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

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

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

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

The Senator from Utah.

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

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator from California.

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

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

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

Without objection, it is so ordered.

The Senator from Utah.

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

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

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

The PRESIDING OFFICER. The Senator from California.

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

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

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

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

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

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

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

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

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

I heard Senator KENNEDY speak in the Judiciary Committee this morning. I have heard him speak on the floor this afternoon. I understand his concerns. I do not believe judges should have to report their sentences on child crime to the Congress of the United States. I think that is a mistake. It should not happen.
With respect to Koon v. the United States, I think it is a mistake to let appellate courts change the standard of review. I hope the Judiciary Committee will consider these things in the future.

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

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

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

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

It creates a crime with a maximum penalty of 30 years for a U.S. citizen traveling within or outside the United States, and illegally sexual conduct with children. I agree.

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

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

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

It contains no limitations for child abduction and sex crimes. I agree with that.

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

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

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

It provides more funding for the National Center for Missing and Exploited Children, increasing funding by $30 million in both fiscal years 2004 and 2005. I wish it did not have to happen this way. I would have felt much better if we had a chance in the Judiciary Committee to hold the requisite decisions and debate this more fully. I am very hopeful those things which are very controversial—and there are a few in this bill—we will have an opportunity to hear further and amend, if necessary.

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

I yield the floor.

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

As an original co-sponsor of the National AMBER Alert Network Act, S. 122, I have worked with Senate colleagues to do all that we possibly can to speedily pass it into law. Twice now we rapidly passed our bill through the Senate on unanimous, bipartisan votes—last fall and again in January. Both times the House leaders chose not to pass it instead delaying it a second time. I was filing an amendment to have the passage into law by using the bill as a “sweetener” for a package of other controversial provisions that the Senate has not previously considered. The Senate and the AMBER Alert for the safe return of Elizabeth Smart—has repeatedly joined us to urge House leaders to promptly take up and pass our Senate bill.

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

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

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

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

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

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

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

When Senator HATCH and I introduced S. 151 in January, I supported passing a bill that was identical to the measure that we worked so hard to get立法 during the last Congress. That bill had passed the Judiciary Committee and the Senate unanimously in the 107th Congress. It did not become law last year because, even though the Senate...
was still meeting, considering and passing legislation, the House of Representatives had adjourned and would not return to take action on this measure, which had passed the Senate unanimously, or to work out our differences.

As I said when we introduced the Hatch-Leahy PROTECT Act and again as the Judiciary Committee considered this measure, although this bill is not perfect, it is a good faith effort to provide police and investigators the tools they need to combat child pornography. The Hatch-Leahy PROTECT Act strives to be a serious response to a serious problem. Let me outline some of the important provisions in Title V that I helped to write and move through the Senate.

I was glad that the House retained the Senate version of Section 503 of the bill, which created two new crimes aimed at people who distribute child pornography and those who use such material to entice children to commit illegal acts. Each of these new crimes carries a 15-year maximum prison sentence for a first offense and double that term for repeat offenders. First, the bill criminalizes the pandering of child pornography, creating a new crime to punish those who distribute child pornography. The new crime is narrower than the old pandering definition, which I believed and continue to believe that we should not sit by and do nothing. It is important that we respond to the Supreme Court’s decision. It is just as important for us to avoid repeating our past mistakes. Unlike the CPPA, this time we must respond with a law that passes constitutional muster. Our children deserve more than a press conference on this issue. They deserve a law that will last, rather than one that will be stricken from the law books.

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

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

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

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

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

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

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

The same day as the bill unanimously passed the Senate Committee, I sought to gain the unanimous consent of the full Senate to pass the Hatch-Leahy PROTECT Act as reported, and I worked with Senator HATCH to clear the bill on both sides of the Senate. I was pleased that the Senate could pass the bill by unanimous consent.

I want to thank Senator HATCH for all he did to help clear the bill for passage in the 107th Congress. Unfortunately, the House failed to act on this measure last year and the legislation that did not pass was a good law that could protect children on the books months ago.

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

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

The bill also contains a directive to the Sentencing Commission which asks it to develop a new sentencing guideline to punish those who pandeer or distribute such material and those who only “solicit” the material. As with narcotics cases, distributors and producers are more culpable than users and should be more harshly punished for maximum deterrence efforts.

With the many problematic sentencing provisions that were included in the conference report, this provision that I crafted does it the correct way. It points out an important distinction between possessors and distributors but ultimately leaves it to the bipartisan commission to set the guidelines.

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

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

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

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

At the same time, I was pleased the House agreed to accept the provision I authored that protects prosecutors from unfair surprise in the use of this affirmative defense by requiring that a defendant prove in his initial motion his intention to assert it, just as defendants are currently required to give if they plan to assert an alibi or insanity defense. As a former prosecutor I suggested this provision because it affects the real individuals who are being tried and convicted. With the provision, the government will have sufficient notice to marshal the expert testimony that may be needed to rebut this “virtual porn” defense in cases where real children were victimized.

