to rest in the same cemetery as Gary's grandfather? A son with just 2 months left on his enlistment?

Will we ever understand the loss of Rogelio Santiago, a Navy veteran himself, who was planning a trip with his son Ron to his native Philippines in December?

Have we ever experienced the bewilderment of Sarah Gauna, who said she would never hang up the phone with her boy until she had made him laugh, as she waited days to learn the awful truth about Timothy?

We cannot feel the depth of sorrow of these families, but we are all diminished by their loss because U.S.S. *Cole* was a small patch of American soil and on that patch we lost our own.

Today, as we come and go in our ordinary routine, life is anything but routine for those they left behind.

Today, the U.S.S. *Cole*, crippled but proud, has begun the long journey home. She is under tow for a rendezvous with another larger vessel that will literally carry her home to America.

The ship is cold. It is dark and quiet. But the spirit of the fallen Texans and the 14 others who lost their lives carries on in the valiant efforts of their 300 shipmates. They saved the ship and they mean to rebuild it to fight another day.

In the words of her Commanding Officer, ''We're going to get this ship back home [and] put back together so that she can again sail and defend American freedom throughout the world.''

That is exactly what is going on today in so many other distant places across the globe. Today we remember the *Cole*, but she was just one representative of a proud service that is still on watch.

Today as most Americans get up for work, have breakfast with their families, perhaps attend a son or daughter's school play or athletic event, we may not think much about the tens of thousands who left their families alone on a pier months ago to sail into harm's way, expecting, but not really knowing for sure, if they would come home.

Just today—November 1—on, over, or under the seven seas, more than 41,000 sailors and marines are standing watch on the bridge of a warship, landing aircraft onto the deck of a carrier, manning nuclear power plants leagues beneath the surface, training to land ashore from the sea.

These thousands do not count a much greater number ashore who repair the ships, maintain the aircraft, and perform a host of other activities that mark an ordinary day in the life of a superpower.

Those young men and women are out there serving under our flag in places where they are not always welcome but whose presence is reassuring.

Every once in a while, we hear from them. Not when they are landing their fighter onto the rolling deck in pitch blackness, scared but exhilarated all the same. We do not read about it when they bring their ship alongside an oiler, two 10,000-ton machines just 90 feet apart at 15 knots for 3 hours replenishing their stores at sea to extend the reach of freedom.

There are no cameras there for the 19 year-old Marine guard at the gate of the overseas naval installation at 3 o'clock in the morning who must decide in an instant whether the vehicle approaching him is loaded with explosives or is just a shipmate coming back from liberty.

They do not seek our recognition, but at times, that is demanded of us. Unfortunately, now is one of those times. At a time such as this, we cannot believe what we see but we marvel at the courage and dedication of these young people.

I received an e-mail message that has been circulated around the world, shared with me by Knox and Kay Nunnally, whose son attends the Naval Academy. A helicopter pilot from the U.S.S. *Hawes* recorded what he saw when he was assigned the task of taking airborne photos of the stricken *Cole* pierside in Yemen, just days after the tragedy. His words bring home to us just what it is we ask of our sailors and marines:

> I will tell you that right now there are 250-plus sailors just a few miles away living in hell on earth. You can't even imagine the conditions they're living in, and yet they are still fighting 24 hours a day to save their ship and free the bodies of those still trapped and send them home.
>
> As bad as it is, they're doing an incredible job. The very fact that these people are still functioning is beyond my comprehension. Whatever you imagine as the worst, multiply it by ten and you might get there.
>
> I wish I had the power to relay to you what I have seen, but words just won't do it. I do want to tell you the first thing that jumped out at me—the Stars and Strips flying. I can't tell you how that made me feel . . . even in this God forsaken hell-hole our flag was more beautiful than words can describe.
>
> The U.S.S. *Cole* and her crew is sending a message: even acts of cowardice and hate can do nothing to the spirit and pride of the United States. I have never been so proud of what I do, or of the men and women that I serve with as I was today.

