congress, the Feeney Amendment emerged as a compromise position that preserves district judges' ability to depart, but requires that this departure authority be subject to more consistent and careful review and control by the Sentencing Commission and appellate courts.

The Department strongly urges the conferees to retain these much-needed provisions of the Feeney Amendment in the final version of S. 151.

Thank you for your attention to this important matter. If we may be of further assistance in this or any other matter, we trust that you will not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

JAMIE E. BROWN,

Acting Assistant Attorney General.

Mr. HATCH. I notice the distinguished Senator from Vermont is in the Chamber. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, I am somewhat perplexed that we are in this situation. Let me explain why. This is not a question of whether people are for or against those who abuse children. We are all against that, Republicans and Democrats. It is one of those many areas that would unite all of us. Those of us who are parents or grandparents always feel that way. I think of some of the child molesters I prosecuted before I was in the Senate. Invariably, I sought the stiffest sentences possible, and got them, including life sentences. So I do not think any of us has to demonstrate that we are against child molesters. I think the American people know that, of course, we are all against them. That is the way I was when I prosecuted them and the way I am in the legislation I have helped to write.

For example, the AMBER alert bill that is before us: When I was chairman of the Senate Judiciary Committee last year, I put that through in record time. We had a hearing. We had a vote in committee. We brought it up for a roll call vote on the floor in about a week. It was a record. We sent it over to the other body. Of course, they sat on it and never passed it.

This year, I joined with Senator HUTCHISON of Texas, Senator FEINSTEIN of California, and Senator HATCH of Utah. The four of us put through AMBER alert again, brought it up, had a rollcall vote on the Senate floor. Every single Senator who was here that day voted for it. We sent it over to the other body, where it languished.

This conference report also includes the PROTECT Act, to provide prosecutors with important tools to fight child pornography. That is a Hatch-Leahy act. Twice I came to the floor of the Senate and joined Senator HATCH in urging passage of this measure that we crafted together. I do not need to suggest whether I am for that or not. I helped write it.

We have housing for abused children in this legislation. Again, I helped write that bill. I am the lead sponsor. Obviously, I am for that.

We had the so-called Reid shoe bomber fix to the criminal law. I am the lead sponsor of that.

The National Center for Missing and Exploited Children authorization, I am a lead sponsor of that.

The victims' shield, the cyber-tipline, these are things I have sponsored and supported. I have no problem with any one of them.

But what happens, and I hate to think this is why the other body has refused to take up our AMBER alert bill twice now, we suddenly have a bill

that comes back—actually, as my friend Senator KENNEDY pointed out during our only conference meeting in this matter, subject to a point of order with new and controversial provisions added to a once non-controversial and bipartisan bill.

It would have been so much better if the other body had simply taken the bill I got out of the committee last year and we passed in the Senate, and having failed to do so, it would have been so helpful had they taken the bill—of Senator HATCH and myself and Senator KAY BAILEY HUTCHISON and Senator FEINSTEIN—and passed it here, this year, and gone with that. The House leaders chose not to pass it. They delayed its passage and tried to use it as a sweetener to add on a number of controversial items.

I wonder what would have happened had they simply taken the bill and passed it last year. The President made clear he would sign it after we passed it by such an overwhelming majority. The other body decided not to.

I wonder what would have happened had they picked it up and passed it this year after we passed it through the Senate. The President would have signed it. Maybe we would already have a nationwide AMBER alert system today. One wonders how many children might have been saved by such a nationwide AMBER alert plan if the other body had been willing to pass that bill last year or earlier this year when we passed it.

So many, Republicans and Democrats alike, came together on parts of this bill with the idea of protecting children. I worry when efforts to protect our children are used as pawns by those who play politics by attaching legislation of a more controversial nature. Of course, the AMBER alert legislation is in there. I was a main sponsor of that last year and this year. Of course, I am happy about that and I will speak further on that later.

I cannot imagine a worse nightmare than a family having an abducted child. I remember sitting around the clock with families when I was a prosecutor as we were trying to find their children. I also remember some cases where we found a child and the child was dead. I remember as a young prosecutor, trying to keep my composure in the trials when I prosecuted the people who did that and seeking the maximum sentence. One, especially, I still have nightmares about to this day, a case in Chittenden County. I remember it as though it were yesterday even though it was many years ago.

So that is why I worry when we find ourselves in a situation where all of this time-consuming discussion on more controversial matters could have been avoided. We have so much in this legislation, that Republicans and Democrats alike have joined in, so much that our staffs have worked on so hard over the last 2 years. So many things of these measures are helpful and broadly supported by police, Gov-

ernors, and those who have to deal with abused and neglected children.

The unfortunate situation is—whether it is overreaching, whether someone was looking for an opportunity, I do not know—that members of the other body insisted once again on adding controversial measures that have already slowed down this important legislation.

These are bills that came out of the House Judiciary Committee and the Senate Judiciary Committee. We, of all people, should be willing to set the standards and make sure we follow the rules. We, of all people, should not add things in controversial provisions that do not belong here. That is what has been done.

I can think of things I would have liked to have had included in the conference report—and not controversial matters at that—but unfortunately, even non-controversial requests by the minority were not afforded the same consideration as highly controversial proposals by the majority.

I tried to add the Hometown Heroes Survivors Benefit Act of 2003. This legislation would improve the Department of Justice Public Safety Officers Program by allowing families of public safety officers who suffer fatal heart attacks or strokes to qualify for Federal survivor benefits. I have been at the funerals of officers who died of a heart attack after putting their lives on the line to protect their community.