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

The bill also provides much needed assistance to prosecutors in rebutting a false “virtual porn” defense by removing a restriction on the use of records of performers portrayed in certain sexually explicit conduct that are required to be maintained under 18 U.S.C. 2257, and expanding such records to cover computer images. These records, which will be helpful in proving that the material in question is not “virtual” child pornography, may be used in federal child pornography and obscenity prosecutions. The conference report made this change.

The purpose of this provision is to protect real children from exploitation. It is important that prosecutors have access to this information in both child pornography and obscenity prosecutions, since the Supreme Court’s recent decision has had the effect of narrowing the child pornography laws, making it more likely that the general obscenity statutes will be important in future prosecutions for exploitation. In addition, the Act raises the penalties for not keeping accurate records, further deterring the exploitation of minors and enhancing the reliability of the records.

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

Specifically, the House virtual porn provision, which was applied to the entire definition, however, the conference report made by the government before the Supreme Court, that the virtual porn provisions in the Senate bill were “indistinguishable” from an actual minor. This adopts language from Justice O’Connor’s concurrence in the Free Speech case. The problem with that is that Justice O’Connor was not the deciding vote in the Free Speech case, she was the seventh vote to strike down the law. Thus, while this language is defensible, I predict that this provision will be the center of much constitutional debate. Although I will explain in more detail later, these new provisions present a constitutional line.

Title V, which was already in the unanimously passed Senate bill before the House saw fit to make the bill more controversial, itself contains a variety of other measures designed to increase jail sentences in cases where children are victimized by sexual predators. First, it enhances penalties for repeat offenders of child sex offenses by expanding the predicate crimes which can trigger enhanced sentences. Second, the bill requires the U.S. Sentencing Commission to address a disturbing disparity in the current Sentencing Guidelines. The current sentences for a person who actually travels across state lines to have sex with a child are not as high as for child pornography. The commission needs to correct this oversight immediately, so that prosecutors can take these dangerous sexual predators off the street. The bill also targets measures designed to protect children from the increasingly prevalent internet convictions for child molesters and those who otherwise exploit children but—unlike the ill-conceived Feeney and
April 10, 2003

Hatch-Sensenbrenner amendments—they are done the right way within the structure that Congress established under the Sentencing Reform Act of 1984. Also retained from the original Hatch-Leahy PROTECT Act are several provisions designed to protect the children who are victims in these horrible cases. Privacy of the children must be paramount. It is important that they not be victimized yet again in the criminal process. This bill provides for the first time ever a provision that I suggested. It is an explicit shield law that prohibits the name or other nonphysical identifying information of the child victim, other than the age or approximate age, from being admitted at any child pornography trial. It is also intended that judges can and will take appropriate steps to ensure that such information as the child's name, address or other identifying information not be publicly disclosed during the pretrial phase of the case or at sentencing. The conference report also retained a Senate provision requiring the judge to instruct the jury, upon request of the government, that no inference should be drawn against the United States of information inadmissible under the new shield law.

The conferees also voted to adopt a provision from the original Hatch-Leahy PROTECT Act that amended certain reporting provisions governing child pornography. Specifically, it allows Federal authorities to report information they receive from NCMEC to State and local police without a court order. In addition, the bill removes the restrictions under the Electronic Communications Privacy Act (ECPA) for reporting the contents of, and information pertaining to, a subscriber of stored electronic communications to NCMEC when a mandatory child porn report is filed with NCMEC pursuant to 18 U.S.C. § 2256.

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

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

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The conferees also voted to adopt a provision from the original Hatch-Leahy PROTECT Act that amended certain reporting provisions governing child pornography. Specifically, it allows Federal authorities to report information they receive from NCMEC to State and local police without a court order. In addition, the bill removes the restrictions under the Electronic Communications Privacy Act (ECPA) for reporting the contents of, and information pertaining to, a subscriber of stored electronic communications to NCMEC when a mandatory child porn report is filed with NCMEC pursuant to 18 U.S.C. § 2256.

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

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

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

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

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

Second, regarding the affirmative defense, I would have liked to ensure that there is a clear affirmative defense for each new category of child pornography and for all cases where a defendant can prove in court that a specific, non-obscene image was made not using any child but only actual, identifiable adults. That will not do a bit of good for attacking the constitutionality of this law. I specifically made this suggestion in conference negotiations but my Republican colleagues from both the House and the Senate refused to adopt an affirmative defense, instead leaving holes that will surely be raised in constitutional attacks on the bill.

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

An excerpt from NCMEC’s answer to written questions submitted after our hearing, which I will place in the Record in its entirety:

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

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

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

Specifically, in addition to the provisions that I have already discussed, there were two amendments adopted in the Judiciary Committee in the last Congress and one in this Congress to which I objected that are included in the bill as we consider it today. I felt and still feel that these alterations from the original language that Senator HATCH and I adopted to the PROTECT Act might both confuse the statute and unnecessarily and endanger the already edge, but probably barely on the constitutional side of it.” I placed his letter in the RECORD upon introduction of the bill in this Congress on January 13, 2003.