Mr. President, it has been said that young fighting men and women don't endure the risks they do for such lofty goals as patriotism, freedom, democracy, or all the other reasons why older generations send young generations into war.

Rather, these young men and women fight for the buddy next to them in the foxhole; in the next bunk over; in the back of the cockpit.

If that is so, then there can be no greater honor for Timothy Gauna, Ron Santiago, and Gary Swenchonis than that their sad and painful deaths force us to remember, through them, their shipmates and all the other thousands of American fighting men and women who are out there doing the extraordinary everyday, just so that we can live our everyday lives.

As we remember the words of the Navy Hymn, we honor the memory of these three Texans by calling to mind those they left behind:

> O hear us when we cry to thee, for those in peril on the sea.

Mr. President, I yield the floor and suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BIDEN. Mr. President, I ask unanimous consent to proceed in morning business for 10 minutes.

The PRESIDING OFFICER. The Senator is recognized.

THE BANKRUPTCY BILL

Mr. BIDEN. Mr. President, we just had a vote on a cloture motion on the bankruptcy bill, which did not prevail; that is, cloture was not invoked. I just want to make a short statement now because we will be back at this again.

This has been a prolonged and complicated process that brought us to this point today. I personally believe it need not have been so long nor have been so complicated. We should not have had to wait for this legislation as long as we have. We should have just stepped up to this earlier. But here we are.

I heard a number of things stated in the well of the Senate as we were voting on cloture relative to this legislation about which I think people were misinformed. A lot of statements were being made that did not reflect what is actually in this bankruptcy bill.

I know many of my colleagues are not happy with the bill. But on balance the bankruptcy reform bill still deserves the strong support of the Senate. We will return to this issue later this month, and I would like to put to rest some of the assertions made.

We have what we call a very strong safe harbor provision in this bill, to protect families that are below the median income, along with allowing them adjustments for additional expenses, that will assure that only those with the real ability to pay in bankruptcy are steered from chapter 7 to chapter 13.

The Senate language, giving judges the discretion to determine whether or not there are special circumstances that justify those expenses, prevailed over the very strict House language. The bottom line is, if you are someone who is listed by the national statistics as being poor—many folks keep saying poor folks will be hurt by this—you are not even in the deal here. You are not even in the deal. You are protected. That is what we mean by the safe harbor.

This provision has been strengthened with an additional protection for those between 100 and 150 percent of the national median income. So if you have

an income that is 150 percent above the median income, you will get only a very cursory means test.

I heard on the floor today people saying how poor folks and lower middle income folks were really going to be hurt by this. That is simply not true.

Compared to current law, this provision provides increased protection against creditors who try to abuse the so-called reaffirmation process.

This bill imposes new requirements on credit card companies to explain to their customers the implications of making minimum payments on their bills every month.

A feature of this legislation that I think deserves much more emphasis is historic improvement in the treatment for family support payments, child support, and alimony. I heard my colleagues on my side of the aisle down there saying this hurts women and children.

Compared to current law, there are numerous new, specific protections for those who depend on support payments and alimony payments. The improvements are so important that they have the endorsement—I want everybody to hear this—they have the endorsement of the National Child Support Enforcement Association. This is the outfit that comes to us and says: Look, you have to provide additional help in seeing to it that child support payments are paid by deadbeat dads. The National Child Support Enforcement Association, the National Association of District Attorneys, the National Association of Attorneys General, they all support this bill because of these protections. These are the people who actually are in the business of making sure family support payments are made.

One passage from the letter sent to the Senate Judiciary Committee deserves repeating. Referring to critics of the legislation, those men and women who are on the front lines of the struggle to enforce family support agreements say:

> For the critics appear content to sacrifice the palpable advantages which this legislation would provide to support creditors—

That is, the women and children who depend on support payments.

> to defeat of this legislation, based on the vague and unarticulated fears that women will be unfairly disadvantaged as bankruptcy creditors—in more ways than one, the critics would favor throwing out the baby with the bath water.

This is a letter from the people who go out on behalf of women, collecting child support payments for their children.

They say this bankruptcy bill is a good bill.