Each year hundreds of public safety officers nationwide lose their lives and thousands more are subjected to great physical risks. The benefits can never be the substitute for the loss of a loved one. Families of fallen heroes depend upon us for helping out when their family members make the ultimate sacrifice.

I tried to include the Hometown Heroes bill to fix this loophole and assure the survivors of public safety officers who die of heart attacks or strokes, who die within 24 hours of being on the job, are eligible to receive financial assistance. We passed this bill in the House last year. Representative ETHERIDGE, in the other body, and I introduced identical versions of this legislation. The House passed it, but an anonymous Republican hold in the Senate stopped those benefits for the families of fallen police and firefighters.

During the conference, I offered this bill as an amendment, hoping to see it become law. Unfortunately, the majority blocked it.

My colleagues across the aisle overlook the fact that public safety is dangerous, exhausting, and stressful work. A first responder's chance of suffering a heart attack or stroke greatly increases when he or she puts on heavy equipment and rushes into a burning building to fight a fire or save lives. To not be able to participate in the PSOP program—I wish my friends on the other side of the aisle allowed families,

survivors of those who died in the line of duty that way, to be able to at least have the benefits that go to other officers. I think it is unfortunate.

I have heard from police officers, I have heard from firefighters. They ask, how can this possibly happen? Is this a partisan issue? I say, I hope it is not. If there is one thing that should unite Republicans and Democrats, it is support for the families of those who die in the line of duty. We could have done that. Unfortunately, Republicans in the House and Republicans in the Senate voted it down. I hope they will reconsider that decision. I would welcome them back to the fold. But also, the families of firefighters and police officers, the first responders, would welcome them back. They face grave disappointment today. They cannot understand why this was not done. They would like to see it back. I call on the Republican leadership to instruct the Members to let this go through.

I am glad the conference report did include a provision I introduced in the last Congress to clarify an airplane as a vehicle for the purpose of terrorism and other violent acts. I tried to include this bill in the omnibus appropriations measure, but the Department of Justice blocked it. Then, to my surprise, the same provision appeared in the leaked copy of the Department's new antiterrorism package.

This bill is meant to address a discrete problem that surfaced in the prosecution of Richard Reid, a man who tried to blow up an international flight from Paris to Miami. In that case, the court dismissed a charge against Reid over the question whether the airplane he attempted to destroy was a mass transportation vehicle. This makes it very clear that it is. I am glad this clarification was included at my request.

There are many things in this conference report that I either helped write or cosponsored that we can all support. The Leahy-Kennedy legislation establishes a transitional housing grant program within the Department of Justice to provide to victims of domestic violence, stalking, and sexual assault, the necessary means to escape the cycle of violence. That is in here. Today, more than 50 percent of homeless individuals are women and children fleeing domestic violence. This will help real women and children, including many in my home State. I commend my colleagues who, after some initial opposition, joined with Senator KENNEDY and me on this legislation.

I am glad the Protecting Our Children Comes First Act is in this conference report. It is a bipartisan bill I introduced both in this Congress and the last, joined by my friend from Utah as well as Senator DEWINE of Ohio and Senators BIDEN, SHELBY, LINCOLN, and HARRY REID. Our bill reauthorizes the National Center for Missing and Exploited Children. It needs to be reauthorized. That is in here.

We proposed reauthorization through the year 2007, but at least it has been agreed to through the year 2005. We agreed to double the grants. We also authorized the U.S. Secret Service to provide forensic and investigative assistance to the National Center; and we strengthened the Center's Cyber Tipline to provide online users an effective means of reporting Internet-related child sexual exploitation in the distribution of child pornography, online enticement of children for sexual acts, child prostitution, and child pornography.

Of course, the Hatch-Leahy PROTECT Act is the centerpiece of this bill. And after all the hard work that Senator HATCH and I completed to craft this bill, introduce it twice, and usher it through the Senate by two unanimous votes, I do not have to tell any one how pleased I am that the House adopted most of our provisions. The key provision from the House bill that is retained is the so-called "virtual porn" provision, which I predict will be the subject of much constitutional scrutiny. We will see how the House provision fares before the Supreme Court, I am sure.

So there are a number of things that are good in this bill. That is why I am frustrated we have this situation. It is because of overreaching, because of putting controversial measures in that have received little or no consideration in either body and have delayed enactment of the better parts of this bill, that we do not yet have a law passed.

I say this really out of sadness. No. 1, we did not have to be here today. The Senate passed both the Amber bill and the PROTECT Act twice, once this year and once in the last Congress, and sent clean bills to the House both times.

When these bills came out of committee last year, when I was chairman, the Senate passed them by unanimous votes on the Senate floor. They passed. We sent them to the other body and they let the bills sit there. When Senator HATCH took over as chairman of the committee this year, we passed them out again. Both Senator HATCH and I, as well as Senators FEINSTEIN and HUTCHISON, were the main sponsors of the Amber bill. Senator HATCH and I were the main sponsors of the PROTECT Act. The Senate passed them out again. Again, they sat over in the other body for months without action.

Now we find out why. It appears that the Republican majority in the House was looking for legislation with that kind of universal support and popularity on which to attach controversial measures that might not have support in the Senate.

That is unfair. That is unfair to children. That is unfair to those who may be abducted. That is unfair to those of us who spent years trying to protect children. It is unfair to those, myself and others in this body, who were once prosecutors and prosecuted child molesters and abductors. It is unfair to them and to others.

I will put more material in the RECORD. I will go back to this. But I urge my friends on the other side of the aisle to find a way out of this increasing partisanship because it has delayed passage of this important legislation, which has so much in it to protect children.