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

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

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

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

The ‘‘identifiable minor’’ provision in the current law may be used without
any link to obscenity doctrine. Therefore, what potentially saved the original version we introduced in the 107th Congress was that it applied to child porn made with real persons. The provision was designed to cover all sorts of images of real persons that at morphed or altered, but not something entirely made by computer, with no child involved.

The provision we now consider, however, was intended to ease the prosecutor's burden in cases where images of real children were clearly altered to avoid prosecution. By changing the Senate's identifiable minor provision to House's virtual provision, the conference needlessly dislodged, in my view, that sole constitutional anchor. The new provision could be read to include images that never involved real children at all but were 100 percent computer generated. That was not the original goal of the Senate provision.

There are other provisions in this bill that deal with obscene virtual child pornography that I support, such as those in new section 1466A, which are linked to obscenity doctrine and the tighter definition and the narrower area of virtual pornography in the Free Speech Clause. Virtual porn, however, was intended to ease the prosecutor's burden in cases where images of real children were clearly altered to avoid prosecution. By changing the Senate's identifiable minor provision to House's virtual provision, the conference needlessly dislodged its constitutional anchor. For these reasons, I was glad to work in a bipartisan manner to shore up this provision in conference. Unfortunately, despite our best efforts, I fear we did not do everything possible to strengthen it against constitutional attack. Let me explain.

The virtual 'porn provision in section 502 lumps together such truly 'hard core' sexual activities such as intercourse, bestiality, and S&M with simple lascivious exhibition of the genitals and simulated intercourse where any part of a breast is shown. Equating such disparate types of conduct, however, does not mesh with constitutional anchor. The new provision was designed to cover all sorts of海上, both those in new section 1466A, which are linked to obscenity doctrine and the tighter definition and the narrower area of virtual pornography in the Free Speech Clause. Virtual porn, however, was intended to ease the prosecutor's burden in cases where images of real children were clearly altered to avoid prosecution. By changing the Senate's identifiable minor provision to House's virtual provision, the conference needlessly dislodged its constitutional anchor. For these reasons, I was glad to work in a bipartisan manner to shore up this provision in conference. Unfortunately, despite our best efforts, I fear we did not do everything possible to strengthen it against constitutional attack. Let me explain.

I am pleased that the conference addressed the vagueness concern in the new statute 2552(2) as it applies in virtual cases. By removing the requirement of "actual" conduct, we corrected the vagueness issue and have prevented clever defendants from seeking to argue that this new provision still requires proof of "actual" sexual acts involving real children.

The Supreme Court made it clear that we can only outlaw child pornography in two situations: No. 1, what is obscene by definition and the tighter definition and the narrower area of virtual pornography in the Free Speech Clause. Virtual porn, however, was intended to ease the prosecutor's burden in cases where images of real children were clearly altered to avoid prosecution. By changing the Senate's identifiable minor provision to House's virtual provision, the conference needlessly dislodged its constitutional anchor. For these reasons, I was glad to work in a bipartisan manner to shore up this provision in conference. Unfortunately, despite our best efforts, I fear we did not do everything possible to strengthen it against constitutional attack. Let me explain.

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to victims of domestic violence. We last authorized such a transitional housing grant program as part of the reauthorization of the Violence Against Women Act in 2000. This program would have been administered through the Department of Health and Human Services and would have provided $25 million in fiscal year 2001. Unfortunately, funds were never appropriated for the program, and the authorization expired. If we truly desire an end to domestic violence, then transitional housing must be available to all those fleeing their abusers. First of all, such housing provides women and children a stable, sustainable home base. Second, it gives these victims opportunity to participate in educational programs, to work full-time jobs, to learn new job skills, and to search for adequate child care in order to gain self-sufficiency. Without such resources, many women and children eventually return to situations wherein they are resettled or even killed.

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

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

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

On June 11, 2002, a U.S. District Judge in Boston dismissed one of the nine charges against Richard Reid stemming from his alleged attempt to detonate an explosive device in his shoe while onboard an international flight from Paris to Miami on December 21, 2001. The judge initially assessed the charged defendant Reid with violating section 1993 of title 18, United States Code, by attempting to “wreck, set fire to, and disable a mass transportation vehicle.”

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

The district court rejected defendant Reid’s arguments to dismiss the section 1993 charge on grounds that one, the penalty provision does not apply to an “attempt” and two, an airplane is not engaged in “mass transportation.” “Mass transportation” is defined in section 1993 by reference to the “the meaning given to that term in section 5302(a)(7) of title 49, U.S.C., except that the term shall include schoolbus, charter and sightseeing transportation.” Section 5302(a)(7), in turn, provides the following definition: “mass transportation” means transportation by a conveyance of persons, is for a charge, or is for hire and is not a conveyance that provides general or special transportation to the public, but does not include school bus, charter or sightseeing transportation.” The court explained that “commercial aircraft transport large numbers of people every day” and that the definition of “mass transportation” “when read in an ordinary or natural way, encompasses aircraft of the kind at issue here.” U.S. v. Reid, CR No. 02–10013, at p. 10, 12 (D. MA, June 13, 2003).