I think the last line from the letter deserves special stress. I quote:

> No one who has a genuine interest in the collection of support should permit such inexplicit and speculative fears to supplant the specific and considerable advantages which this reform legislation provides to those who need support.

I can think of no stronger rebuttal to the arguments we have seen and heard recently about the supposed effects of this legislation on women and children who depend on alimony and child support.

Mr. President, I ask unanimous consent that the full text of this letter be printed in the RECORD.

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

DISTRICT ATTORNEY FAMILY SUPPORT BUREAU,
San Francisco, CA, September 14, 1999.

Re S. 625 [Bankruptcy Reform Act].

DEAR SENATORS: I am writing this letter in response to the July 14, 1999 letter prepared by the National Women's Law Center. That letter asserts in conclusory terms that the Bankruptcy Reform Act would put women and children support creditors at greater risk than they are under current bankruptcy law. The letter ends with the endorsement of numerous women's organizations.

I have been engaged in the profession of collecting child support for the past 27 years in the Office of the District Attorney of San Francisco, Family Support Bureau. I have practiced and taught bankruptcy law for the past ten years. I participated in the drafting of the child support provisions in the House version of bankruptcy reform and testified on those provisions before the House Subcommittee on Commercial and Administrative Law this year.

I believe it is important to point out that none of the organizations opposing this legislation which are listed in the July 14th letter actually engages in the collection of support. On the other hand, the largest professional organizations which perform this function have endorsed the child support provisions of the Bankruptcy Reform Act as crucially needed modifications of the Bankruptcy Code which will significantly improve the collection of support during bankruptcy. These organizations include:

1. The National Child Support Enforcement Association.
2. The National District Attorneys Association.
3. The National Association of Attorneys General.
4. The Western Interstate Child Support Enforcement Council.

The thrust of the criticism made by the National Women's Law Center is that by not discharging certain debts owed to credit and finance companies, the institutions would be in competition with women and children for scarce resources of the debtor and that the bill fails ''to insure that support payments will come first.'' They say that the ''bill does not ensure that, in this intensified competition for the debtor's limited resources, parents and children owed support will prevail over the sophisticated collection departments of these powerful interests.''

With all due respect, nothing could be further from the truth. While the argument is superficially plausible, it ignores the reality of the mechanisms actually available for collection of domestic support obligations in contrast with those available for non-support debts.

Absent the filing of the bankruptcy case, no professional support collector considers the existence of a debt to a financial institution as posing a significant obstacle to the collection of the support debt. The reason is simple: the tools available to collect support debts outside of the bankruptcy process are vastly superior to those available to financial institutions and, in the majority of cases, take priority over the collection of non-support debts.

More than half of all child support is collected by earnings withholding. Under federal law such procedures have priority over any other garnishments of the debtor's salary or wages and can take as much as 65% of such salary or wages. By contrast the Consumer Credit Act prevents non-support creditors from enforcing their debts by garnishing more that twenty-five percent of the debtor's salary.

In addition, there are many other techniques that are only made available to support creditors and not to those ''sophisticated collection departments of . . . [those] powerful interests:'' These include:

1. Interception of state and federal tax refunds to pay child support arrears.
2. Garnishment or interception of Workers' Compensation or Unemployment Insurance Benefits.
3. Free or low cost collection services provided by the government.
4. Use of interstate processes to collect support arrearage, including interstate earnings withholding orders and interstate real estate support liens.
5. License revocation for support delinquents.
6. Criminal prosecution and contempt procedures for failing to pay support debts.
7. Federal prosecution for nonpayment of support and federal collection of support debts.
8. Denial of passports to support debtors.
9. Automatic treatment of support debts as judgments which are collectible under state judgment laws, including garnishment, execution, and real and personal property liens.
10. Collection of support debts from exempt assets.
11. The right of support creditors or their representatives to appear in any bankruptcy court without the payment of filing fees or the requirements of formal admission.