I see my colleagues on the floor. I see the Senator from Alabama who I assume—he is nodding yes—I assume he is looking for the floor, so I will yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I just will share a few thoughts I think are very important with regard to this legislation.

We seem to have strong or at least grudging support from everybody on the underlying portions of the bill. At least that is what we are told repeatedly. But there is a suggestion that the Feeney amendment is such a horrible thing that the entire PROTECT bill should not go forward.

I will just say a couple of things about that. The Feeney amendment was designed to deal with a growing problem of Federal judges downward-departing from the mandates of the sentencing guidelines and thereby giving lighter sentences than should be given to criminals. It is a growing problem.

Senator HATCH had the chart there. Downward departures went from 1,200 in 1991 to over 4,000 in 2001. There have been some erosions of the clarity of the law about that. In effect, we are at a point of some danger that the integrity of the guidelines would be undermined.

So I felt from the beginning we ought to give, in this body, serious consideration to the Feeney amendment and review it and see what we could do about it. That is my general view of that.

I served as a Federal prosecutor for almost 15 years. I was a Federal United States Attorney when the sentencing guidelines were passed. I applied them. I carried around the sentencing guideline manual. I could look through and find the upward departures and downward departures and all the statistics and how to figure out how many prior convictions should be considered in the defendant's criminal history. You would figure out the nature of the criminal act, did it involve violence, did the defendant carry a gun, did it involve a particularly vulnerable victim like a woman or a child. You would do all those things. A lot of experienced people in criminal justice came together and put the Sentencing Guidelines together over a decade ago. It was a remarkably good achievement.

Most experts who knew about it said basically they were compiling and putting into law what most Federal judges, mainstream Federal judges in America were doing, anyway. But it compromised those who were especially harsh and those who were especially light. Frankly, when you give a lifetime appointment to a Federal

judge and he or she decides they don't want to enforce child pornography laws or child abuse laws and they don't think those are particularly significant crimes that ought to be in Federal court and they depart downward, and you are in a position where the law is unclear, they can depart with impunity. If the judge is elected, at least you can vote him out of office sometime, but you can't do that for an unelected, lifetime-appointed judge.

For the most part, I think judges follow the guidelines scrupulously. But these statistics on this chart, which shows an almost fourfold increase over a decade in downward departures, are troubling.

I served on the Senate Crime Subcommittee. We had hearings in the year 2000 to confront this problem. In fact, we even asked the Sentencing Commission to give us some information on it, but they still have not given us that information.

So the Feeney amendment comes along. It was offered in the House of Representatives and it applied to all crimes. They put that amendment on to the AMBER Alert legislation that was going through the House of Representatives, and made it an appropriate part of the PROTECT Act that we would conference about, that we would confer about.

I thought it was a matter that ought to be given serious thought. I had not overtly committed to the Feeney amendment, but as someone who worked with the sentencing guidelines, I felt that the intent of it was good.

So there was a big controversy. My colleagues on the other side said: Well, we are not going to pass this bill that will protect children. We believe in protecting children, but you can't have the Feeney amendment on it. It is irrelevant to children. It does other things in the criminal justice system, and we are not prepared to vote for that. We are not troubled, in effect, by Federal judges who are downward departing in record numbers. So we don't want that on the PROTECT Act.

We got a call from a Federal judge who said: It is restricting my freedom to do what I want to do, and we don't think it is a good idea. Take the Feeney amendment off.

Well, Chairman HATCH, who has been in this body a long time, and has been chairman of our committee off and on for a number of years, and Chairman SENSENBRENNER in the House, they knew there was a complaint about it. They knew people were unhappy about the Feeney amendment. So they got together and they decided: What could we do about it? And they decided to offer a suggestion and a provision, an amendment that would solve the problem. And I, frankly, am amazed it is having any difficulties getting passed in Congress.

What my colleagues on the other side said was: OK, since this is a child protect bill, we will not put in this limitation on downward departures—this leg-

islation that really only tightens up the freedom of judges to abuse the guidelines. We will not do that for all these other cases, but since this is a child act, and we have historical and anecdotal records of child abuse cases where judges have improperly downward departed, we will just apply the Feeney amendment to those cases involving minor victims and sex offenders.

Certainly that was very consistent with the intent of the act. It dealt with the situation of some judges not taking these cases seriously. And we had a history of it. The legislation dealt with the problem of repeat offenders because some people seem to think if a person is caught in a child sexual abuse case, and they come in and say, "Oh, judge, I'm sorry, I won't do it again," that you can rely on that.

People in churches have heard people say that, and they have believed them. But I have been a prosecutor. I have seen the numbers. I have seen the prosecutions. Most of them have not offended just once or twice, but they have done it several times over a period of years. They come back to it again and again and again. I wish that were not so. I wish it were not so. But you cannot rely on the words of a pedophile, that they are not going to offend again, because history and science and criminal justice statistics show that they go back to these horrible acts again and again, ruining the lives of another child, another child, and another child. It is a big deal in America. It is not a little deal.

So the Feeney amendment was really constrained. It did not apply to all criminal justice cases; it applies to sex cases and those involving child and sexual abuse.

I would say, as a Federal prosecutor, and knowing the kind of cases that are prosecuted in Federal court—bank fraud, bank robbery, all kinds of white-collar crimes, gun cases, drug cases, international smuggling cases, and all those—I am confident—this may shock some people—I am confident that less than 2 percent—probably less than 1 percent—of the Federal cases prosecuted in Federal court deal with child sexual abuse. Most of them—many of them—are tried in State courts, and the ones that are prosecuted in Federal court are fairly limited in number.