Defendant Reid also argued that the section 1993 charge should be dismissed because an airplane is not a “vehicle.” The court agreed, citing the fact that the term “vehicle” is not defined in section 1993 and that the Dictionary Act, 1 U.S.C. §4, narrowly defines “vehicle” to include “every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land, water or through the air.”

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

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

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

Tuesday’s conference, which was convened in the spirit of bipartisan cooperation, turned political, however,
when Republicans sprung a lengthy and complex amendment on the Democrats. This 9-page document was not a simple substitute for a portion of the bill. It was a highly complex amendment requiring careful consideration. The sponsors requested that it be brought up briefly in order to give conferees a moment to analyze the document. After meeting for three days in good faith, the Democratic conferees were effectively slapped in the face with a totally new proposal. Then, our amendment was called, and Senator HATCH's office, at 2:00 a.m., substantially changed the text of his own amendment—the amendment that had already been voted upon in the House. After a new meeting and no new vote of the conferees, the Republicans changed the conference report as it was voted on, and filed it in the House. The 2:00 a.m. text came closer to reflecting the original description of the amendment, but was still not limited, as was promised, to crimes against children.

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

Speaking about the original Feeney amendment, Chief Justice Rehnquist wrote: "This legislation, if enacted, would do serious harm to the basic structure of the sentencing guideline system and would seriously impair the ability of courts to impose just and responsible sentences." In another bald mischaracterization of the Hatch-Sensenbrenner amendment, Senator HATCH claimed in the conference meeting that he had addressed the Chief Justice's concerns. Senator HATCH is worried about the breadth and scope of the Feeney Amendment. He is not worried about this language. They know this language is to protect our children in our society, and we're limiting it to that." In fact, the Hatch-Sensenbrenner amendment does not address the problems raised in Chief Justice Rehnquist's letter, including: (1) the world's view that this amendment was explained to the conferees before the conferees had a chance to review or debate the amendment. I was sorely disappointed by the way that this amendment was explained to the conferees. One sponsor said not once or twice, but three separate times: "It's important to note that the compromise is limited to these serious crimes against children and sex crimes and would only apply to a few crimes." In fact, the amendment was not limited as he described, and did apply broadly to downward departures in sentencing for all Federal crimes. After the conferees were forced to vote again, the Hatch-Sensenbrenner amendment, Senator HATCH's office, at 2:00 a.m., substantially changed the text of his own amendment—the amendment that had already been voted upon in the conference. With no new meeting and no new vote of the conferees, the Republicans changed the conference report as it was voted on, and filed it in the House. The 2:00 a.m. text came closer to reflecting the original description of the amendment, but was still not limited, as was promised, to crimes against children.

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After the conference had adjourned and they took the time to familiarize themselves with their own amendment, they discovered that I was correct. They were in fact forced to depart from the sentencing guidelines in some extraordinary cases. At the conference's one meeting, during the brief period afforded for debate on the Hatch-Sensenbrenner amendment, I pointed out that the amendment retained language from the original Feeney amendment that eliminated the ability of Federal judges to depart and give lower sentences based upon extraordinary military service.

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

After the conference had adjourned and they took the time to familiarize themselves with their own amendment, they discovered that I was correct. They were in fact forced to depart from the sentencing guidelines in some extraordinary cases. I have already acknowledged that they have always advocated doing a thorough review of our Federal system. The Hatch-Sensenbrenner amendment removes almost all discretion for Federal judges to depart from the sentencing guidelines in some extraordinary cases.
had been seriously wounded while defending their nation in battle. What is worse, they were doing this during a time of war, when future veterans are literally risking their lives for America. Realizing that this might not go down well on the floor of the United States Senate, they quietly dropped the provision from the final conference report.

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

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

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

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

Rather than rush to change the law with no factual basis for doing so, the Democrats in this conference asked for hearings on the topic. In fact, Senator Graham, the new chairman of the newly constituted Crime, Corrections and Victims' Rights Subcommittee indicated that he planned to hold hearings on this topic very soon—that is, until the Feeney amendment and the subsequent Hatch-Sensenbrenner amendment overrode the Senate. Republicans in the conference now claim that no study is necessary. They believe that no hearings are necessary. They would rather significantly increase incarcer-
similar defense in the three strikes law, and it is appropriate that we included one here as well. We should also have included in the two strikes provision a carve-out for Indian country. Unfortunately, the conference in a party-line vote failed to allow Indian nations to decide for themselves whether or not to be part of the new two strikes regime. There is no question that the two strikes law will disproportionately affect Indian countries. Sentencing Commission data indicates that approximately 75 percent of cases to which the two strikes provision will be applied will involve Native Americans on reservations. Thus, the two strikes provision will have the effect of singling out Native Americans for harsher treatment.