While the above list is not exhaustive, it is illustrative of the numerous advantages given to support creditors over other creditors. And while all of these advantages may not ultimately guarantee that support will be collected, they profoundly undermine the assumption of the National Women's Law Center that the mere existence of financial institution debt will somehow put support creditors at a disadvantage. To put it otherwise, support may sometimes be difficult to collect, but collection of support debt does not become more difficult simply because financial institutions also seek to collect their debts.

The National Women's Law Center analysis includes without specification that the support ''provisions fail to insure that support payments will come first, ahead of the increased claims of the commercial creditors.'' Professional support collectors, on the other hand, have no trouble in understanding how this bill will enhance the collection of support ahead of the increased claims of commercial creditors. To them, such creditors are irrelevant outside the bankruptcy process. And in light of the treatment of domestic support obligations as priority claims under current law and the enhanced priority treatment of such claims in the proposed legislation, this objection seems particularly unfounded.

Where support creditors are indeed at a disadvantage under current law is during the bankruptcy of a support debtor. Under existing bankruptcy law support creditors frequently have to hire attorneys to enforce support obligations during bankruptcy or attempt the treacherous task of maneuvering through the complexities of bankruptcy process themselves. Attorneys working in the federal child support program—indeed, even experienced family law attorneys—may find bankruptcy courts and procedures so unfamiliar that they are ineffective in ensuring that the debtor pays all support when due.

Ideally, procedures for the enforcement of support during bankruptcy should be self-executing and uninterrupted by the bankruptcy process. The pending bankruptcy reform legislation goes far in this direction. To suggest that women and children support creditors are not vastly aided by this bill is to ignore the specifics of the legislation.

In the first place support claims are given the highest priority. Commercial debts do not have any statutory priority. Thus when there is competition between commercial and support creditors, support creditors will be paid first. And, unlike commercial creditors, support creditors must be paid in full when the debtor files a case under chapter 12 or 13. Unlike payments to commercial creditors, the trustee cannot recover as preferential transfers support payments made during the ninety days preceding the filing of the bankruptcy petition, and liens securing support may not be avoided as they may be with commercial judgment liens. Unlike commercial creditors, support creditors may collect their debts through interception of income tax refunds, license revocations, and adverse credit reporting, all—under this bill—without the need to seek relief from the automatic bankruptcy stay.

In addition, support creditors will benefit—again, unlike commercial creditors—from chapter 12 and 13 plans which must provide for full payment of on-going support and unassigned support arrears. Further benefits to support creditors which are not available to commercial creditors is the security in knowing that chapter 12 and 13 debtors will not be able to discharge other debts unless all postpetion support and prepetition unassigned arrears have been paid in full.

Finally, and most importantly, support creditors will receive—even during bankruptcy—current support and unassigned arrearage payments through the federally mandated earnings withholding procedures without the usual interruption caused by the filing of a bankruptcy case. Like many other provisions of the bill, this provision is self-executing, the bankruptcy proceeding will not affect this collection process. Frankly, and contrary to the assertions of the National Women's Law Center, it is difficult to conceive how this bill could better insure that ''support payments will come first, ahead of the increased claims of the commercial creditors.''

The National Women's Law Center states that some improvements were made in the Senate Judiciary Committee. This organization may wish to think twice about that conclusion. What the Senate amendments did was to distinguish in some cases between support arrears that are assigned (to the government) and those that are unassigned (owned directly to the parent). The NWLC might have a point if assigned arrears were strictly government property and provided no benefit to women and children creditors. However, upon a closer look, arrears assigned to the government may greatly inure to the benefit of such creditors.

In the first place the entire federal child support program was created to recover support which should have been paid by absent parents, but was not. Such recovered funds became and remain a source of funding to pay public assistance benefits, especially by the states which contribute about one half of the costs of such benefits.

More directly significant, however, is the fact that under the welfare legislation of 1996 (the Personal Responsibility and Work Opportunity Reconciliation Act) support arrearage assigned to the government and not collected during the period aid is paid reverts to the custodial parent when aid ceases. This scenario will become increasingly common in the very near future as the five year lifetime right to public assistance ends for individual custodial parents. In such cases this parent will face the double whammy of being disqualified from receiving the caretaker share of public assistance and—because of the Senate amendments—not receiving arrears or intercepted tax refunds because they were assigned at the time the debtor filed for bankruptcy protection.