So what Senator HATCH, Senator GRAHAM of South Carolina, and Chairman SENSENBRENNER offered was a tremendous move in the direction of the opponents who were concerned about the downward departure rule contained in the Feeney amendment. And they focused it simply on this very small but very important number of cases dealing with the abuse, sexual assault, kidnaping and rape of our citizens in America.

I think that was a very generous amendment. And I would have thought that would have settled the matter completely. I remain baffled that we would see this kind of opposition, the

kind of opposition that would suggest they are willing to kill this important legislation that, if passed, this very day could save the lives of children, could save other children from being abused by a pedophile, if we pass it. And if we don't pass it, if we delay it, the victimization of our children could continue for a long time.

And some say: Well, this Feeney amendment is so extreme and so controversial. I suggest not, Mr. Chairman. Looking at the vote in the House of Representatives, when the full Feeney amendment came up, tightening up the ability of judges to downward depart on all the cases in the criminal justice system—the 98 percent plus the 2 percent—the vote was 357 for and 58 against, 1 voting present.

Now, that is an overwhelming vote. And then, when the conference report came back, after the Hatch-Sensenbrenner modification was put in, dramatically reducing the number of cases impacted by the Feeney amendment to 2 percent or so, or less—probably 1 percent or less—involving sexual abuse cases, it passed 400 to 25. So it comes out of the House 400 to 25—overwhelming support from Democrats and Republicans. You have more than 25 liberals, you have liberals and conservatives, Republicans and Democrats voting for this bill in the House of Representatives, overwhelmingly. Yet here we are having this legislation, as critical as it is, being held up over this small amendment, after Chairman HATCH had worked so hard to settle the issue and to accommodate my colleagues on the other side of the aisle.

So I think it is important that we understand that. It is important that we pass this bill now. There is no need for it to continue. Who knows? This very day—as a matter of fact I know this just because of the statistics that are out there some child has been sexually abused. Maybe there is a child being kidnaped right now. This legislation could help save that child, and other lives.

And I noticed Senator DURBIN suggested—and I see Senator KENNEDY and Senator LEAHY in the Chamber—well, maybe we could talk about having a hearing on the sentencing guidelines and minimum mandatory sentences. I am not opposed to that, but I will just say this: I really care about sentencing guidelines. I think there should be integrity in the enforcement of those guidelines.

Federal judges should not get in the habit of eroding the clear injunctions of those acts. And the way they are doing it today, sometimes they are not writing opinions and explaining why they are doing it, leaving it very difficult to determine what has actually occurred, and making it difficult to appeal. So I think we ought to have integrity in sentencing. But we, as a Congress, I say to my colleagues on the floor, passed the guidelines. We set up the mandatory minimums. We created

the Sentencing Commission, and we directed them, in large part, on how to carry out sentencing.

The Congress has taken over sentencing; that is true. And after these many years of experience with the guidelines, I do not have any doubt that we could improve it, and that we ought to make some improvement. In fact, I would say to my colleagues here, who think some of the sentencing guidelines are too tough—and that is what you hear a lot—that Senator HATCH and I are the only two Members of this Senate, that I know of, who have taken any action to fix it.

We offered the Hatch-Sessions bill last year and are reoffering it this year, that would deal with what I believe to be an unfair circumstance: The crack cocaine/powder cocaine sentencing disparity. I don't believe the extent of the disparity is justified. If you want to complain about something, let's talk about that. Not child pornography, child sexual abuse, not sexual cases. I don't see a problem in the guidelines with those cases. If anything, those sentences need to be toughened up.

I do agree, as a person who regularly and consistently prosecuted cases, that we can improve the sentencing disparity on crack and powder cocaine. For every child sex case, there are probably 10 crack and powder cocaine cases going through Federal court. Let's talk about that. I would be willing to talk about that.

I also think we should pass the Hatch-Sessions bill first. That legislation takes a major step forward in creating some fairness in the system and deals with the courier case, the girlfriend case. It deals with the sentencing disparity between at some points as much as 100 to 1 between crack and powder cocaine. It narrows that, substantially eliminating the unfairness there. Let's do it that way. Let's not stop this bill. This bill needs to go forward.

I understand the concerns about sentencing guidelines in general. How should we fix it? We should fix it by maintaining integrity in the sentencing process, not by standing idly by if judges are violating that process.

No. 2, if we carry out our responsibilities, we will look at the act as we pass. We will look at the sentences being imposed in the courtrooms of America and if we were wrong in any of those sentences, we should change them. The one area I am confident we could do better in is the crack and powder cocaine issue. I am prepared to act on that. I have offered legislation that would act on that. It would reduce the crack cocaine sentences significantly. A lot of people don't want to appear to be soft on crime. They don't want to appear to reduce any sentences. But I have been there. I have seen defendant after defendant go off to jail. Several years in a row my office had some of the highest average sentences in America for drug cases. I didn't apologize for

that one bit. But if the sentences are not what we need if some, like powder, are not tough enough and need to be increased, and some like crack need to be reduced we should eliminate some of the criticisms about justice in American by being more consistent in how we sentence. That would create more public confidence in the system, and we ought to do that. I am prepared to take the lead on that. In fact, Senator HATCH and I have led on that. We have stepped to the plate and proposed to make progress.

I suggest that the PROTECT Act needs to move forward. Chairman HATCH and Chairman SENSENBRENNER have done the responsible thing. They have examined the complaints about the Feeney amendment. They have reduced those complaints to an extraordinary degree. They kept this legislation focused on sexual abuse cases, as it should be. We ought to support it.

