

think his remarks have been right on target this evening. I know this may not be the hour for his comments, and they were not particularly well listened to, but I hope he will repeat them at a later date.

I visited one of our leading drug and alcohol treatment centers in this Nation a few weeks ago and talked to people there and know the trauma they have been through.

I think the Senator is right on target. Alcohol kills 25,000 people a year just on the highways of our country. Every 2 years, we equal all the slaughter of the Vietnam war—every 2 years.

The real answer to alcohol and drugs is not sealing our borders. It is as we get peer pressure not to use. We are only putting some 10 percent of the money in this bill into education, in trying to get the peer pressure off using.

A little while ago, the distinguished Senator from Connecticut [Mr. WICKER] was talking about the need for \$375 million, and I agree with Senator WICKER's comments on that. I submit that we might add that to what we did on the reconciliation bill last week. What a sham that was. We did everything else on the reconciliation bill; we might as well do this, too.

So there is no problem getting the money, after what we did last week.

I compliment the Senator for his remarks. I hope they are repeated in this Chamber when the audience is a little more receptive and when people across the country are watching. I think he was right on target.

AMENDMENT NO. 3065

(Purpose: To express the sense of Congress that the entertainment industry take certain steps to assist in the national war against illegal drugs)

Mr. HARKIN. Mr. President, there is an amendment at the desk. I assume that it is going to be voted on and that there will be a rush of judgment to show our strength and determination to stop drug use. In that sense, I send to the desk an amendment in the nature of a substitute.

The PRESIDING OFFICER (Mr. McCONNELL). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 3065 to amendment numbered 3062:

On page , line , after , insert the following:

It is the sense of Congress that, whereas illegal drug consumption and alcohol consumption and the trafficking in those legal and illegal drugs is a major problem in the United States; whereas the problem of alcoholism is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment and written media indus-

try should voluntarily refrain from producing material meant for general or encourages the use of illegal drugs and alcohol and the entertainment which in any way glamorizes industry and written media further is encouraged to develop films, television programs, records, and videos and advertising which encourages the rejection of illegal drug usage and alcohol use.

SEVERAL SENATORS. Vote! Vote!

Mr. DOMENICI. Mr. President, as I understand it, the amendment adds the written industry and adds alcohol wherever the Domenici amendment referred to the entertainment industry and drugs. I think the amendment is a good amendment. I accept it, and I hope the Senate will adopt this substitute.

Mr. THURMOND. Mr. President, we accept the amendment on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 3062), as modified by amendment No. 3065 was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3068

Mr. LEAHY. Mr. President, I have an amendment on behalf of myself, Senator HATCH, and Senator DENTON, which I send to the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. HATCH, and Mr. DENTON, proposes an amendment numbered 3068.

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

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

The amendment is as follows:

Strike section 1802 of the bill and insert in lieu thereof the following:

SEC. 1802. CRIMINAL ORGANIZATIONS, FEES AND FEE WAIVERS.

(a) Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

"(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence [(as defined in Executive Order 12333)], or international terrorism [(as defined in the Foreign Intelligence Surveillance Act)], and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section."

(b) Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or a requester is indigent and can demonstrate a compelling need for the documents.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

"(II) for any request described in clause (i)(II) or (iii) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has

previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

"(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo provided that the court's review of the matter shall be limited to the record before the agency.

Mr. LEAHY. Mr. President, the bill contains language concerning release of law enforcement records under the Freedom of Information Act which passed the Senate in 1984. The language of our amendment addresses the problem which was the concern of the original proposal, the use of FOIA by sophisticated criminal enterprises to learn about ongoing criminal investigations. But, it is narrower and more acceptable to legitimate users of FOIA, especially the news media.

In addition, our amendment addresses the problem of FOIA fees and fee waivers so that more of the costs of FOIA will be recouped, and at the same time relieve the news media of the need to pay a high cost for access to Government records.

Mr. MATHIAS. Mr. President, will the Senator yield so that I may offer an amendment to the amendment?

Mr. LEAHY. I yield.

AMENDMENT NO. 3067

Mr. MATHIAS. Mr. President, I send to the desk an amendment to the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Maryland [Mr. MATHIAS] for Mr. LEAHY, himself, and Mr. THURMOND, proposes an amendment numbered 3067 to amendment No. 3066.

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

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

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

Mr. MATHIAS. Mr. President, today the Senate considers an amendment to the drug bill that embodies an important bill to enhance the privacy of Americans and update the provisions the 1968 Wiretap Act—the Electronic Communications Privacy Act of 1986.