In addition, prior to the Senate Judiciary Committee amendments a debtor could not obtain confirmation of a plan if he were not current in making all postpetition support payments. The advantage of this scheme was that it was self-executing. Under the Senate amendments a debtor may obtain confirmation even when he is not paying his on-going support obligation. He is only required to provide for such payments in his plan. In such cases it will then be the burden of the support creditor to bring a bankruptcy proceeding to dismiss the case if the debtor stops paying. While this procedure is a welcome addition to the arsenal of remedies available to support creditors, it should not have supplanted the self-executing remedy which required the debtor to certify he was current in postpetition support payments before the court could confirm the plan.

While the Senate version of bankruptcy reform should certainly be amended to restore the advantages of the earlier draft, it does, even in its present form, provide crucial improvements in the protections and advantages afforded spousal and child support creditors over other creditors during the bankruptcy process. These improvements will ease the plight of all support creditors—men, women, and children—whose well-being and prosperity may be wholly or partially dependent on the full and timely payment of support. Congress has created the federal child support program within title IV–D of the Social Security Act. It is the opinion of those whose job it is to carry out this program that the Bankruptcy Reform Act provides the long overdue assistance needed for success in collecting money during bankruptcy for child and spousal support creditors.

Most of the concerns raised by the groups opposing the bill do not, in fact, center on the language of the domestic support provisions themselves. Instead they are based on vague generalized statements that the bill hurts debtors, or the women and children living with debtors, or the ex-wives and children who depend on the debtor for support. It is difficult to respond point by point to such claims when they provide no specifics, but they appear to fall into two categories.

The first suggests that the reform legislation will result in leaving debtors with greater debt after bankruptcy which will ''compete'' with the claims of former spouses and children. As discussed above there is little likelihood that such competition would adversely affect the collection of support debts. In any event the bill does little to change the number or types of nondischargeable debt held by commercial lenders. it will slightly expand the presumption of nondischargeability for luxury goods charged during the immediate pre-bankruptcy period and will make debt incurred to pay a nondischargeable debt also nondischargeable. It is doubtful that either provision will, in reality, have much effect on the vast majority of ''poor but honest'' debtors who do not use bankruptcy as a financial planning mechanism or run up debts immediately before filing for bankruptcy in anticipation of discharging those obligations.

The second contention is presumably directed at a number of provisions in the bill that are designed to eliminate perceived abuses by debtors in the current system. The primary brunt of this attack is borne by the so-called ''means testing'' or ''needs based bankruptcy'' provisions which would amend the current language of Section 707(b). Most of the opposition appears to stem from the notion that means testing would be a wholly novel proposition. Such a conclusion is plainly incorrect. Virtually every court that has ever considered the issue holds that Section 707(b) already includes a means test or, more accurately, a hundred or a thousand means tests, one for each judge who considers the issue. The current Code language sets no standards or guidelines for applying this test, thus leaving the outcome of a motion subject to the unstructured discretion of each bankruptcy judge. The proposed bankruptcy reform legislation attempts to prescribe one test that all courts must apply.

The precise terms of that standard have been under constant revision since the bankruptcy reform bills were introduced last year, and undoubtedly they will continue to be fine-tuned to ensure that they strike a balance between preventing abuse and becoming unduly expensive and burdensome. But mere opposition to any change in the present law, and vague claims that any and all attempts to address such existing abuses as serial filings are oppressive and will harm women and children, does nothing to advance the dialogue. And worse, the critics appear content to sacrifice the palpable advantages which this legislation would provide to support creditors during the bankruptcy process for defeat of this legislation based on vague and unarticulated fears that women will be unfairly disadvantaged as bankruptcy debtors. In more ways than one the critics would favor throwing out the baby with the bath water. No one who has a genuine interest in the collection of support should permit such inexplicit and speculative fears to supplant the specific and considerable advantages which this reform legislation provides to those in need of support.