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

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

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

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

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

The next section of the conference report is another example of hastily drafted language that has not been vetted thoroughly by either house of Congress. Section 203 adds certain crimes against children to the list of offenses that carry a rebuttable presumption against pre-trial release. Like the other provisions in titles I and II, this section has never been considered by the Senate, and received only the most cursory consideration by the House. I have two problems with this provision. First, as with sentencing determinations, I believe that judges, not Congress, should determine who gets bail. Clearly, judges are in the better position to determine whether, for public safety reasons, an accused offender should be detained.

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

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

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

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

My uncertainty about the constitutionality of this provision is, of course, compounded by the fact that there is virtually no legislative record on it. It has never been introduced in the Senate, and received a grand total of 10 minutes of debate before being passed as part of the appropriations bill.

And in case any judge is reading this and wondering, there was no discussion of this provision during the one afternoon that the conference committee actually met.

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

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

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

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

The crack house statute has been on the books for more than 15 years, and for most of its existence, Federal prosecutors have used it solely against
property owners who have been directly involved in committing drug offenses. The House Judiciary Committee, however, heard evidence last year that the Drug Enforcement Administration and prosecutors are now using the free-standing forfeiture provisions even in cases of business owners who take serious precautions to avoid drug use at their events. Business owners have come to Congress and told us there are only so many steps they can take to prevent thousands of dollars of drugs from being found in the home of a tenant. They are worried about being held personally accountable for the illegal acts of others. Those concerns may well be overstated, but they deserve a fuller hearing.

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

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

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

The PSOB Program currently provides a one-time financial benefits package to the families of law enforcement officers, firefighters, emergency responders, and other public safety officers who are killed in the line of duty. Unfortunately, PSOB guidelines do not allow survivors of public safety officers who die of heart attacks or strokes in the line of duty to collect those benefits, ignoring the fact that service-connected heart conditions are serious killers of public safety officers nationwide. I sought to include our tri-partisan bill in the conference report to fix the loophole in the PSOB program. This language would ensure that the survivors of public safety officers who die of heart attacks or strokes in the line of duty, including for a triggering incident while on duty—regardless of whether a traumatic injury is present at the time of the heart attack or stroke—are eligible to receive financial assistance. Representative ETHEIDGE and I introduced identical legislation in the House last Congress, and the House bill passed that body, but an anonymous Republican hold in the Senate killed it.

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

Public safety is dangerous, exhausting, and stressful work. A first responder’s chances of suffering a heart attack or stroke greatly increase when he or she puts on heavy equipment and rushes into a burning building to fight fires, or when families of public safety officers suffer fatal heart attacks or strokes. It is deep disappointment that the Senate and House to show their support and appreciation for these extraordinarily brave and heroic public safety officers by passing the Hometown Heroes Survivors Benefit Act.

Mr. President, I would like to take a moment to thank my staff for all their hard work on these provisions to protect our nation’s children. I want to recognize Julie Katzman, Steve Dettelbach, Tara Magner, Ed Pagano, Sarah Sizemore, Phil Tipton, Sally Lynch and Marguerite McConihoe for their dedication to these important measures. Their diligence and professionalism do credit to this body.

I also wish to recognize the staff of the other Senate conferees for their hard work, including Robin Toone, Neil MacBride, Tonya Robinson, Eric Rosen, Chad Groover, Mike Volkov, Reed O’Connor, Wan Kim, James Galyean, and William Smith. Finally, I want to thank the staffs of the Democratic House conferees, including Perry Apelbaum, Bobby Vassar, Greg Branes, Ted Kalo, as well as Chairman SENSENBRENNER’S professional staff, especially Will Moschella, Phil Kiko, Beth Sokol, Sean McLaughlin and Jay Apperson.

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

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

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

While the bill makes significant progress in strengthening Federal child pornography laws and in enhancing public outreach, so that missing and exploited children can be recovered, the bill also includes the Houses’ tough on crime penalties for Federal sex offenses. The bill increases penalties for crimes such as kidnapping, sex tourism, child abuse, and child torture. It also includes a “two-strikes” provision that would establish a mandatory life sentence for twice convicted sex offenders.
This one provision alone will help keep some of the worst violent child molesters off the streets and out of the exploitation business. The bill also includes new rules for supervised release of sex offenders, so that criminals with deep-seated aberrant sexual tendencies can be restricted since they do not benefit from first amendment protection.

The conference report also accepted two sense-of-Congress provisions. The first provision expresses that it is the sense of the Congress that the Child Exploitation and Obscenity Section of the Department of Justice should focus its investigative and prosecutorial efforts on major producers, distributors, and sellers of obscene material and child pornography leading up to and facilitating the marketing of material to children.

This provision was recommended in the 2000 report of the COPA Commission, a congressional commission tasked with studying how to protect children from pornography online. The second provision, which is also taken from the COPA Commission report, expresses that it is the sense of the Congress that the online commercial adult industry should voluntarily refrain from placing obscenity, child pornography, or other harmful material on the front pages of their Web sites. By taking this step, these Web sites will be helping to protect minors from material that may negatively impact their social, moral, and psychological development.

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

The conference report that we consider today will expand and improve the program by establishing an AMBER Coordinator within the Department of Justice to enhance and centralize the operation of the communications system. It will establish minimum standards for coordination between states and the federal government. It will encourage widespread public participation through radio and television broadcast and electronic highway signs.

The conference report will also expand the bill's protections for children. It would extend the scope of the provisions on the bill. First, it was able to get accepted an amendment to include child pornography manufacturers and distributors in the Federal sex offender registry. Because child pornography is a gateway to child molestation, just as marijuana is a gateway to harder drugs, those who deal in this type of material should also be included in the offender registry, so that the public is on notice of these criminals.

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

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

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

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

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

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

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

As envisioned by Congress, the NCPA was intended to allow States to have in effect national background check procedures that enable a “qualified entity” to determine whether an individual applicant is fit to care for the safety and well-being of children, the elderly, or individuals with disabilities. The procedures permit this entity to ask an authorized state agency to request that an applicant provider.

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

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

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

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

Under current law, whether they want a state or national criminal background check, organizations must apply through their state-authorized agency. The state agency then performs the state check and forwards the results to a national check. The FBI responds back to the state agency, which then forwards the information back to the volunteer organization. In Delaware, the State Police Bureau of Identification works with groups to fingerprint prospective workers and check their backgrounds. A patchwork of statutes and regulations govern background checks at the state level; there are currently over 1,200 State statutes concerning criminal record checks. This has led to a wide range of different state checks, different agencies authorized to perform the checks for different types of organizations, distinct forms and information are required, and the results are returned in various formats that can be difficult to interpret. States have not been consistent in their interpretation of the NCPA and VCA. Put simply, the current system is extremely cumbersome, particularly for those organizations that must check criminal records in multiple States, to check for those groups employing seasonal workers, such as summer camps, for whom time is of the essence when seeking the results of background checks.

After careful study of this issue it became clear to me that the concerns of groups such as the National Mentoring Partnership and the Boys and Girls Clubs are not merely anecdotal. In 1998, the FBI’s Criminal Justice Information Services, CJIS, Division performed an analysis of fingerprint submissions for civil applicant purposes. CJIS found that the average transmission time from the point of fingerprint to the State bureau was 51.0 days, and from the state bureau to the FBI was another 66.6 days, for a total of 117.6 days from fingerprinting to receipt by the FBI. The worst performing jurisdiction took 544.8 days from fingerprinting to receipt by the FBI. The National Mentoring Partnership, mentoring organizations on average waited 6 weeks for the results of a national criminal background check to be returned. The danger these delays post to mentoring groups and others cannot be overstated. Suppose a group seeks to hire a volunteer who grew up in a neighboring jurisdiction to work with children. The group has the volunteer fingerprinted at their local police department, forwards those prints along to the agency designated by state statute or procedure to receive such requests, and then waits for the national results. FBI data indicates they will wait close to four months, on average, for the final results of the background check. That’s too long. It forces groups to choose between taking a risk on someone who may have committed a non-profit entities for background checks do not discourage volunteers from participating in child care programs.” In a survey of mentoring organizations, the National Mentoring Partnership found that organizations were paying on average $10 for a State records check, plus the fee for a national check. For organizations utilizing hundreds of volunteers and employees, the costs of thorough background checks can be exorbitant. Small, community-based organizations with limited funding often need must choose between funding services to children and checking the criminal history records of prospective volunteers.

Section 108 does three things. First, subsection (a)(2) establishes a State Pilot Program that will facilitate the ability of youth-serving organizations in three States designated by the Attorney General to perform criminal background checks of their volunteers. The intent of this provision is for State Pilot Program to operate as the Congress intended the National Child Protection Act to operate. That is, youth-serving organizations who want a state or national criminal background check to be returned.

Congressional Record — Senate April 10, 2003
history records will be provided to the State agency. The language in that section which reads “consistent with the National Child Protection Act” is intended to result in that State agency then making a determination of the potential volunteer to work with children. While subsection (a)(2)(D) does permit the National Center for Missing and Exploited Children to access the criminal history records information to the National Criminal History Records System in order to check the backgrounds of potential volunteers, the conference report changes that. Ninety days after the date of enactment of this conference report, the Attorney General will notify the Boys and Girls Clubs of America, the National Mentoring Partnership, the National Council of Youth Sports that they have been statutorily designated to make 100,000 background check requests of the FBI. Allocations of these checks are set out in subsection (a)(3)(C). The three eligible organizations may not accept fingerprint cards under this Pilot Program from any of their members or affiliates located in the States designated by the Attorney General to participate in the State Pilot Program described in subsection (a)(2). The organizations are required to obtain a signed statement from the potential volunteer along with the volunteer’s fingerprints. Once the Attorney General receives fingerprint cards from the volunteer organizations, subsection (a)(3)(F) gives them 14 business days to provide any resulting criminal history record information to the National Center for Missing and Exploited Children. The Attorney General shall charge these three organizations no more than $1 to perform these checks. The National Center for Missing and Exploited Children will work with the three organizations to develop standards to determine how to evaluate the criminal history records information provided by the FBI, and to set standards to guide the fitness determination described in subsection (a)(3)(G)(i). Nothing in this subsection requires the NCMEC to make such a fitness determination; the language of subsection (a)(3)(G)(i) is discretionary. It is my view that the conferees intended this subsection to permit NCMEC to work with the eligible organizations in determining the fitness of prospective volunteers to work with children. However, it is my view that the conferees did not intend for NCMEC to perform this function unless adequate appropriations are allocated to it pursuant to subsection (c)(3). NCMEC shall not be liable for any fitness determinations made pursuant to subsection (a)(3)(G)(i), consistent with the limitation on liability set forth in section 305(a) of the conference report.