One thing we know is that sexual offenders and predators are repeat offenders. A 1998 study of sexual recidivism factors for child molesters showed that 43 percent of offenders sexually reoffended within a 4-year follow-up period. Almost half of the people arrested as child molesters reoffended in a sexual abuse case within 4 years. I would suggest some of those reoffended and were not caught. There is no doubt in my mind that within 4 years, if this number is accurate, we could say with certainty that over half of those offenders in 4 years reoffended. That is a serious social problem.

One thing we put in this bill is important. We put in a provision that would allow lifetime supervision after release from custody or after probation, if that occurs, if the judge feels the defendant poses a danger to society. That is the right thing to do. I am so glad that is in this bill. Senator HATCH and I offered language to that effect. We suggested it last year.

The theory behind it is simply this: science and history tell us that child molesters are repeat offenders. Pedophiles reoffend. Do we want to keep them in jail forever? They ought to be kept in jail a long time—no doubt about that in my mind. Should they be kept in jail forever? Very few are kept in jail forever, whether they should be or not. Large numbers of them are released. Under the normal Federal sentencing guidelines, post conviction supervision is 1 to 5 years. So after that 5 years is over, these sexual offenders are not even being supervised by Federal probation officers.

It is a rational and logical and just step to give a Federal judge the ability to impose post-release supervision for as long as he or she deems appropriate. That is a good step in the right direction.

According to the Bureau of Justice statistics, released rapists were 10.5 times as likely as nonrapists to be rearrested for rape, and those who had served time for sexual assault were 7.5 times more likely as those convicted of

any other crime to be rearrested for a new sexual assault. Do you see what that is saying? Those are stunning numbers, when you think about it. They tell us that released rapists are 10 times more likely to rape someone else in the future; that tells us that when you apprehend a rapist, it needs to be taken seriously. We need to understand that a person who has committed rape in the past has a much, much greater potential for raping another innocent human being in the future or for molesting another child in the future. That is why Federal supervision can be helpful there.

Good Federal probation officers work hard. They stay on top of offenders. Perhaps they can identify circumstances when offenders may be getting in trouble or acting in an unhealthy way, to make sure that the jobs sexual offenders take do not place them in contact with children. Perhaps probation officers can otherwise monitor offenders' activities to substantially reduce the likelihood that they would reoffend.

I thank Senator HATCH for his leadership. We thought we had an agreement with Senators LEAHY and KENNEDY and others to move this bill forward. Unfortunately, we are not moving forward at this moment. I hope we can break the logjam so that this important legislation will go forward to final passage.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I will only speak for about 3 or 4 minutes, I tell the Senator from Massachusetts. I appreciate the recognition.

I want to speak on the AMBER alert portion of this legislation because we have been working on it for several months. We passed AMBER alert legislation last year. Senator FEINSTEIN and I cosponsored the legislation. Senator HATCH and Senator LEAHY were very supportive. We passed AMBER alert again this year and hoped very much that we could get a clean bill that would be signed quickly by the President.

However, I know provisions were added that are very good provisions. I am very pleased that we have finally gotten a bill that the House has passed and would be able hopefully to pass this legislation and send it to the President.

Because the AMBER alert is proven to save lives, Senator FEINSTEIN and I have been working very hard to get it passed through the Senate. Ed Smart, a constituent of the distinguished Senator from Utah, told us how important AMBER alerts were in helping to find his daughter Elizabeth. Even though she is one of the few abducted children who was found after a long period, it was the publicity that made the difference because a person who saw the picture of the suspect in the paper then saw the suspect on the street, and the police were able to walk up to the suspect and Elizabeth Smart was right

there with him. So it does make a difference that we have this kind of publicity.

To date, sixty abducted children have been recovered with the assistance of AMBER alert. In fact, the statistics show that 75 percent of recovered children are recovered within the first 3 hours. You can only do this with the large electronic road signs and with media helping you to get the word out that this is a child in peril. That is why the AMBER alerts do work, and the quick recovery is the best chance we have for a recovery at all.

There are Federal grants authorized in this legislation that will help educate States about AMBER alerts and assist States so they won't be overused. The legislation will provide for a person who will be in the Justice Department—the AMBER coordinator—so that a law enforcement officer who believes a suspect may be going to another State can make one call to the Justice Department and not worry again about the recovery effort continuing. The Justice Department can put the word out to the other contiguous States and really make a difference.

The AMBER alert bill has had a lot of supporters: The National Center for Missing and Exploited Children, the National Association of Broadcasters, and the Fraternal Order of Police have all been instrumental in passing this legislation. I had hoped we could pass it earlier. I had hoped we would have passed it last year to get other States up to speed, so they would have good, solid AMBER alert systems that would coordinate with the Justice Department. But it is April of 2003 now and it is time to pass this legislation.

Senator FEINSTEIN and I have worked very hard to do this. We thank Senator HATCH and we thank those who helped us with the original legislation. I know there are differences in some of the add-ons. Believe me, we would have liked to have had a clean bill. But we don't get exactly what we want in the legislative process. There are a lot of other people with different views and they have to be accommodated.

So I am very pleased we have the bill before us. I intend to support it, and I hope we can pass it and send it to the President.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I listened to the Senator from Texas in terms of her strong support. I know she has been involved in the AMBER legislation, as others have, such as my friend and colleague from Vermont. We all remember the work done by the committee itself last year when we initially sent this over to the House of Representatives. We waited a long time. It didn't come back. We sent it back over in January. It didn't come back. Now we have this part come back, of which we are all in support.