Yours very truly,

PHILIP L. STRAUSS,
Assistant District Attorney.

Mr. BIDEN. Mr. President, I want to briefly address two issues that have been raised by the President and by the opponents of this legislation. I honestly believe, compared to the many substantial victories for the Senate position in this legislation, these two issues fall short of justifying a change in the overwhelming support bankruptcy reform has received in the last two sessions of Congress.

First, there is the issue of this homestead cap. I heard people on the floor voting, saying: There is no protection in here, no protection at all. You just let people get away. You allow the Burt Reynolds of the world to go out there and buy multimillion-dollar homes and then declare bankruptcy. This is unfair.

First of all, do you think any of the creditors want that to happen? The companies are concerned about this, along with interest groups that are concerned about this. And on the consumer side, do you think they want people being able to escape having to pay what they owe because they are able to bury assets in a multimillion-dollar home?

So where is this coming from? First, the homestead cap. One of the most egregious examples of abuse under the current law is the ability of wealthy individuals, on the eve of filing for

bankruptcy, having the ability to shelter their income from legitimate creditors by buying an expensive home in one of a handful of States that have an unlimited homestead exemption in bankruptcy. This is one of the most egregious abuses, but it is actually pretty rare, involving only a few of the millions of bankruptcies that have been filed in recent years. Nevertheless, it is an abuse that should be eliminated.

There are reasons that the Senate included a strong provision. That was a hard cap of $100,000 in the value of a home; that is, if your home was worth more than $100,000, your creditors could go after the remainder of that money, but if it was $100,000 or less, your creditors could not get it because we have a principle in this country of not taking away your home based on bankruptcy.

This provision, though, was struck by the House. They did not like the hard cap of $100,000. So what we did was we reached a compromise to avoid the worst abuses as a last-minute move to shelter assets from creditors. That last-minute move to avoid legitimate debts has been eliminated.

To be eligible under any State's homestead exemption, a bankruptcy filer must have lived in that State for the last 2 years before filing. If you buy a home within 2 years of filing, your exemption is capped at $100,000. Put another way, you have to have a pretty good estate plan in order to escape bankruptcy by buying a multimillion-dollar home.

You have to know, under the law, if we had passed it today—and 2 years from now you go bankrupt—so you go out 2 years ahead of time and move into a State that allows you to buy a multimillion-dollar home to escape bankruptcy. So you move into that State 2 years ahead of time, and 2 years ahead of time you buy the home. You take all your assets that you are worried it is going to cost you, and you put them into a home.

Let me tell the Senate, that is a pretty good plan. I don't know how many people know over 2 years ahead of time that they are going to go bankrupt and take all their money out and put it into a home. Granted, I would prefer a hard cap, but the truth is, if you don't buy the home 2 years prior to declaring bankruptcy, the cap is $100,000. So there are a lot of canards that have been used to defeat this cloture motion. I might say to my colleagues, if they want to eliminate the worst abuse of the homestead exemption, then they should have voted for the conference report.

That brings me to the last major issue, the one that has, unfortunately, generated a lot more heat than light. That is what we have come to call—and I saw my colleague a moment ago—the SCHUMER amendment, because of the energy and dedication of my friend and worthy opponent, in this case—hardly ever in any other case—Senator SCHUMER. We all know of the confrontations, sometimes peaceful, sometimes tragically violent, that have occurred in recent years between pro-life and pro-choice groups over access to family planning clinics. Because of the threat to the constitutional right of the people who run those clinics and their patrons, Congress, with my support and President Clinton's signature, passed a bill, the strongest proponent of which was the Senator from New York, the Free Access to Clinic Entrances Act of 1993. The law makes it a crime punishable by fines as well as imprisonment to block access to family planning clinics.