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

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

This bill also contains a provision I sponsored that reauthorizes Child Advocacy Centers. Child Advocacy Centers are widely supported by police, prosecutors and the courts. Not surprisingly, communities with centers report increased successful prosecution of perpetrators, more consistent follow-up to abuse reports, medical and mental health referrals for victims, and more compassionate support for victim children. It is also worth noting that in a May 1998 publication titled, New Directions from the Field, the National Children’s Alliance has estimated that three Children’s Advocacy Centers as their number one recommendation for improving services to children who directly experience or witness violence—number one.

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

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

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

These events focused new attention on an existing, growing problem—the ease with which individuals and organizations can forge and steal IDs and use
them to harm our society. These circumstances weaken our efforts in the fight against terrorism; identity theft; underage drinking and drunk driving; driver's license, passport and birth certificate fraud; even child abduction. In the past, all identity thefts were identity thefts. Today, one must do more to prevent the creation of false, misleading or inaccurate government IDs. This has become an issue of national importance and therefore merits a national response.

In authenticating documents, the ability of criminals to produce authentic-looking fake IDs has grown immensely. Today, unfortunately, it is becoming increasingly common for criminals to either steal or forge, and traffic in, the very items that issuing authorities use to verify the authenticity of their IDs. These "authentication features" are the holograms, watermarks, and other symbols, letters and codes used in identification documents to prove that they are authentic. Unfortunately, today, these authentication features can be purchased on the Internet or through mail order outfits. In addition, breeder documents, such as birth certificates, are desk-top published, with an illegitimate embossed or foil seal. In this way, not only crooks forge identification documents, they also now illegally fake or steal the very features issuing authorities use to fight that crime.

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

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

Holograms have long been used on credit cards, and are beginning to be deployed in identification documents. The term "hologram" is meant to include diffractive optical gratings and other optically variable devices, regardless of their manner of fixation to, or formation in, a document substrate. Watermarks take a variety of forms, including fabricated paper watermarks and digital watermarks. Watermarks have a long history of use as authentication features in paper, and were traditionally fabricated during the wet paper phase of the paper-making process by varying the thickness of paper fiber. Such conventional watermarks are now fabricated in a number of other ways, including chemical treatment (e.g., a logo—e.g., a seal—is revealed by viewing the document at an angle, or subject to certain illumination.

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

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

Mr. President, this section will give law enforcement officials a powerful tool to crack down on identity thieves. According to the U.S. Department of Justice, up to 70,000 people in the United States may be victimized by identity bandits each year, costing the average victim more than $1,000. Additionally, banks lost at least $1 billion to identity thieves last year. The SAFE ID Act will also go a long way toward combating the nationwide problem of underage drinking. Underage drinking is a serious problem with dangerous, and sometimes deadly consequences. The SAFE ID Act will help prevent underage drinking by making it harder for fraudulent attempts to provide young people with fake IDs. It perhaps goes without saying that legislation such as this, which makes it
harder to obtain fake IDs, will also make it harder for those who abduct innocent children to mask their identity and thereby avoid detection.

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

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

This legislation arose out of a series of hearings the Conference Committee. Rather than quoting the legal text of the changes made by the conference report, I felt the need to be constrained by the background information they provoked on the issue discussed my bill. I believe it is a fitting addition to a bill whose purpose is to engage in illegal narcotics activity.

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

The bill is aimed at the defendant’s predatory behavior, regardless of the type of drug or the particular place in which it is being used or distributed. One defendant was facing criminal charges for possessing a small amount of a controlled substance, and could have been acquitted in court.

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

Although this legislation grew out of concerns expressed by parents who report attending a rave are seven times more likely to have tried Ecstasy than teens who report not attending a rave. I find this statistic quite troubling and I hope that the changes made by the conference report before us today will make promoters think twice before endangering kids in this manner.

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

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

We know that there will always be certain people who will bring drugs into the venue or use them without the knowledge or permission of the promoter or club owner. This is not the type of activity that my bill would address. My bill would help in the prosecution of rogue promoters who not only know that there is drug use at their event but also hold the event for the purpose of illegal drug use or distribution. That is quite a different standard in my bill—which makes clear that anyone who promotes any type of event for the purpose of drug use or distribution. If rave promoters and sponsors operate such events as they are so often advertised—as places for people to come dance in a safe, drug-free environment—then they have nothing to fear from this law. In no way is this bill aimed at stifling any type of music or expression—it is only trying to deter illicit drug use and protect kids.

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

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

Section 611 would amend Title 18 to encourage federal prosecutors to bring “John Doe” DNA indictments in federal sex crimes. Specifically, the provision amends 18 U.S.C. § 3382 to authorize explicitly federal prosecutors to issue an indictment identifying an unknown defendant by this DNA profile within the 5-year statute of limitations. If the indictment is not filed within the 5-year statute of limitations, the statute is then tolled until the perpetrator is identified through his or her DNA profile at a later date. The John
Doe/DNA indictment would permit prosecution at anytime once there was a DNA “cold hit” through the national DNA database system.

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

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

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

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

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

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

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

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

"We oppose the systematic dissemination outside the court system of judge-identifying information in criminal case files. . . . We urge Congress to meet its responsibility to oversee the functioning of the criminal justice system through the use of this and other information without subjecting individual judges to the risk of unfair criticism in isolated cases. The record may not fully reflect the events leading up to and informing the judge’s decision in a particular case. Surely we should hear from the Judicial Conference which has some serious concerns about the impact of this provision in judicial monitoring.

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

These are just a few among the many troublesome provisions that were inserted into a piece of legislation after its passage in the Senate had enjoyed broad bipartisan support. The Senate has not had the opportunity to consider the potential impact of these provisions through either hearings or floor debate. Mr. President, I am disappointed that they are now being considered in a conference report which we will have no opportunity to discuss.

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

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

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

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

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

I do not believe it is an exaggeration to say that, if you want to know what America is all about, visit one of America's 23 million children each and every day in these organizations. And those are the values that will be given new strength and potency by this legislation.

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

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate the remarks of the distinguished Senator from California. There is no question she and the distinguished Senator from Texas have been major movers on this legislation and the volunteers would have access immediately. A majority of the conferees, with an average of 30.5 additional victims. Every one of them. It is time we get tough. This bill is a tough bill, as it should be. This bill will help solve many of the problems of society, as it should.

I have to confess, I have been underwhelmed by some of the arguments, underwhelmed by some of the arguments in this area. All I can say is that we do not do away with downward departures; they better be the departures allowed by the Sentencing Commission and not just conjured out of thin air by the judges. I have to also confess that the distinguished Senator from Massachusetts is continuously bringing up Justice Rehnquist and Justice Kennedy. Their letters were to the Feneey amendment which has been drastically modified by the Hatch-Sensenbrenner-Graham amendment argument, in and of itself, does not stand or hold water. I will not say that it is a misrepresentation, as has been indicated on the other side, but I will say it does not hold any water.

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

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

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

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

That is how our system works. I urge my colleagues to vote in favor of this measure because this measure is a measure that can help to put an end to the violence that children are so adopting our society.

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

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

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

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

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

But the main complaint by Democrats appears to be they do not like this compromise that provides for meaningful review of the sentencing guideline provisions. Why anyone would oppose provisions that simply appellate courts the opportunity to give meaningful review to criminal sentences is just simply beyond me. The House had Sentencing Commission
hearings. The Senate has had Sentencing Commission hearings—regardless of the representations by my distinguished friend from Massachusetts. We had extensive hearings back in the year 2000. We all know a lot about this. This measure, through compromise, has taken steps to address a growing problem both bodies identified in guideline sentencing.

But I am even more troubled by the manner in which we have heard and read from the Associated Press, where Republicans were accused of: . . . kidnapping the AMBER alert bill in an attempt to achieve partisan and wholly unrelated goals, getting judicial sentencing guidelines.

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The yeas and nays are ordered. It is time to vote.

The PRESIDING OFFICER. The yeas and nays are ordered.

The yeas and nays were ordered.
workable solution to the problem. Efforts by persistent mismanagement of trust beneficiaries. This nomination on the table.

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

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

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

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

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

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

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

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

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

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

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

The bottom line is that trust beneficiaries deserve a Special Trustee in whom they can have confidence to restore sound accounting principles and integrity to the Federal Government’s management of trust assets. There is a critical need to elevate the Indian trust issue to higher levels within the administration. The current state of Indian trust management is a debacle and has come to be known as the “Enron of Indian Country.” We need an individual who is able to tackle this issue with the vested interests involved.

I agree with South Dakota tribal leaders and the Great Plains tribal Chairmen’s Association that Ross Swimmer is not the right man for this job.

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

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

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

Mr. NICKLES. Mr. President, today I want to speak on the nomination of my good friend Ross Swimmer to be Special Trustee for American Indians.

In 1994 Congress passed the American Indian Trust Fund Management Reform Act, which created the position of Special Trustee for American Indians. Ross was Principal Chief of the Cherokee Nation, the second largest Indian tribe in the United States. He served 3 years as Assistant Secretary at the Department of Interior, where he managed a $1.5 billion budget; 15,000 employees, and the oversight and management of policy concerning Indian affairs.

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

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

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

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

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

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