I must say there are procedures that probably would have to be streamlined,

but the provisions that apply to those who are going to be involved in the abduction and kidnapping of children and the various sex crimes outlined and considered in the legislation, that is not any point of dispute. We are in strong support.

The fact is, there are other factors included in this legislation on which there haven't been hearings and which basically undermine the criminal justice system, as pointed out by the Chief Justice of the United States. It is not just the Senator from Massachusetts, it is the Chief Justice of the U.S. and he has not been known as a coddler of criminals or lenient on defendants. That is not the reputation of the Chief Justice of the United States, Mr. Rehnquist. Yet he has serious reservations about the provisions of this legislation which we have addressed earlier today and which were addressed in the conference.

So I want to make some additional remarks at this time to once again let my colleagues know what is really involved in the legislation.

As I mentioned earlier, when we came out of conference, it was said by the chairman of the committee that rather than have the Sentencing Commission do a review and report back in 180 days about the sentencing requirements under this legislation, then we could either enhance or adjust, or rather than even having hearings by the Criminal Justice Subcommittee of the Judiciary Committee, then we could move ahead and consider those on the floor of the Senate. We accepted, after the 6 or 7 minutes of debate and discussion on the floor of the House of Representatives, and without any hearings whatsoever in the Senate or in the Judiciary Committee, provisions that have broad application to all of the sentencing guidelines. We have heard explanations that they really don't, but they do.

I will review them very quickly here this afternoon once again. There are three major ways in which this conference report goes beyond the issues of crimes against children.

First, the bill changes the standard of appellate review in all cases, not just cases in which children are victims. This overturns a unanimous Supreme Court decision and radically changes the Federal sentencing system.

Do we understand that? This legislation overturns a unanimous Supreme Court decision, without a single day, hour, or minute of hearings. That is one reason the Chief Justice, the Judicial Conference of Judges, the American Bar Association, all have expressed their opposition to these provisions.

Second, the bill imposes new reporting requirements when judges depart in any case, not just children cases, and this is a blatant attempt to intimidate the judiciary. It says to judges you will be called on the carpet if you depart downward. Your name will be given to

the Attorney General and he will report you to Congress. If that isn't a blacklisting for Federal judges, I don't know what is, Mr. President. If these judges are not competent to serve on the Federal judiciary, they should not have been recommended—in these cases, Republican Presidents—or approved by a Republican Senate. But these are the ones who are basically applying these guidelines at the present time.

Third, the bill directs the Sentencing Commission to limit downward departures in all cases, not just child cases. This proposal is based on the erroneous view that there is excessive leniency in the Federal sentencing system. The Federal prison population has quadrupled in the last 20 years. The length of sentences is up dramatically in 20 years.

Those are three major departures from the assurances that were given by the chairman of the Judiciary Committee in that conference. His amendment, which is included in the conference, would only apply to the issues that were before us dealing with children and children's crimes. These are three examples of where they will affect all of the sentencing, and that has not been refuted this afternoon.

I want to take a moment of time to consider a response to many of the claims that have been made here about the problems in the Federal criminal system—claims, quite frankly, that are not supported by any record in the Senate, I might add. This is the analysis of eight highly respected former U.S. attorneys, most of whom are Republicans. They wrote to the Judiciary Committee:

We write, as former United States Attorneys in the Southern and Eastern Districts of New York, to express our concern about Section 109 of S. 151/H.R. 1104, the Child Abduction Prevention Act. This proposed legislation—which contains some of the most far-reaching revisions of the federal sentencing process in many years—was passed by the House of Representatives on March 27, 2003. Our concern regarding this legislation is based not only on the questionable justification for many of its provisions, but also on the fact that it has already been adopted by one house of Congress without any meaningful input from the judiciary, the Sentencing Commission, members of the bar or other interested experts and members of the criminal justice community.

It continues:

. . . The proposed legislation not only disregards the Sentencing Commission's unique role in the federal sentencing process, but also ignores Congress' own admonition that the views of interested parties in the federal criminal justice system be carefully considered before changes to the Guidelines are enacted.

The proposed legislation raises serious questions on its merits as well. To start, the justification for such sweeping changes is unclear. Although the number of downward departures not based on cooperation has increased in the last several years, 70 percent of that increase is attributable to departures in a small number of "border" districts that handle an extraordinary number of immigration cases which place unique demands on

the criminal justice system. The localized nature of this increase does not justify a nationwide restriction on the availability of downward departures in all cases.

The sparse legislative history of this proposal similarly reflects that it is an unnecessarily broad response to a particularized concern. The amendment's author has stated that the legislation is prompted by the fact that a "disturbing trend has occurred, especially in child pornography cases" and that departures have become a "common occurrence." If downward departures have become commonplace in one particular type of case, then careful scrutiny of the reasons for this phenomenon, and of the appropriateness of the Guideline level for that type of case, may well be warranted. It does not, however, justify a wholesale restriction of downward departures for all cases within the criminal justice system.

The legislation also contemplates unwarranted limitations on the exercise of sentencing discretion by the federal judiciary. A United States District Judge has the unique and difficult responsibility of imposing criminal punishment on a defendant based on an individualized assessment of the facts and circumstances of a particular case. Indeed, Congress has explicitly recognized that the Sentencing Guidelines are intended not only to avoid unwarranted disparity in sentencing but also to maintain "sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices." 28 U.S.C. §991(b)(1)(B).