Some of those who have been arrested and prosecuted under the law have brazenly announced that they plan to declare bankruptcy to escape the consequences of their crimes, specifically to avoid paying damages. Some of those individuals have, in fact, filed bankruptcy. But in no case—in no case that I am aware of or anyone else can show me or no case that the Congressional Research Service was able to find—has any individual escaped paying a single dollar of liability by filing bankruptcy. Not a dollar, not a dime, not a penny, it hasn't happened. I don't believe it will happen.

The reason is simple: Current bankruptcy law already states that such settlements for ''willful and malicious conduct'' are not dischargeable in bankruptcy. If that were not enough, current case law supports a very strong reading of the provisions of the current law. When one clinic demonstrator who violated a restraining order attempted to have a settlement against her be wiped out in bankruptcy, her claim was rejected out of hand by the court. The violation of the restraining order setting physical limits around the clinic has been ruled to be willful and malicious under the current code. The penalties assessed against the violator were not dischargeable in bankruptcy.

I ask unanimous consent to print in the RECORD a letter from the Congressional Research Service confirming, as of October 26, that an exhaustive authoritative search did not reveal any reported decisions where such liability was discharged under U.S. bankruptcy code.

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

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, October 26, 2000.

MEMORANDUM

To: Hon. Charles Grassley, Attention: John McMickle
From: Robin Jeweler, Legislative Attorney, American Law Division
Subject: Westlaw/LEXIS survey of bankruptcy cases under 11 U.S.C. §523.

This confirms our phone conversation of October 25, 2000. You requested a comprehensive online survey of reported decisions considering the dischargeability of liability incurred in connection with violence at reproductive health clinics by abortion protesters. Our search did not reveal any reported decisions where such liability was discharged under the U.S. Bankruptcy Code.

The only reported decision identified by the search is *Buffalo Gyn Womenservices, Inc.* v. *Behn (In re Behn)*, 242 B.R. 229 (Bankr. W.D.N.Y. 1999). In this case, the bankruptcy court held that a debtor's previously incurred civil sanctions for violation of a temporary restraining order (TRO) creating a buffer zone outside the premises of an abortion service provider was nondischargeable under 11 U.S.C. §523(a)(6), which excepts claims for ''willful and malicious'' injury. The court surveyed the extant and somewhat discrepant standards for finding ''willful and malicious'' conduct articulated by three federal circuit courts of appeals. It granted the plaintiff's motion for summary judgment and denied the debtor/defendant's motion to retry the matter before the bankruptcy court. Specifically, the court held:

''[W]hen a court of the United States issues an injunction or other protective order telling a specific individual what actions will cross the line into injury to others, then damages resulting from an intentional violation of that order (as is proven either in the bankruptcy court or (so long as there was a full and fair opportunity to litigate the question of volition and violation) in the issuing court) are ipso facto the result of a 'willful and malicious injury.'''—242 B.R. at 238.

Mr. BIDEN. Again, Mr. President, the only case I could find, in fact, held, as I had predicted, that willful and malicious conduct denies you from being discharged in bankruptcy, in a case where a woman was arrested for violating a restraining order or getting too close to the clinic, tried to discharge the fines against her in bankruptcy, and could not.

I repeat: No one has escaped liability under the Fair Access to Clinic Entrances Act through the abuse of the bankruptcy code, not one. As strongly as feelings are on both sides of this issue, the Schumer amendment is, I must say, a solution in search of a problem. I would support it just to make sure we have the extra protection, but in the absence of the Schumer amendment, there is no reason for the Senate to reverse its opinion on the legislation that had received such strong support.

We voted today on trying to get to a conference report that had a strong Senate stamp on it. I think we made a mistake. I think part of the reason why we made a mistake in not invoking cloture was we had a number of absences. There are 16 or 17 or 18 absences, as I count it; 15 or thereabouts were for cloture. But we will come back to it again, as the majority leader has said.

This does not in any way do anything to allow people to violate the free access to clinics law. And it actually helps women and children who depend on support payments and alimony payments. I will speak to it more later.

I see the majority leader is on the floor for important business. I thank the Chair and yield the floor.

Mr. LOTT. Mr. President, I thank Senator BIDEN for his comments and for yielding the floor at this time.