A measure similar to this amendment has already been approved by the other body. H.R. 4952 passed the House Judiciary Committee by a vote of 34 to 0. That bill passed the House by a voice vote on June 24. In the Senate, the Electronic Communications Privacy Act has also been thoroughly considered. The Subcommittee on Patents, Copyrights and Trademarks held hearings last fall on an earlier version of this legislation. After House passage of H.R. 4952, I joined

with Senator LEAHY to introduce an identical companion bill, S. 2575. With some modifications, that bill received the unanimous approval of the Subcommittee on Patents, Copyrights and Trademarks on August 12, and, with further improvements, was ordered reported by the full Judiciary Committee on September 19. The revised version embodied in this amendment enjoys the active support of the Department of Justice, of numerous affected communications and computer businesses and trade associations, and of the American Civil Liberties Union.

I have given this thumbnail sketch of the history of this legislation in order to show that the problems addressed by this amendment have been thoroughly studied, and the solutions it proposes have been significantly refined, throughout the legislative process. In these closing days of the Congress, many measures come before the Senate without the benefit of such careful scrutiny; I can assure the Senate that this is not one of them.

As I mentioned earlier, this amendment enjoys the strong support of the Department of Justice. Currently, the Department is operating under the 1968 Wiretap Act. Many vital law enforcement functions are unnecessarily inhibited because that act, written almost 20 years ago, did not anticipate the many changes in technology and business organization that have occurred over the past two decades.

For example, this amendment would provide the Department with clear authority to conduct so-called "roving" wiretaps. Many drug dealers are sophisticated. They know that their phone could be tapped under an appropriate court order. Therefore, they do not use their own phone. They instead use public telephones—moving among several phones for their illicit business contacts. This amendment gives the FBI explicit authority to obtain a court order to tap these phones and listen to these conversations. It recognizes that under carefully defined circumstances the court should be able to order the conversations of a particular person to be taped rather than just those from a specific telephone.

The bill also clarifies the use of pen registers and trap and trace devices. Pen registers keep a record of all the phone numbers dialed from a particular phone. Trap and trace devices are similar, keeping track of the phone numbers from which all incoming telephone calls are placed. Pen registers have been in existence for many years, but effective and inexpensive trap and trace devices are of much more recent vintage and were not practical at the time the 1968 law was written. With the breakup of the Bell System, the need has grown for uniform statutory rules covering these devices. This amendment provides explicit author-

ity for magistrates to order the installation of pen registers and trap and trace devices, providing another important tool for law enforcement agencies in their effort to root out organized drug syndicates.

Another important law enforcement feature of this amendment is the clarification of the status of mobile tracking devices. These electronic devices can be installed in the vehicle of a suspect, or secreted in an illicit shipment of drugs so that law enforcement agents can follow the movements of the vehicle or the contraband shipment. Under existing law there are several ambiguities about the use of such devices. This is particularly true when a device is installed in an object that may move across jurisdictional lines. This amendment clarifies the law and makes it clear that a court has the authority to order the installation of such a device, and that once installed that order remains valid even if the vehicle or other object in which the device is installed is moved across jurisdictional lines by the suspect. This will greatly enhance the Government's ability to follow drug shipments and establish the chain of distribution.

These important law enforcement tools should be provided to law enforcement agencies to aid them in acquiring the necessary evidence against major drug smugglers and distributors.

In essence, the Electronic Communications Privacy Act [ECPA] responds to new developments in computer and communications technology by amending title III of the Omnibus Crime Control and Safe Streets Act of 1968—the Federal wiretap law—to protect against the unauthorized interception of electronic communications. Currently, title III covers only voice communications. The amendment expands coverage of the wiretap act to include data and video communications on nearly the same basis as conventional telephone technology. In addition, the amendment eliminates the distinction between common carrier communications and private carrier communications. The ECPA extends privacy protection to new forms of electronic communications, but is careful to exempt media in which privacy is not expected, such as tone only paging devices; amateur radio services; police, fire, and other public safety radio communications systems; and many satellite transmissions, including network feeds destined for rebroadcast, and satellite cable programming as defined in section 705 of the Communications Act of 1934.

The amendment that Senator LEAHY and I are offering today incorporates the improvements in the ECPA made by the Subcommittee on Patents, Copyrights and Trademarks and by the full Judiciary Committee. This