In fiscal year 2001, putting aside the "border" districts and departures based on cooperation (which require the government's consent), district judges departed downward only 10.2 percent of the time. Moreover, 85 percent of all defendants who received non-cooperation downward departures that year nevertheless were sentenced to prison. What these statistics reveal is a relatively limited exercise of sentencing discretion of the sort contemplated by Congress when it authorized the promulgation of the Guidelines.

The legislation also would overrule the Supreme Court's decision in *Koon v. United States*, 518 U.S. 81 (1996). This, too, is of serious concern. In *Koon*, all nine Justices of the Supreme Court recognized that an appellate court should review a decision to depart from the Guidelines with "due deference" to the district court's decision, and that such a decision should be overruled only if the district court abuses its discretion.

That is what the Supreme Court said, but that is not what is in the Hatch amendment.

Continuing to quote the letter:

The decision correctly recognized that district judges are uniquely qualified to decide whether a departure from the Guidelines is justified by the particular circumstances of a given case or the background of a particular defendant. The legislation's substitution of a *de novo* standard of review would allow appellate courts to second-guess sentencing decisions without any meaningful guidance as to when those decisions should or should not be upheld. Moreover, given the fact that the government currently has the ability to appeal unauthorized or excessive downward departures and is successful in such appeals about 80 percent of the time—

Understand that, 80 percent of the time when the Government appeals these cases, they are successful.

A change in the appellate standard of review appears unnecessary to enable the appellate courts to overturn unwarranted departures.

These and other concerns have prompted objections to the proposed legislation from representatives of a wide variety of interested parties to this issue. This includes the Secretary of the Judicial Conference of the United States, all five current voting members of the United States Sentencing Commission, all three Chairpersons of the Commission since its creation, the President of the American Bar Association, and numerous other bar organizations. As former members of the Department of Justice, we respectfully urge you to allow careful consideration of their views, and those of other interested parties, in a public forum before deciding upon the wisdom of any of the sentencing reforms contained in this proposed legislation.

Imagine that, they are requesting us to give some consideration and have a hearing on it. According to the chairman of the Judiciary Committee, there is no chance for that. We are just going to be faced with this situation.

The entire premise of the Feeney amendment is that departure from the guidelines is a problem that needs to be stamped out. That reflects the fundamental misunderstanding of the guideline system. We never intended the Sentencing Reform Act of 1984 to eliminate judicial discretion. We struck a balance between sentencing uniformity and individualized sentencing. We recognized that guidelines cannot possibly describe every single case. We need uniform rules, but then we need flexibility in individual cases.

There is no epidemic of leniency in the Federal criminal justice system. The Federal prison population has quadrupled in the last 20 years. It is now larger than any State system.

The departure rate is not excessive. In the committee report accompanying the 1984 act, we anticipated a departure rate of around 20 percent. That is what the estimates were at the time we accepted the Federal guidelines. In fact, the rate at which judges today depart over the objection of the Government is slightly more than 10 percent. So we are well within the acceptable rates.

If there is any problem at all, it is with Government departures. The American Bar Association reports that 79 percent of the downward departures in the United States were requested by the Government. Unlike judicial departures, which are subject to appellate review, departures sought by prosecutors are essentially unreviewable. Maybe we need to look at the procedures adopted by the Department of Justice in this area.

Why do judges depart? According to the Sentencing Commission, the second most frequent reason for departure is "pursuant to a plea agreement." That accounts for 17.6 percent of downward departures other than substantial assistance. Only a small fraction of departures are based on the offender traits the Senator from Utah complains about—family ties, 3.8 percent; rehabilitation, 1.7 percent; mental conditions, 1.1 percent.

It is only a small number of defendants that benefit from judicial leniency. In all the talk about leniency, we

forget who these judges are. Many were appointed by Republican Presidents. All were confirmed by the Senate. Many are former prosecutors or other government officials. These are not people predisposed to sympathy for criminals. They are toughminded, responsible pillars of their communities trying their best to impose just sentences within the constraints of the law. Almost 80 percent of the time, the prosecutor agrees that leniency is warranted. Sometimes the Government does not agree, and that is what an appellate review is for.

Moreover, the Government wins 78.1 percent of all sentencing appeals. So that mechanism is functioning very well to ensure tough sentences.

In this proposal, judges will now have less discretion, and so the prosecutor—listen to this, Mr. President—and so the prosecutor will dictate the sentence in more and more cases. This is a dangerous development. Judicial discretion in sentencing is an accountability measure. It is an important way to check the excesses of the prosecutor. Our system of government is founded on that type of checks and balances. But by weakening the judiciary and depriving judges of the tools they need to do justice in individual cases, the proposal undermines accountability and diminishes justice.

This is not the end of the fight. It took us 10 years, 75 hearings, and extensive consultation with top judges, prosecutors, defense attorneys, and other experts to achieve the right balance between ensuring fairness and consistency in the criminal justice system and preserving judges' judicial sentencing discretion.

It is not right for us to destroy that balance through an ill-considered measure that has not received any hearings or any debate in the Senate.

It is not right to transform the entire Federal guideline system into a system of mandatory minimum sentences. Just yesterday, Justice Kennedy vigorously criticized the existing mandatory minimums as unfair and inconsistent with fundamental principles of justice.

Of course, Chief Justice Rehnquist, as I mentioned, not known to be particularly sympathetic to criminal defendants, has described this provision as doing serious harm to the basic structure of the sentencing guidelines system and impairing the ability of courts to impose just and responsible sentences.

That is what the Chief Justice has stated about these provisions in this legislation that we are about to consider, as well as Justice Kennedy, also nominated by a Republican President and not known to be a coddler of criminals or lenient in terms of sentencing.

It is a slap in the face of Federal judges, who have to apply the guidelines system on a daily basis, to include these provisions in the conference report. It is wrong for my Republican colleagues to misrepresent the nature of this provision, to suggest

that it is limited to serious crimes against children, when they know more serious provisions will apply to all of the offenses. It is wrong to hold protections for children hostage in order to ram through this sweeping, ill-advised provision without a single hour or day of hearings or debate.

I will continue to pursue this issue and do everything I can to protect the reforms we have achieved on a strong bipartisan basis in the Sentencing Reform Act of 1984.

I ask unanimous consent that the conference report be defeated, that the Senate concur in the House amendment with an amendment which is the text of the conference report with a new title IV.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Mr. President, reserving the right to object, if this change were allowed, as the Senator's unanimous consent request asks, it would effec-

tively kill this bill, and he knows it. If Senators on the other side of the aisle want to vote against this conference report, they can do so.

The point is that we are prepared to vote on this bill today and to get this to the President for signature before the impending recess so that there will not be any more children subjected to what Elizabeth Smart was subjected to, or at least we can have a better set of tools to solve these problems. Therefore, we cannot agree to this request.

I ask unanimous consent that the consent be modified so that there now be 30 additional minutes of debate on the conference report, to be equally divided in the usual form, and that following that time, the Senate proceed to a vote on adoption of the conference report, with no further intervening action or debate.

Mrs. FEINSTEIN. Reserving the right to object, if I may.

The PRESIDING OFFICER. The unanimous consent request before the Senate is the request from the Senator from Massachusetts. The Senator from Utah has suggested a modification of that request.

Mr. KENNEDY. Under the rules, the Senator can either object or accede to that request. I retain my right to the floor, Mr. President.

The PRESIDING OFFICER. Is the Senator from Massachusetts calling for regular order?

Mr. KENNEDY. Regular order.

Mr. HATCH. Then I object.

The PRESIDING OFFICER. Does the Senator from Utah object?

Mr. HATCH. I object to the request of the Senator.

The PRESIDING OFFICER. Objection is heard.

Mr. KENNEDY. I have not lost the floor.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR FRIDAY, APRIL 11, 2003

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate complete its business today, it stand in adjournment until 9:30 a.m., Friday, April 11. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period for morning business until 10 a.m., with the time equally divided between Senator HUTCHISON and the minority leader or their designees.

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I direct this to the distinguished assistant majority leader. We are aware, and we are confident, that the majority understands that tomorrow afternoon we hope to begin our April work period.

I am sure my distinguished colleague has been visited numerous times today about people making airplanes reservations, and all kinds of different things that they have to do. We understand that everything is being done to expedite the budget, and the supplemental appropriations bill, which at least the supplemental is a must-do before we leave. We hope everyone will keep in mind the schedules we are trying to make. We will be happy on our side to work as quickly as we can.

We have a few problems that are very obvious. We have 10 hours set aside on the budget resolution when it comes back. While it would be possible to

yield back some of that time, there is no way that all of it will be yielded back.

The supplemental appropriations bill is something that some Members will have to take a look at before agreeing to a time limit or final vote on it. So we have a lot to do.

I am personally disappointed that we are not going to be able to move some of those items tonight, but I understand, having been in the same position as my friend from Kentucky, that we do not always have control over what goes on.

On this side, we will be happy to cooperate any way we can, but these are very important issues and we can only give up so many rights. We have to be very careful what rights we give up, I guess is what I should say.

I repeat for the third time, we will cooperate tomorrow in any way we can short of giving up what we believe are principled matters on these two important issues.

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

The Senator from Kentucky.

Mr. McCONNELL. It is certainly our hope and desire to finish both the supplemental appropriations and the budget conference tomorrow. That is the goal we are all working toward.

PROGRAM

Mr. McCONNELL. For the information of all Senators, the Senate will be in a period for morning business tomorrow until 10 a.m. The Senate could begin consideration of any of the conference reports that may be available. The Senate may also consider the dig-

ital technology bill, S. 196. Rollcall votes are expected and a late night is expected.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. McCONNELL. If there is no further business to come before the Senate, I ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:50 p.m., adjourned until Friday, April 11, 2003, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate April 10, 2003:

FEDERAL MARITIME COMMISSION

A. PAUL ANDERSON, OF FLORIDA, TO BE A FEDERAL MARITIME COMMISSIONER FOR THE TERM EXPIRING JUNE 30, 2007, VICE DELMOND J. H. WON, TERM EXPIRED.

EXPORT-IMPORT BANK OF THE UNITED STATES

APRIL H. FOLEY, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 2007, VICE DAN HERMAN RENBERG, TERM EXPIRED.

LEGAL SERVICES CORPORATION

DAVID HALL, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE LEGAL SERVICES CORPORATION FOR A TERM EXPIRING JULY 13, 2005, VICE JOHN T. BRODERICK, JR., TERM EXPIRED.

DEPARTMENT OF JUSTICE

PETER D. KEISLER, OF MARYLAND, TO BE AN ASSISTANT ATTORNEY GENERAL, VICE ROBERT D. MCCALLUM, JR.

DEPARTMENT OF THE TREASURY

ROBERT STANLEY NICHOLS, OF WASHINGTON, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE MICHELE A. DAVIS.

DEPARTMENT OF HOMELAND SECURITY

C. STEWART VERDERY, JR., OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF HOMELAND SECURITY. (NEW POSITION)

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED