HOUSE OF REPRESENTATIVES—*Wednesday, October 16, 1991*

The House met at 10 a.m.

Chaplain Jonathan A. Panitz, Office of the Chief of Chaplains, U.S. Navy, Washington, DC, offered the following prayer:

O great and immutable Lord, we ask that Your beneficent presence fill these Chambers. Cause the essence of wisdom, knowledge, and discernment to fill the hearts and minds of our Nation's chosen representatives. Enable them to discharge their awesome responsibilities with courage and foresight. Bless them with equal measures of justice and mercy. May their sense of wit be tempered by true compassion. May their desire for effective change be met with patience and forbearance. Bless them, O Lord, as they steer this Nation's democratic course through sometimes troubled and turbulent waters. When ill winds blow, create for them a haven of safety and security. Enfold them securely in the comforting web of Your grace. Bring to fruition all their noble and worthy plans. Allow them, O Lord, to reflect honor and glory upon our great democracy so that all who know us will call us truly blessed. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from Florida, [Ms. ROS-LEHTINEN] please come forward and lead the House in the Pledge of Allegiance.

Ms. ROS-LEHTINEN led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

INTRODUCTION OF LT. COMDR. JONATHAN A. PANITZ

(Mr. ROE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROE. Mr. Speaker, it is my pleasure to have Lt. Comdr. Jonathan A. Panitz, a former constituent, as the guest chaplain for today. Chaplain Panitz, who is currently the head of the policy branch in the Office of the Chief of Chaplains at the Pentagon, is the son of a dear friend, the late Rabbi David H. Panitz.

Chaplain Panitz received his B.S. degree from New York University in 1968 and his rabbinic ordination in 1975 from the Leo Baeck College of London, England. He also received a masters degree in biomedical ethics and moral theology from Catholic University in 1988, and a masters degree in guidance and counseling from Providence College in 1991. He is married and has three children.

Chaplain Panitz has served congregations in Salisbury, MD, and Fall River, MA. As a Navy chaplain, he has held positions in Yokosuka, Japan; Norfolk, VA; and Newport, RI. He is a member of the Rabbinical Assembly, the American Mensa Society, the American Association of Counseling Therapists—specialty in hypnotherapy, and the Jewish War Veterans. As I mentioned above, he is currently the head of the policy branch of the Office of the Chief of Chaplains. I am very pleased to have him here today, Mr. Speaker.

THE CRIME BILL

(Mr. SENSENBRENNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, the delay in bringing up the crime bill is not a case of haste makes waste. Last March the President challenged us to pass a crime bill within 100 days. We failed to do that.

Last Thursday the Rules Committee reported out a rule so that we could bring up the crime bill yesterday and start debate on it, but lo and behold, the liberals on the House Judiciary Committee did not like the rule because it did not stack the deck so much in their favor. So the crime bill did not come up yesterday, and the Rules Committee reconvened and reported out a rule that will make it much more difficult for the gentleman from Illinois [Mr. HYDE] to get the liberals' habeas corpus provision stricken from the bill and replaced with the President's habeas corpus reform.

Let there be no mistake about it, the rule which we will be voting on shortly is one that is designed to protect criminals, not to protect society, and for that reason alone the rule ought to be voted down.

BENEFIT OF THE DOUBT

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, Judge Souter got the benefit of the doubt. Nancy Reagan got the benefit of the doubt. Clark Clifford got the benefit of the doubt. Edwin Meese got the benefit of the doubt, and now Judge Thomas gets the benefit of the doubt. And that is good, because the Constitution says you are innocent until proven guilty.

Not quite so. Check the laws of the Internal Revenue Service. An American taxpayer is guilty and must prove himself innocent in a court of law.

The bottom line here in the Congress is very simple. If you are a big shot and you have political clout in America, you get the benefit of the doubt and you are innocent until proven guilty. But if you are a plain old American taxpayer, you just simply get screwed, and that is the fact of it.

GET TOUGH ON CRIME, NOT SOFT ON CRIMINALS

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, in my home State of California, the reported incidents of violent crimes have been increasing at an alarming rate. Reports of violent crimes in California have increased by over 35 percent in the past 5 years, while reports of willful homicides have increased almost 10 percent in 1990 alone. Let's not get too caught up in these percentages, though, these numbers represent almost 312,000 violent crime victims and 3,562 murder victims, not to mention the families and friends, who are also victimized by these horrific crimes.

Now, at a time when many Americans have lost the right to feel safe in their own communities, the House is considering so-called crime control legislation which, as reported, would help criminals feel safer on our streets.

I strongly support the President in his desire to see Congress pass tough, comprehensive anticrime legislation that ensures the certainty of apprehension, prosecution, and punishment of violent criminals. The message to criminals should be simple: If you commit a crime, you will be caught. If you are guilty, you will be punished.

TERM LIMITATION BIG WINNER IN THOMAS CONTROVERSY

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON, Mr. Speaker, who is the big winner after the Thomas controversy? Term limits for the Congress.

This is unfortunate because this movement is a Republican scheme to gain control of the Congress. If we had term limits, the Government would be run by bureaucrats, staff, and lobbyists, because all elected officials would be too busy getting their feet wet.

Very few know that since 1980 close to 70 percent of the Congress has changed. Understandably, there is frustration with our process out there.

One constituent told me this weekend that while she thought I was a good Congressman and supported me, that after 9 years she thinks I am part of the process that needs to be changed. I asked her why, and she said, "Because you guys, especially the President, aren't dealing with problems like the economy."

Mr. Speaker, the time has come to deal with problems like the economy. The President needs to lead. He is too preoccupied with foreign affairs, negatively using the quota issue, vetoing unemployment bills. We need to deal with important problems like health care, education, and the economy. Unless we do that, this term limit movement will gain more ground.

□ 1010

SUPPORT THE VOLKMER-SENSENBRENNER AMENDMENT TO H.R. 3371

(Mr. SCHULZE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHULZE. Mr. Speaker, every 10 seconds in America, a criminal breaks into a home or business. Will eliminating 22 semiautomatic weapons do anything to reduce criminal activity?

Eliminating guns or the ability to legally own guns has never prevented criminals from arming themselves with the weapons of their choice. For years, gun control advocates argued that the Saturday night special was the choice of criminals, now, it is semiautomatic assault weapons.

Washington, DC, is the best example of gun control's absolute and total failure. Murder occurs on a daily basis in our Nation's Capital where it is illegal to own a handgun, much less the weapons in H.R. 3371.

Banning the weapons contained in H.R. 3371 will do nothing to reduce the alarming number of break-ins and violent crimes occurring in America.

I urge my colleagues to reject gun control as crime control. Support the Volkmer-Sensenbrenner amendment to H.R. 3371.

DELETE GUN CONTROL FROM CRIME CONTROL BILL

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, again, I want to inform my colleagues that I will be offering amendments striking the bans on so-called assault weapons and magazines with a capacity of more than seven rounds when we debate the crime bill this week.

We will hear heated debate, and some will argue that these assault weapons are the weapons of choice for the criminals. I seem to remember a few years ago when we had the Volkmer-McClure bill up that the weapon of choice was an automatic weapon, and we banned that. Then they said that the "Saturday night special" was the weapon of choice for the criminals, and when we did the Brady bill, the handgun was the weapon of choice for the criminal.

You know, they have no data to support the allegations, and their provisions are based upon erroneous assumptions.

These two provisions I am seeking to strike will not affect criminals, but will affect the law-abiding citizen. It is a longstanding position of mine that gun control measures do not equal crime control.

The committee did include significant penalties for illicit firearms use. I support those provisions, because they focus where the problem is: the criminal.

I cannot support gun control under the guise of crime control. I ask support of my efforts to delete gun control from a crime control bill.

PEOPLE NEED ANSWERS, NOT BACKDOOR VETOES

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, I recently received a letter from a constituent of mine who wrote: "For the people like myself who aren't earning big money * * * how do we make it? Why do we have to be hammered like this? The old American dream of a home, a family, a job seems to have been replaced * * * I feel I speak for many when I say we need some answers."

Mr. Speaker, I spend every weekend at home, usually at shopping centers, listening to my constituents. People are scared about the future. The American dream no longer seems to be within reach of average working families; they want some answers.

And I do, too. Why do our highest leaders not seem to be listening? The gross national product is down for the third straight quarter, poverty is up, income for middle class families is down, corporate profits are down, yet the President still insists that a recovery is under way and that the economy is in no need of attention.

There are 9 million Americans presently unemployed, and they are far from realizing the American dream.

The White House listens to the cries of the Kurds and the cries of Bangladeshi. Why can not the White House acknowledge the cry for attention from hard-working people in need. Unemployment benefits are being exhausted and the President looks for yet new ways to put off and ignore the problem. The people need answers, not backdoor vetoes.

HABEAS CORPUS REFORM

(Mr. WOLF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLF. Mr. Speaker, today we debate the Judiciary Committee's version of the President's crime bill, a bill that weakens many of the most important crime control measures the President seeks, and which many in the House have sought for years.

We have an opportunity today to show the American people that this House has the will to regain control of the towns and cities of this Nation and get the criminals off the streets and behind bars.

The President and some of our colleagues in the House have come up with a plan to do this. We need tough but fair standards that will show the criminals of this Nation that the Congress is serious about controling crime.

While we have a duty to protect the constitutional rights of those who are charged with crimes and find themselves going through our justice system, we also have a responsibility to protect the innocent victims of crime whose own lives and the lives of their families are forever changed.

Guilty people should go to jail. Innocent people should be exonerated. And victims should be protected by laws that work.

Let us pass tough language, like the President recommended, and get serious about controlling crime in this Nation.

THE POLICE CORPS

(Mr. MCCURDY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCCURDY. Mr. Speaker, my colleagues, in spite of all the rhetoric, it is perfectly clear that the Federal Government does not have much jurisdiction over the crimes that affect most Americans today. Most of those are

governed by local communities and the States.

However, there is something the Federal Government can do. This week I am offering an amendment along with the majority leader, the gentleman from Missouri [Mr. GEPHARDT], the minority leader, the gentleman from Illinois [Mr. MICHEL], the gentleman from California [Mr. DORNAN], the gentleman from Nebraska [Mr. HOAGLAND], and 65 other cosponsors called the Police Corps.

This is something the Federal Government can help local communities with by increasing the number of cops on the beat, putting cops on the street where they belong. It is similar to the GI bill where we offer educational opportunities for young people who want to spend 4 years in a local police department. It expands the pool of available applicants. It raises the qualifications of our police, and it frees police to deal with crime in the most volatile areas.

Again, it puts police on the street where they belong.

I urge your acceptance and support of this amendment.

THE EXCLUSIONARY RULE

(Mr. McEWEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McEWEN. Mr. Speaker, as you know, there are many things that the Federal Government can do in the area of crime, not the least of which is to define when a criminal is not a criminal.

When the proof of the criminal's guilt may be a gun or burglary tools or stolen merchandise which are found by a police officer who thought she was conducting a proper search but later found that someone had made a technical mistake, as an example.

The Constitution of the United States through the Bill of Rights protects people from unreasonable searches and seizures. In some countries, we all know police forces run rampant over the rights of individuals. Our fourth amendment protects that from happening in the United States.

To help enforce the fourth amendment, our courts have adopted the policy of not allowing evidence into a trial if the evidence came to light as the result of an imperfect action by the police such as an improper entry into the home, or finding evidence unexpected in a search.

But what about the officer who followed the law? What if she felt that she did everything right, and the court finds that this was only an insignificant mistake like maybe not double checking a well-executed warrant when it later turned out to be mistyped before conducting the search? Should that evidence be thrown out then, too? Is setting murderers and rapists and assaulters free the price that Americans must continue to pay until all police officers achieve human perfection?

The President's crime bill makes reasonable concessions for minor police human errors that would otherwise put known criminals, people directly implicated in serious crimes, on the street.

The Democrats' crime bill dilutes this commonsense provision. When police officers act in good faith in the interests of justice, we need to exclude the exclusionary rule.

EQUALITY FOR WOMEN

(Mr. SARPALIUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SARPALIUS. Mr. Speaker, we have just witnessed how sexual harassment can affect a woman in this country.

Mr. Speaker, in this country, if a woman is sexually harassed, the maximum award that she can receive in the courts is her job back, which she does not want, attorneys' fees paid for, and backpay. And that is it.

□ 1020

This body addressed that issue. Today in this country, there is no real equality for women, but when we passed the civil rights bill, a big percentage of that bill addressed equality for women, I thought we had taken a giant step. After we passed that bill, the President said that he would veto it.

Mr. Speaker I challenge our President to open his eyes, to reexamine the civil rights bill, look at what it does for equality for women in this country.

WHAT IS UP AND WHAT IS DOWN

(Mr. PAXON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PAXON. Mr. Speaker, there are just 21 days left until the first anniversary of the 1990 budget agreement, and after that 1-year time period has elapsed I think it is a good opportunity to evaluate the effect of that budget agreement on this country.

Let us look at what is up and let us look at what is down. What is up, taxes are up, Federal spending is up, the deficit and the debt of this Nation are up higher than ever before; the result, unemployment at its highest levels ever with at least 2 million American families feeling the sting of unemployment in the last year, 2 million more.

What is down is economic growth, job creation, business and economic indicators; most of all hope and opportunity for every American family is down as a result of what we have seen over the past year.

Mr. Speaker, the American people know how to change all this. Let us bring taxes down, seriously down. Let us control runaway government spending and government redtape.

Most of all, most importantly, Mr. Speaker, as we approach this 1-year anniversary of that budget agreement, let us make economic growth this Nation's No. 1 national priority on a bipartisan basis.

ECOTERRORISM IN THE PERSIAN GULF

(Mr. TAUZIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TAUZIN. Mr. Speaker, I rise today to remind this House of the worst, the cruelest form of ecoterrorism that has ever been inflicted on this planet. The memories of the victory of the war in the Persian Gulf are still fresh and so is the oil.

I show pictures today that were taken just 2 weeks ago of the oil damage that still remains in the Arabian Gulf, oil damage that now kills and destroys mangrove swamps, sensitive environmental areas that are breeding grounds for fish and wildlife, for sea turtles, oil that continues to coat hundreds of miles of beaches and sensitive environmental areas in the Arabian Gulf.

Saddam Hussein's act of ecoterrorism still has gone unanswered. Tomorrow, the Committee on Merchant Marine and Fisheries will begin its inquiry into this mess and we will begin demanding that the United Nations take steps to encourage our friends in Saudi Arabia and Kuwait to begin the cleanup. They are victims of this mess. They are not the cause of it, but we need to encourage them to begin the efforts of cleaning it up.

We need to demand that the United Nations take steps to require that Saddam Hussein pay for the almost one-half billion dollars that Saudi Arabia has estimated it will cost to clean up the gulf.

Very little is being done today. The new world order witnessed the victory when we won the war in the Persian Gulf, but we also witnessed the loss of the gulf.

Mr. Speaker, it is time now that we begin to clean it up and win it back.

LET US TAKE A FRESH LOOK AT AMERICA'S POSTAL SYSTEM

(Mr. BROOMFIELD asked and was given permission to address the House for 1 minute.)

Mr. BROOMFIELD. Mr. Speaker, yesterday, a fellow Member came up to me and said, "BILL, I'm a cosponsor of your resolution for a commission to study the Postal Service, but I've got to take my name off."

"The Postal Committee and the postal unions are putting a full court press on me," he said. "They say your bill is for privatizing the Postal Service."

Privatize, I say, baloney. Nothing in the resolution calls for privatization, and I showed him the resolution to prove it.

What are they afraid of?

It has been 20 years since the Federal Postal Service became a quasi-independent agency. Americans are up in arms about the lousy service.

It is time for some fresh thinking about how to manage America's postal system.

We need a bipartisan commission including representatives of postal unions and management, as well as Congress and the general public, to review the process.

INTRODUCTION OF FOREIGN AID REPORTING REFORM ACT OF 1991

(Mr. VALENTINE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VALENTINE. Mr. Speaker, this morning I introduced the Foreign Aid Reporting Reform Act of 1991. This bill would require the President to submit to the Congress an annual report on the entire American foreign aid program containing detailed information about costs, justification, and proposed termination dates for U.S. foreign assistance programs.

I believe we need to understand just what it is we're going to spend our constituent's money on before we make decisions that will affect their economic future by affecting the economic health of our country.

As we find new ways to juggle increasingly limited resources and the world changes around us, we must realize that this one facet of our foreign policy has remained untouched. This legislation will finally allow us to see the inner workings of the giant machine that is our foreign aid program.

Mr. Speaker, I urge all of my colleagues to join me in supporting this bipartisan effort. Bring accountability back to the foreign aid program. Support the Foreign Aid Reporting Reform Act of 1991.

RESTORE THE DREAM OF FAMILY FARMERS

(Mr. BARRETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARRETT. Mr. Speaker, the dream of many family farmers and ranchers has been to pass along the farm to their children or relatives.

Unfortunately, that vision today is being plowed under by our Federal Tax Code. Currently, if a husband and wife have died, the Federal Government places a special-value tax on the children or relatives that inherit the farm or ranch.

Constituents have told me some heart-wrenching accounts of how this tax killed any possibility of keeping the farm in the family because of the inheritance taxes they had to pay. Many times the family had to sell the land just to pay the taxes.

That is why today I am introducing the Farm Estate Fairness Act that will amend the Internal Revenue Code to allow any qualified heir to be free from the special-value tax.

The hope of family farmers for more than 200 years has been to pass the place along to the son or daughter. I urge my colleagues to cosponsor the Farm Estate Fairness Act, and allow the dream to become reality.

LISTEN TO THE PEOPLE ON THE ECONOMY

(Mr. APPLEGATE asked and was given permission to address the House for 1 minute.)

Mr. APPLEGATE. Mr. Speaker, the real crime that we have in this country is the economy of the country, and until we get that economy straightened around, crime in this country is going to run rampant.

I think I know how the people feel, and just in the event that you did not read the CBS poll on Bush and the economy, it says that there is an approval rating of 30 percent against a 62-percent disapproval rating.

And is President Bush paying attention to the economy, paying enough? Eighteen percent, he should pay more by 78 percent.

Bush's weakness on the economy: Given the importance of both foreign and domestic policy, does the President spend too much of his policy on foreign policy? Fifty-nine percent.

Does he spend too much time on domestic? Two percent, that is all.

And the sad part about it is the way people feel, the future for the next generation of American's will be, and this is how they feel, it is going to be better, only 20 percent; but 52 percent of the people feel that it is going to be worse.

I think the American people, by these polls, are sending a very strong message to those of you who sit in this body. It will have some say over how the economy is going to ultimately end up. You had better get the message. The people are saying something, and if you do not listen to what they are saying, they are going to throw you out of office next year.

NEXT SATURDAY IS TAXPAYER'S ACTION DAY

(Mr. DELAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELAY. Mr. Speaker, I agree with the gentleman who just spoke in the well. Congress does not have to wait for the President. It can act on its own. Instead of destroying the economy, it can help the economy.

Mr. Speaker, all over America, taxpayers are angry and fed up. Everywhere they turn, some politician is going on and on about the need for new taxes. Well, as Ronald Reagan said so long ago, the problem isn't that the people are taxed too little, it's that Government spends too much. But there is something the taxpayers can do.

This coming Saturday, October 19, the Council for Citizens Against Government Waste is sponsoring Taxpayers' Action Day—a day of nationwide protests against tax hikes, Government waste, corruption, and mismanagement.

Mr. Speaker, to join the tens of thousands of angry taxpayers already coming out on the 19th and to find where the nearest demonstration is you can call 1-800-BE-ANGRY—that is 1-800-232-6478.

□ 1030

S&L BAILOUT SHOULD BE ON A PAY-AS-YOU-GO BASIS

(Mr. KENNEDY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KENNEDY. Mr. Speaker, the last thing my colleagues want to hear is more funds are needed for the savings-and-loan bailout. The President has asked for another $80 billion to pay off the depositors of failed thrifts, double the money that has been spent so far.

The President proposes to borrow these funds and have the average taxpayers pay them back with interest over the next 30 years. That is a huge ball and chain around the necks of the next century's working families.

Instead of building better roads and schools or fighting crime and budget deficits, they will be paying off our bailout bill just because we lack the courage to pay it ourselves. Last week members of a banking subcommittee said, "No more business-as-usual inside the beltway." They voted to replace Bush's budget-busting borrow-and-spend bailout with a pay-as-you-go plan. It was a vote to cut the budget deficit by up to $200 billion. It was a vote to end the budgetary double standards by treating the bailout just like we treat other programs for housing, for education, and for health care.

Most importantly, it was a vote to keep, not break, the budget's summit agreement as well as to keep faith with future generations of Americans.

They expect us to lead them with a stronger America than the one we inherited. Mr. Speaker, if we can stop

writing hot checks on the House bank, then we can surely stop the President from writing them on the people's bank.

It is time we start paying our bills as they come due, not sending them to our children and to our grandchildren.

CONGRESS MUST NOT GO HOME AND LEAVE SMALL BUSINESS WITH A PROMISE OF "TRUST US"

(Mr. IRELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, I rise in support of the Small Business Jobs and Tax Benefits Act of 1991, introduced by Mr. FRANKS of Connecticut. This bill would extend five critically important small-business tax credits that are scheduled to expire at the end of this year.

If we fail to extend them before we adjourn, small businesses will be faced with an impossible choice: Gamble on the hope that we will approve them retroactively; or stop doing the research, stop providing the training, and simply discontinue the other activities that these credits are designed to encourage.

Smaller firms simply cannot afford to do business the way that Congress does—in fits and starts, with little regard for the future.

Mr. Speaker, I say to my colleagues this is no time for us to close up shop and go home, leaving small businesses and their employees with little more than a promise of "Trust Me" from Uncle Sam.

I urge Members to join me in cosponsoring H.R. 3487. Remember—it's easy to say that you're all for small business. But it is how you vote that really counts.

LET US PROHIBIT SUBMACHINEGUN SALES, TAKE THEM OFF THE MARKET

(Mr. HOAGLAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOAGLAND. Mr. Speaker and my colleagues, we have a lot of hard and difficult work to accomplish in the remaining months of this year. I would like to call on all of you to support the ban on semiautomatic weapons that is contained in the crime bill that we are going to begin debating today. The crime bill prohibits 13 categories, 22 specific kinds of semiautomatic assault weapons. Now, these weapons have no purpose whatever for the average citizen, no reason for the average citizen to own. They have no hunting purpose. The only purpose is to provide firepower for criminals against police officers who carry handguns that really have virtually no defense against these submachineguns.

So I would ask all of you to support the ban on submachineguns. It does not include the popular M–1 carbine many of us are familiar with from our service in the armed services. It does not prohibit semiautomatic rifles that people like to use for hunting. It prohibits submachineguns. Let us take those off the market.

THE CRIME BILL: VOTE FOR GEKAS, HYDE, AND McCOLLUM AMENDMENTS

(Mr. ZIMMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ZIMMER. Mr. Speaker, in early March, the President challenged Congress to enact a tough crime bill within 100 days; 233 days later, the Democratic leadership is finally moving on what they call a crime bill.

However, their bill is a facade. It will not curb crime, but rather will offer criminals greater protection from the law.

Despite law enforcement officials' efforts to protect innocent victims, crime runs rampant in this country.

Nearly 50 percent of all violent crimes are committed by repeat offenders.

The lipservice and demonstration programs offered in the Democrats' bill will not save the lives of innocent people. We need a tough crime bill that will effectively put criminals behind bars and give Americans back their communities.

The President's crime bill, H.R. 1400, includes key provisions that were passed in the previous Congress and, unlike the Democrats' crime bill, it would be tough on criminals.

Critical amendments that will be voted on today and tomorrow can salvage the Democrats' crime bill. If amended to include several of the President's proposals, this crime bill could put criminals in jail where they belong, provide law enforcement officials with the help they need, and give Americans the protection they deserve.

I urge my colleagues to vote for the Gekas, Hyde, and McCollum amendments and for their constituents' lives and safety.

SUPER SAVINGS BONDS

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, I rise today as cochair of the congressional competitiveness caucus to introduce the Super Savings Bond Act, sponsored by the leadership of the congressional competitiveness caucus and Cochairman JIM KOLBE, and Vice Chairmen NORM MINETA and AMO HOUGHTON, and several members of the Ways and Means Committee.

This legislation will increase national savings. It will reduce our Nation's debt currently owed to foreign creditors. In 1990, the United States paid $206 billion in interest on our Federal debt. Of this, 20 percent was paid out to foreign creditors. The amount of foreign funds that flood into America to compensate for the lack of savings here at home among individuals, corporations, and government impacts directly on our economic health and competitiveness. Today 62 cents of every U.S. individual tax dollar goes to pay interest on the national debt, and of that 8 cents flows offshore, amount to $37.4 billion in 1990 and $172.3 billion between 1985 and 1990. Why shouldn't we pay that money to our own citizens?

I once asked a renowned economist if we could hold the Federal deficit constant but substantially increase the purchase of U.S. savings bonds by U.S. citizens whether we would see an increase in savings in America and a decrease in interest rates. His reply was yes. But it would take concerted Presidential and congressional leadership to achieve.

The Super Savings Bond Act will be attractive investments for U.S. households while at the same time it will reduce our Nation's dependence on foreign financing. Our bill creates super savings bonds [SSB's] to encourage saving among working men and women so each American has the chance to make a contribution to a healthy America. SSB's will be sold through a payroll deduction system to encourage a regular pattern of saving. SSB's will be sold in small denominations ranging from $50 to $500 in face value.

The U.S. savings rate has dropped from over 7 percent of national income in the 1970's to barely 1.5 percent of national income in 1990. The United States saves less than any other Western nation. The United States savings rate is less than one-quarter of Japan's saving rate and less than half of the savings rates of Canada, the United Kingdom, France, and most other European nations.

Only one-quarter of all U.S. households currently own U.S. savings bonds. The savings bond market is not a saturated market. The SSB's higher rate of return should appeal to all potential households, helping more people to save. Since it is fundamentally a good investment, SSB's can also unleash a new category of savers among households of moderate means who will be able to buy bonds in small denominations.

National dissavings is manifested in America's large, nonsustainable budget and trade deficits. The economic independence of America is being eroded as individuals, corporations, and the Federal Government live beyond their means.

SSB's will yield 95 percent of the 5-year Treasury bond rate after being held for 5 years, an increase over the rate currently offered on savings bonds, which is the greater of 6 percent or 85 percent of the 5-year Treasury constant maturity yield.

Importantly, SSB's introduce fairness in savings for all income ranges. As it stands now, savings bond purchases through payroll deductions yield only 85 percent of the 5-year Treasury bond rate. This means foreign investors who can afford to purchase U.S. Treasury bonds in large denominations get a much larger return on their investment. SSB's will correct this inequity by allowing the small investor to purchase bonds in small denominations with a 95-percent yield and encourage a whole new group of savers who would otherwise not be able to save or purchase bonds.

It is vitally important to enlist ordinary Americans in the reclaiming of America. Currently, the economy is fueled by institutional investors. Control of the economy has effectively been transferred from Main Street to Wall Street. This legislation sends a clear message to individuals that the Nation puts individual investors on par with institutional investors.

As savings among individuals increase, the purchasing of the Nation's debt by foreign investors will decrease. Currently, U.S. savings bond holders own 3.7 percent of the Federal debt while foreign investors own 12.4 percent of the Federal debt. This legislation will put the Nation's bond purchases back into domestic hands. As the cochair of the congressional competitiveness caucus, I know that it is critical to increase our savings and reduce our debt service to generate domestic investment for education, research, technology, and infrastructure.

I am pleased that the Super Savings Bond Act is a bipartisan, competitiveness caucus initiative. I hope the Congress will move quickly to pass this legislation and make it one part of a national campaign to increase personal, corporate, and government savings. SSB's can go a long way toward instilling a savings ethic among individuals and help our Nation regain its economic independence.

AMERICAN PEOPLE DO NOT WANT MORE LAWS; THEY WANT BETTER AND STRONGER ENFORCEMENT OF THE LAWS ALREADY ON THE BOOKS

(Mr. DUNCAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DUNCAN. Mr. Speaker, I served for 7½ years as a criminal court judge before coming to Congress. I tried primarily felony cases, the most serious cases.

The most basic civil right of all is the right for a person to be safe in his home and on the streets. Protection from crime is the most basic, the most fundamental of governmental functions. The people of this Nation want us to be tougher on convicted criminals.

While I support many things in the crime bill we will take up today, to be honest I do not believe the people of this Nation really want more laws. They want better and stronger enforcement of the laws already on the books. They want tougher judges. They want less lenient parole. If a criminal is convicted, they want him to serve his sentence and not be back out on the streets after 60 or 90 days.

They want to stop endless, frivolous, expensive appeals. They believe in the right to appeal, but not over, and over, and over again.

Especially, I believe, they want prosecutors who will go after real criminals, violent criminals, and not just seek headlines and publicity, spending all their time trying to advance their own careers by prosecuting only the high-profile defendants like Oliver North and others.

LEGISLATION TO CONSOLIDATE GOVERNMENT'S REAL ESTATE INVENTORY

(Mr. McMILLEN of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McMILLEN of Maryland. Mr. Speaker, the savings and loan fiasco, HUD mismanagement, and other debacles of the administration have resulted in the Federal Government becoming the reluctant owner of between $25 and $35 billion in repossessed real estate. No one really knows the exact amount—and there are 15 different agencies conducting uncoordinated liquidations throughout the country. I rise today to introduce legislation to remedy the situation. It will: consolidate the inventory, develop a governmentwide policy, and speed up the disposition process. Most of the agencies holding the properties were established to carry out some very important social programs and, at best, are ill-equipped to dispose of the vast inventory of Government-owned real estate. The result has been an ever-increasing inventory and escalating costs. The Government has an obligation to the taxpayers to dispose of these properties in the most efficient manner possible—not to remain a landlord with the bill for holding the real estate going to the taxpayers. I urge my colleagues to cosponsor this important legislation.

□ 1040

TAXPAYERS' ACTION

(Mr. GOSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, some say if we stacked enough dollar bills on top of each other to equal the national debt, mankind would achieve the dream of reaching Mars. At the rate we're going, even Saturn doesn't seem far away. The fiscal chaos this represents is tearing our country apart. Not a day goes by that I don't hear from my constituents who are fed up. This weekend, at over 300 rallies across the country, the American people will take to the streets in honor of taxpayers action day. Their outrage is legitimate, and it's time Congress paid attention. Look at the numbers:

For every dollar raised in tax revenue, Congress spends $1.58.

The Tax Foundation estimates that Americans work an average of 125 days to pay his or her total tax bill.

Today, a median income family of four pays 24 percent of its annual gross earnings to the Federal Government—32 percent when you figure in State and local taxes.

And for what? Our Federal deficit has risen from $200 to $350 billion. No wonder the American people are angry. It is time to stop wasteful spending in Congress.

REFORM THE SUPREME COURT CONFIRMATION PROCESS

(Mr. COLEMAN of Missouri asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COLEMAN of Missouri. Mr. Speaker, Judge Clarence Thomas has been confirmed to serve as an Associate Justice on the Supreme Court after what undoubtedly was the ugliest confirmation battle in the history of the Republic. Instead of a judicious and deliberate examination of the merits of the nominee, the American people were confronted with a 107-day-long media sideshow of rumor, innuendo, and falsehoods.

While part of this sorry spectacle was the product of pure politics, much more of it was the product of relentless and ruthless campaigns by well-heeled special interest groups whose activities were hidden by current law, which casts a legal veil over their activities.

Grassroots participation in any political process in our democracy is desirable. But does the political activity that blocked Judge Robert Bork's nomination, and which attempted to do the same to Judge Clarence Thomas, represent public participation or manipulation of the judicial process by special interest groups.

Mr. Speaker, the blatantly political motives of these special interests, and their gutter tactics, have degraded the confirmation process and the Court's very independent stature.

Even the Senators who have the constitutional responsibility to confirm

judicial nominations do not know who is contributing to and staging these campaigns for or against Supreme Court nominees. Unlike those who support and finance other public officials in the executive and legislative branches, there is no requirement that those financing elaborate campaigns to block the nomination of a Supreme Court justice disclose their identity.

While blatant political lobbying for or against a Supreme Court nominee is not prohibited, it has never been an accepted part of the confirmation process until recently, and it has degraded the Court's independent stature.

Mr. Speaker, I have introduced legislation H.R. 3226 that would require all individuals and organizations spending money to support or oppose a Supreme Court nominee, to file Federal financial disclosure forms similar to those required of congressional and Presidential campaigns. Failure to disclose financial sources would carry severe penalties, including a fine up to $5,000 and/or a prison sentence up to 1 year. Repeat offenders would be fined up to $10,000 and/or imprisoned for up to 5 years.

This legislation will allow both the public and the Senate to know precisely who the special interests embroiled in the confirmation process are and where they get their money to wage costly public relations campaigns.

Mr. Speaker, I urge my colleagues to support this bill to take an important step toward ending the lobbying frenzy that has so degraded the confirmation process for nominees to the Supreme Court.

CRIME BILL OFFERS MORE PROTECTION FOR CRIMINALS THAN LAW-ABIDING CITIZENS

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, America has more crimes per capita than any other developed country. Police, prosecutors, and the courts need a tough, practical crime bill.

Despite the pleas of the President on March 6 for Congress to enact his tough crime bill within 100 days—we are now at day 224—finally a crime bill is in sight, but it's not the tough, substantive anticrime bill that citizens want.

This bill contains more protections for the criminal than for the law-abiding citizen.

Many of the so-called anticrime bill provisions represent grants that duplicate programs that are already funded. More studies are not what our police and law-abiding citizens need or want.

We need to reduce crime and guarantee punishment of criminals. Instead, we have a bill that increases grants and ignores victims.

CRIME IN AMERICA

(Mr. BILIRAKIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BILIRAKIS. Mr. Speaker, what we will be debating here on the floor today is fear. We will be considering the Omnibus Crime Control Act, but fear is the issue.

That is the way America's citizens look at it. They don't want to fear walking the streets of their neighborhoods. They don't want to fear for their children's safety. They don't want to fear losing their communities' identity to ruthless drug lords and criminal gangs.

In the United States, someone is murdered every 24 minutes, a woman is raped every 6 minutes, someone is robbed every 55 seconds, and someone is assaulted every 33 seconds. It is incredible that this can go on in our country; America's citizens want, and expect, help from us today.

When we finish with this legislation, Mr. Speaker, we must be able to look these people in the eye and say, "here is help." We must make this a tough, anticrime bill—it's time to give our constituents what they want and expect.

It's time to take away the fear.

TWO THINGS THAT NEED TO BE CHANGED IN THIS COUNTRY

(Mr. CAMPBELL of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CAMPBELL of California. Mr. Speaker, today we have the chance to do something right for the American people on the crime bill. We have the chance to change two things that really are in need of changing in this country.

No. 1, when a police officer gathers evidence of a crime, and that police officer has done nothing wrong, it is crazy that frequently we find that evidence excluded, and a criminal goes free, because, through no fault of the police officer, some legal technicality was not followed.

Now we recently had an example of that where 1,200 pounds of cocaine were collected, but the police officer called in the wrong license plate. If it had not been for that particular law in that particular circuit, if it had been a different part of the country, that criminal would have gone free to sell more cocaine on the street.

Mr. Speaker, I think today we have a chance to stand up for what is right, and that is for the police officers who gather information; it should be available to be used and not thrown out for a technicality.

No. 2: the death penalty. It is appropriate, it should be enforced, and it should be certain. Right now one never knows if it is going to be applied or not. Appeals go on endlessly.

Today stand up for what is right, and send a message: Serious criminals will have to face the most serious punishment.

Mr. Speaker, those are two things we can do today to improve fairness to the law enforcement officers for whom we all have so much respect and to protect those of us who find ourselves the victims of crime.

CRIME BILL AMENDMENTS TO ALLOW A JURY TO IMPOSE THE DEATH PENALTY

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, Members of the House, the Democratic crime bill that will come before us is a slap in the face to the America people. The American people for a long time have expressed their willingness to accept the death penalty in those serious, and vicious and heinous cases that we read about too often, yet the Democratic crime bill that will come before us makes it almost impossible for the jury to have the option to impose such a death penalty, and so it is a bill that wraps its arms around a convicted murderer.

Mr. Speaker, this convicted murderer has just shot someone, killed someone. It destroyed an American citizen, a fellow American citizen. He receives a murder in the first degree verdict from a jury, and then this bill says we are going to protect him from a jury that might want to impose the death penalty.

We want to change that with our amendments to make sure that the jury has the full option in those tragic, violent, murderous cases to allow that jury to bring in the death penalty.

Further, this Democratic bill says that even if he is convicted, even if he does receive the death penalty, we are going to make sure through this bill that with endless appeals that individual will stay on for a lifetime on death row failing appeal after appeal.

Mr. Speaker, we want to try to curtail those appeals and bring swift and certain judgment to the convicted cold-blooded killer where a jury has already found him guilty of murder in the first degree, and he deserves no more consideration than the option on the jury's part on whether or not to impose the death penalty.

ABORTION—THE MOTIVATOR OF VOTES IN THE OTHER CHAMBER LAST NIGHT

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, last night on national television I said that the unseen specter at the entire ghastly banquet of character assassinations that went on over the last week was the specter of abortion. It was the main driving issue during all of the hearings, spoken and unspoken, and it was the main motivator behind most, certainly not all, most of the votes in the other distinguished Chamber last night.

□ 1050

Mr. Speaker, 132 years ago this very October 16 John Brown captured the Federal Armory up in Harper's Ferry, VA, later to be West Virginia because of the Civil War that followed. It cost him his life and the lives of all of his sons, and he was the motivation for an army hymn, the Battle Hyman of the Republic. It begins, "Mine eyes have seen the glory of the coming of the Lord."

This abortion issue is not going to go away any more than slavery did 75 years ago. On this same day Margaret Sanger started the first Planned Parenthood clinic in Boston. She was an unashamed, loathsome racist who said that all people of color should be controlled by birth control, that they were subhuman. Adoph Hitler later quoted Margaret Sanger.

It is fascinating that today an intelligent, distinguished black lady, Faye Wattleton, heads up this group founded 75 years ago by a racist, a clear-out, evil racist, Margaret Sanger.

Mr. Speaker, this abortion issue tears this country apart and will until we resolve it, hopefully in favor of the sanctity of human life.

SADDAM HUSSEIN SAYS SANCTIONS WON'T WORK

(Mr. STEARNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, we have all read with horror how Saddam Hussein was closer than any of us imagined to building a nuclear bomb.

Before the gulf war, U.S. intelligence set the estimate at 5 to 10 years. Now that has been revised down 2. In short, the gulf crisis may have been closer and better timed than any of us imagined.

Just last weekend Saddam Hussein was quoted saying his country can survive economic sanctions for at least 20 years. That says something about the effectiveness of economic sanctions that so many Members of this body argued passionately for.

Let me take this opportunity to once again praise President Bush for his superb leadership and handling of the gulf war. Let me also commend those Members of Congress who had the courage and foresight to vote for the use of force resolution last January. They realized that economic sanctions would not work.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE CONCURRENT RESOLUTION 210

Mr. SARPALIUS. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of House Concurrent Resolution 210.

The SPEAKER pro tempore (Mr. MCNULTY). Is there objection to the request of the gentleman from Texas?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 2521, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1992

Mr. MURTHA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2521), making appropriations for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. MCDADE

Mr. MCDADE. Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. MCDADE moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 2521 be instructed to insist on the House position on the amendment of the Senate numbered 46.

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. MCDADE] will be recognized for 30 minutes, and the gentleman from Pennsylvania [Mr. MURTHA] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. MCDADE].

Mr. MCDADE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as we head to the conference with the Senate, there is a very substantial issue involving the question of environmental restoration. As we speak today, because of years of not just neglect but also indeed ignorance about how to shepherd the resources of the Nation, some 17,000 sites at 1,800 bases across this Nation contain some form of hazardous material, some of it very toxic waste.

Under the leadership of my friend, the gentleman from Pennsylvania, we have been working very hard to rid those bases of those sites, particularly as we begin to sequence into a system whereby more bases are being made available for public usage in one form or another. Obviously those sites cannot be turned over until that problem is addressed. That is why the House conferees have unanimously agreed to attack this problem more aggressively than the Senate. Indeed we are $1 billion above the Senate figure, and we are offering this motion in order to further support the decision of the House that what we need to do is to stick with the House position. It is an overall problem of probably $13 or $14 billion. If we continue to treat it as a minor problem, we will be solving it for years.

Mr. Speaker, we want to get at the problem and get this done properly, so I urge the House to adopt the motion I have offered.

Mr. MURTHA. Mr. Speaker, I reserve the balance of my time.

Mr. MCDADE. Mr. Speaker, for purposes of debate only, I yield 10 minutes to the gentleman from Virginia [Mr. WOLF].

Mr. WOLF. Mr. Speaker, I thank the gentleman for yielding this time to me. I am out of breath running over here. I wanted to make a couple of comments and perhaps ask the chairman of the subcommittee a question or two.

It is important for this body to know and for the American public to know that in this bill from the Senate side there is $32 million put in for an unauthorized project—and I stress the words, "unauthorized project"—contravening and going against the Select Committee on Intelligence of the House, which would begin a downpayment for the most expensive Government relocation in the history of the country. This would be done for $1.2 billion. That is billion, b-i-l-l-i-o-n dollars to begin the relocation of the CIA, portions of it, to West Virginia.

The body should know that the CIA retained Legg Mason as a consultant to look at the relocation of the CIA. Legg Mason looked at over 200 sites. Then they narrowed it down to 65 recommendations, and not 1 site was in West Virginia. Then I will tell the Members of this body they narrowed it down to 10, and not 1 site of those 10 was in West Virgina. Then they narrowed it down to four, and the CIA, with a handshake and a nod, bypassing the entire House of Representatives, neglecting the Select Committee on Intelligence of the House, and neglecting the Republican leadership and the Democratic leadership, made a decision and told Legg Mason to put West Virginia back in. Legg Mason, being retained by the CIA, did that.

Then when they put it back in, Legg Mason determined that this was not in the best interest of the employees nor was it in the best interest of the agency, and recommended against it. So now we have Legg Mason, with thousands of dollars of Federal money, recommending against this site, and lo

and behold, with a handshake and a nod, one night the CIA, in conjunction with a Member of the other body, decides that it will go there.

Now, I want to be sure about this, and I wanted to ask the chairman of the subcommittee if my rights would be protected in the House so that we could be sure that we will get a rollcall vote ont this issue. I have an article from yesterday's Newsweek by George Will, where he says:

The argument about consolidating 3,000 Washington area jobs in Byrd's State may seem like merely a parochial fact, but it exemplifies what is done day in and day out in Washington in your name and with your money.

He goes on to say that—

Considering the hijacking of the CIA jobs, the consulting firm hired to advise the CIA did not include the West Virginia site among the top 10 sites, or the top 65, or the top 200. But suddenly the CIA, tugging at its forelock and bowing deeply to the chairman, asked that the site be included in the final four. Wonder of wonders, it won.

□ 1100

When the House Committee on Intelligence held hearings on this matter, 4 hours of hearings, Judge Webster and the people testifying could not answer any of the questions. Literally every member, from the chairman, Mr. MCCURDY, the gentleman from California [Mr. DORNAN], the gentleman from Pennsylvania [Mr. SHUSTER], and the gentleman from California [Mr. DELLUMS], across the board, raised serious concerns. Since this is not authorized by the House Committee on Intelligence and contravenes the laws of the House and the rules of the House, and since our conferees are going to conference with the Senate, I would hope and ask the gentleman from Pennsylvania [Mr. MURTHA], if he would protect my rights to make sure that we can have an up-or-down vote on this issue, whereby the House can work its will?

Mr. MURTHA. Mr. Speaker, will the gentleman yield?

Mr. WOLF. I yield to the gentleman from Pennsylvania.

Mr. MURTHA. Mr. Speaker, we always try to be fair, and we certainly will take a close look at the recommendations of the gentleman from Virginia [Mr. WOLF] when we go to conference. As the gentleman knows, there are a lot of issues, and this is one of the issues we are going to take a close look at. We appreciate the recommendations and advice of the gentleman from Virginia [Mr. WOLF].

Mr. WOLF. Mr. Speaker, I appreciate the statement of the gentleman from Pennsylvania [Mr. MURTHA], but I really want to urge that the rights of the House be protected.

Mr. Speaker, I want to choose my words very carefully. The project will not get an award for procurement integrity. I want to stress again, this CIA relocation will not receive an award for integrity in procurement.

Mr. Speaker, this body, time after time has spoken out about defense procurement fraud and many other things like that. It is absolutely incumbent that every Member of this body, whether they are for or against it, deserves and has an obligation to get a vote, because what we have basically seen is that the process of locating an agency has been, I believe, corrupted. The process has been corrupted.

Mr. Speaker, the General Services Administration has been set up by the Congress to go in and to search and find out the best deal for the Federal Government, the best arrangement, what is best for the Central Intelligence Agency and other agencies.

I would also say the name of the Central Intelligence Agency is the Central Intelligence Agency. It is not the Decentralized Intelligence Agency.

Mr. Speaker, Members should know that this is the most expensive relocation in the history of the entire country, $1.2 billion.

Mr. Speaker, I thank the gentleman from Pennsylvania [Mr. MURTHA] for the opportunity to have a vote, and strongly urge Members, when this issue comes before Congress, that they read the material. I will furnish all the material. No longer can we have decisions that are going to cost the taxpayer $1.2 billion made with a handshake and a nod, contravening and neglecting the entire House of Representatives.

Mr. Speaker, when this issue comes up for a vote, I would urge Members to look at these issues and then say no to the CIA and no to the other body. That we believe in procurement integrity and we believe that this should go back to the General Services Administration, that they should bid it out, postpone this for a year, and do what is in the best interest of the entire country, and not just one or two individuals.

Mr. MORAN. Mr. Speaker, will the gentleman yield?

Mr. WOLF. I yield to the gentleman from Virginia.

Mr. MORAN. Mr. Speaker, I would like to underscore the remarks of the gentleman from Virginia [Mr. WOLF]. What we are talking about here is a decision that was not made on any grounds but political grounds. There is no justification for the CIA moving to West Virginia as has been recommended by the Senate.

Mr. Speaker, there has been an objective analysis done of every possible alternative site, and the site that was chosen was not included in any of the acceptable alternative sites.

We are talking about the most expensive Federal building ever built. We are talking about breaking up an agency that of all agencies it would seem ought to be able to work together.

Mr. Speaker, there are no programmatic grounds, there are no fiscal grounds, there are no rational grounds for the CIA to move. Yet they are moving because of politics.

This is where we have to take our stand. I know we will get the support of this side of the aisle and the side of the aisle of the gentleman from Virginia [Mr. WOLF]. We strongly urge that this be represented as an issue on which the House is prepared to and will take a stand.

Mr. Speaker, I know that our chairman is going to represent those issues. I have complete confidence that we will have the opportunity to take a vote on this issue when it comes back to us.

Mr. WOLF. Mr. Speaker, reclaiming my time, I thank the gentleman from Virginia [Mr. MORAN]. I will not take the time of Members, but I will make available the transcripts of the hearings.

Mr. Speaker, the gentleman from Pennsylvania [Mr. SHUSTER] called this activity outrageous, disgraceful, and scandalous.

The gentleman from New York [Mr. MARTIN] said:

It seems to me that if this were not so pathetic, it would probably be funny. It would be like when the Baltimore Colts snuck out of town on the back of a truck years ago.

The gentlewoman from Connecticut [Mrs. KENNELLY] said:

I am really looking at the situation and seeing what has developed. I think what has happened makes a mockery of our traditional process and system that has kept this whole legislative body going forward in the profession in over 200 years.

The Chairman [Mr. MCCURDY] said:

We are not talking about a covert action here; we are talking about a $1.3 billion—$1.2 billion, whatever the numbers are—consolidation of real estate that obviously is not an emergency. It is not—it may be urgent in your mind, but as far as having an effective policy in order to get the most—the wisest decision. This decision is going to affect the future of the agency, perhaps as no other construction decision made, because you are going to affect the lives and well-being of your personnel.

Mr. MCDADE. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the motion.

The previous question was ordered.

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the motion offered by the gentleman from Pennsylvania [Mr. MCDADE].

The motion was agreed to.

A motion to reconsider was laid on the table.

MOTION TO CLOSE CONFERENCE COMMITTEE MEETINGS WHEN CLASSIFIED NATIONAL SECURITY INFORMATION IS UNDER CONSIDERATION

Mr. MURTHA. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. MURTHA moves, pursuant to rule XXVIII, clause 6(a) of the House Rules, that

the conference committee meetings between the House and the Senate on H.R. 2521, the Department of Defense appropriations bill for the fiscal year ending September 30, 1992, and for other purposes, be closed to the public at such times as classified national security information is under consideration; *Provided, however,* That any sitting Member of Congress shall have a right to attend any closed or open meeting.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania [Mr. MURTHA].

On this motion, the vote must be taken by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 422, nays 0, not voting 11, as follows:

[Roll No. 307]

YEAS—422

Abercrombie	Coughlin	Gordon
Ackerman	Cox (CA)	Goss
Alexander	Cox (IL)	Gradison
Allard	Coyne	Grandy
Anderson	Cramer	Green
Andrews (ME)	Crane	Guarini
Andrews (NJ)	Cunningham	Gunderson
Andrews (TX)	Dannemeyer	Hall (OH)
Annunzio	Darden	Hall (TX)
Anthony	Davis	Hamilton
Applegate	de la Garza	Hammerschmidt
Archer	DeFazio	Hancock
Armey	DeLauro	Hansen
Aspin	DeLay	Harris
Atkins	Dellums	Hastert
AuCoin	Derrick	Hatcher
Bacchus	Dickinson	Hayes (IL)
Baker	Dicks	Hayes (LA)
Ballenger	Dingell	Hefley
Barnard	Dixon	Hefner
Barrett	Donnelly	Henry
Barton	Dooley	Herger
Bateman	Doolittle	Hertel
Bellenson	Dorgan (ND)	Hoagland
Bennett	Dornan (CA)	Hobson
Bentley	Downey	Hochbrueckner
Bereuter	Dreier	Horn
Berman	Duncan	Horton
Bevill	Durbin	Houghton
Bilbray	Dwyer	Hoyer
Bilirakis	Dymally	Hubbard
Bliley	Early	Huckaby
Boehlert	Eckart	Hughes
Boehner	Edwards (CA)	Hunter
Bonior	Edwards (TX)	Hutto
Borski	Emerson	Hyde
Boucher	Engel	Inhofe
Brewster	English	Ireland
Brooks	Erdreich	Jacobs
Broomfield	Espy	James
Browder	Evans	Jefferson
Brown	Ewing	Jenkins
Bruce	Fascell	Johnson (CT)
Bryant	Fawell	Johnson (SD)
Bunning	Fazio	Johnson (TX)
Burton	Feighan	Johnston
Bustamante	Fields	Jones (GA)
Byron	Fish	Jones (NC)
Camp	Flake	Jontz
Campbell (CA)	Foglietta	Kanjorski
Campbell (CO)	Ford (MI)	Kaptur
Cardin	Frank (MA)	Kasich
Carper	Franks (CT)	Kennedy
Carr	Frost	Kennelly
Chandler	Gallegly	Kildee
Chapman	Gallo	Kleczka
Clay	Gaydos	Klug
Clement	Gejdenson	Kolbe
Clinger	Gekas	Kolter
Coble	Gephardt	Kopetski
Coleman (MO)	Geren	Kostmayer
Coleman (TX)	Gibbons	Kyl
Collins (IL)	Gilchrest	LaFalce
Collins (MI)	Gillmor	Lagomarsino
Combest	Gilman	Lancaster
Condit	Gingrich	Lantos
Conyers	Glickman	LaRocco
Cooper	Gonzalez	Laughlin
Costello	Goodling	Leach
Lehman (CA)	Owens (UT)	Skeen
Lehman (FL)	Oxley	Skelton
Lent	Packard	Slattery
Levin (MI)	Pallone	Slaughter (NY)
Levine (CA)	Panetta	Smith (FL)
Lewis (FL)	Parker	Smith (IA)
Lewis (GA)	Pastor	Smith (NJ)
Lightfoot	Patterson	Smith (OR)
Lipinski	Paxon	Smith (TX)
Livingston	Payne (NJ)	Snowe
Lloyd	Payne (VA)	Solarz
Long	Pease	Solomon
Lowery (CA)	Pelosi	Spence
Lowey (NY)	Penny	Spratt
Luken	Perkins	Staggers
Machtley	Peterson (FL)	Stallings
Manton	Peterson (MN)	Stark
Markey	Petri	Stearns
Marlenee	Pickett	Stenholm
Martin	Pickle	Stokes
Martinez	Porter	Studds
Matsui	Poshard	Stump
Mavroules	Price	Sundquist
Mazzoli	Pursell	Swett
McCandless	Quillen	Swift
McCloskey	Rahall	Synar
McCollum	Ramstad	Tallon
McCrery	Rangel	Tanner
McCurdy	Ravenel	Tauzin
McDade	Ray	Taylor (MS)
McDermott	Reed	Taylor (NC)
McEwen	Regula	Thomas (CA)
McGrath	Rhodes	Thomas (GA)
McHugh	Richardson	Thomas (WY)
McMillan (NC)	Ridge	Thornton
McMillen (MD)	Riggs	Torres
McNulty	Rinaldo	Torricelli
Meyers	Ritter	Towns
Mfume	Roberts	Traficant
Miller (CA)	Roe	Traxler
Miller (OH)	Roemer	Unsoeld
Miller (WA)	Rogers	Upton
Mineta	Rohrabacher	Valentine
Mink	Ros-Lehtinen	Vander Jagt
Moakley	Rose	Vento
Molinari	Rostenkowski	Visclosky
Mollohan	Roth	Volkmer
Montgomery	Roukema	Vucanovich
Moody	Rowland	Walker
Moorhead	Roybal	Walsh
Moran	Sabo	Washington
Morella	Sanders	Waters
Morrison	Sangmeister	Waxman
Mrazek	Santorum	Weber
Murphy	Sarpalius	Weiss
Murtha	Sawyer	Weldon
Myers	Saxton	Wheat
Nagle	Schaefer	Whitten
Natcher	Scheuer	Williams
Neal (MA)	Schiff	Wilson
Neal (NC)	Schroeder	Wise
Nichols	Schulze	Wolf
Nowak	Schumer	Wolpe
Nussle	Sensenbrenner	Wyden
Oakar	Serrano	Wylie
Oberstar	Sharp	Yates
Obey	Shaw	Yatron
Olin	Shays	Young (AK)
Olver	Shuster	Young (FL)
Ortiz	Sikorski	Zeliff
Orton	Sisisky	Zimmer
Owens (NY)	Skaggs	

NAYS—0

NOT VOTING—11

Boxer	Holloway	Russo
Callahan	Hopkins	Savage
Edwards (OK)	Lewis (CA)	Slaughter (VA)
Ford (TN)	Michel	

□ 1128

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. MCNULTY). The Speaker will appoint conferees upon his return to the chair.

□ 1130

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE RESOLUTION 194

Mr. FISH. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of House Resolution 194.

The SPEAKER pro tempore (Mr. MCNULTY). Is there objection to the request of the gentleman from New York?

There was no objection.

PERSONAL EXPLANATION

Mr. NAGLE. Mr. Speaker, on Thursday, October 3, 1991, I was unable to participate in the vote because of illness.

Had I been able to vote, I would have voted "aye" on rollcall No. 291.

MOTION TO INSTRUCT CONFEREES ON H.R. 2686, DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1992

Mr. DANNEMEYER. Mr. Speaker, I offer a privileged motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. DANNEMEYER moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendments to the bill, H.R. 2686, be instructed to agree to the provisions contained in amendment numbered 212 of the Senate amendments.

MOTION TO TABLE OFFERED BY MR. YATES

Mr. YATES. Mr. Speaker, I offer a motion to table.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. YATES moves to lay on the table the motion offered by the gentleman from California.

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from Illinois [Mr. YATES].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DANNEMEYER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 181, nays 243, not voting 9, as follows:

[Roll No. 308]

AYES—181

Abercrombie	Atkins	Boucher
Ackerman	AuCoin	Boxer
Alexander	Bacchus	Brown
Anderson	Bellenson	Bustamante
Andrews (ME)	Berman	Campbell (CO)
Andrews (NJ)	Boehlert	Cardin
Anthony	Bonior	Carr
Aspin	Borski	Clay

Clinger	Johnston	Owens (NY)
Coleman (TX)	Jones (GA)	Owens (UT)
Collins (IL)	Jones (NC)	Panetta
Collins (MI)	Jontz	Pastor
Conyers	Kanjorski	Payne (NJ)
Cooper	Kaptur	Pease
Cox (IL)	Kennedy	Pelosi
Coyne	Kennelly	Perkins
DeFazio	Kildee	Pickle
DeLauro	Klug	Rangel
Dellums	Kolter	Reed
Derrick	Kopetski	Richardson
Dicks	Kostmayer	Roe
Dingell	LaFalce	Rostenkowski
Dixon	Lantos	Russo
Downey	LaRocco	Sabo
Durbin	Leach	Sanders
Dwyer	Lehman (CA)	Sawyer
Dymally	Lehman (FL)	Scheuer
Early	Levin (MI)	Schroeder
Eckart	Levine (CA)	Schumer
Edwards (CA)	Lewis (GA)	Serrano
Engel	Lowey (NY)	Sikorski
Espy	Machtley	Skaggs
Evans	Manton	Slaughter (NY)
Fascell	Markey	Smith (FL)
Fazio	Martinez	Smith (IA)
Feighan	Matsui	Solarz
Fish	Mavroules	Staggers
Flake	Mazzoli	Stark
Foglietta	McDade	Stokes
Ford (MI)	McDermott	Studds
Ford (TN)	McHugh	Swift
Frank (MA)	McNulty	Synar
Gaydos	Mfume	Torres
Gejdenson	Miller (CA)	Torricelli
Gephardt	Mineta	Towns
Gilman	Mink	Traxler
Gonzalez	Moakley	Unsoeld
Gordon	Moran	Vento
Grandy	Morella	Visclosky
Green	Mrazek	Washington
Hall (OH)	Murtha	Waters
Hatcher	Nagle	Waxman
Hayes (IL)	Natcher	Weiss
Hertel	Neal (MA)	Wheat
Horn	Nowak	Williams
Horton	Nussle	Wise
Houghton	Oakar	Wolpe
Hoyer	Oberstar	Wyden
Hughes	Obey	Yates
Jefferson	Olin	
Johnson (CT)	Olver	

NOES—243

Allard	Coughlin	Hall (TX)
Andrews (TX)	Cox (CA)	Hamilton
Annunzio	Cramer	Hammerschmidt
Applegate	Crane	Hancock
Archer	Cunningham	Hansen
Armey	Dannemeyer	Harris
Baker	Darden	Hastert
Ballenger	Davis	Hayes (LA)
Barnard	DeLay	Hefley
Barrett	Dickinson	Hefner
Barton	Donnelly	Henry
Bateman	Dooley	Herger
Bennett	Doolittle	Hoagland
Bentley	Dorgan (ND)	Hobson
Bereuter	Dornan (CA)	Hochbrueckner
Bevill	Dreier	Hubbard
Bilbray	Duncan	Huckaby
Bilirakis	Edwards (TX)	Hunter
Bliley	Emerson	Hutto
Boehner	English	Hyde
Brewster	Erdreich	Inhofe
Brooks	Ewing	Ireland
Broomfield	Fawell	Jacobs
Browder	Fields	James
Bruce	Franks (CT)	Jenkins
Bryant	Frost	Johnson (SD)
Bunning	Gallegly	Johnson (TX)
Burton	Gallo	Kasich
Byron	Gekas	Kleczka
Camp	Geren	Kolbe
Campbell (CA)	Gibbons	Kyl
Carper	Gilchrest	Lagomarsino
Chandler	Gillmor	Lancaster
Chapman	Gingrich	Laughlin
Clement	Glickman	Lent
Coble	Goodling	Lewis (FL)
Coleman (MO)	Goss	Lightfoot
Combest	Gradison	Lipinski
Condit	Guarini	Livingston
Costello	Gunderson	Lloyd
Long	Pickett	Smith (NJ)
Lowery (CA)	Porter	Smith (OR)
Luken	Poshard	Smith (TX)
Marlenee	Price	Snowe
Martin	Pursell	Solomon
McCandless	Quillen	Spence
McCloskey	Rahall	Spratt
McCollum	Ramstad	Stallings
McCrery	Ravenel	Stearns
McCurdy	Ray	Stenholm
McEwen	Regula	Stump
McGrath	Rhodes	Sundquist
McMillan (NC)	Ridge	Swett
McMillen (MD)	Riggs	Tallon
Meyers	Rinaldo	Tanner
Michel	Ritter	Tauzin
Miller (OH)	Roberts	Taylor (MS)
Miller (WA)	Roemer	Taylor (NC)
Molinari	Rogers	Thomas (CA)
Mollohan	Rohrabacher	Thomas (GA)
Montgomery	Ros-Lehtinen	Thomas (WY)
Moody	Rose	Thornton
Moorhead	Roth	Traficant
Morrison	Roukema	Upton
Murphy	Rowland	Valentine
Myers	Sangmeister	Vander Jagt
Neal (NC)	Santorum	Volkmer
Nichols	Sarpalius	Vucanovich
Ortiz	Saxton	Walker
Orton	Schaefer	Walsh
Oxley	Schiff	Weber
Packard	Schulze	Weldon
Pallone	Sensenbrenner	Whitten
Parker	Sharp	Wilson
Patterson	Shaw	Wolf
Paxon	Shays	Wylie
Payne (VA)	Shuster	Yatron
Penny	Sisisky	Young (AK)
Peterson (FL)	Skeen	Young (FL)
Peterson (MN)	Skelton	Zeliff
Petri	Slattery	Zimmer

NOT VOTING—9

Callahan	Holloway	Roybal
de la Garza	Hopkins	Savage
Edwards (OK)	Lewis (CA)	Slaughter (VA)

□ 1152

Messrs. DORGAN of North Dakota, WILSON, HOAGLAND, KLECZKA, MOODY, TRAFICANT, FROST, McCURDY, SISISKY, BROOKS, and McCLOSKEY changed their vote from "aye" to "no."

Messrs. JONES of North Carolina, HALL of Ohio, and ABERCROMBIE changed their vote from "no" to "aye."

So the motion to table was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. McNULTY). The gentleman from California [Mr. DANNEMEYER] will be recognized for 30 minutes, and the gentleman from Illinois [Mr. YATES] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, the Nation has just witnessed an intense debate in the Senate on the confirmation of Justice Thomas to the U.S. Supreme Court. My congratulations to him. The controversy between Professor Hill and Mr. Thomas was between those two people. Claims were made that certain statements were made, and the American people, I doubt, will ever know with certainty who said what to whom.

However, Mr. Speaker, on this issue today that I bring before the House we know precisely what has been written, what has been said and, in this instance, has been done with taxpayers' money. There is no question about the contents of the material that we will discuss today on the floor of the House.

This body considered this matter about 3 weeks ago, but at that time it was on a motion to defeat the previous question, which was procedural in nature, so we did not get a clear up or down vote on the substance. Today we are going to have a clear up or down vote on the substance as to whether or not the House is going to adopt language that was approved in the Senate by a vote of 66 to 28 that I believe is necessary in order to get the attention of the people running the National Endowment for the Arts. There are standards that exist in this country that the American taxpayer is going to insist be followed as a means of our providing proper stewardship over what we do with taxpayers' money.

Mr. Speaker, in 1989, language was placed into the interior appropriations bill that said that none of the funds authorized to be appropriated for the National Endowment for the Arts or the National Endowment for the Humanities may be used to promote, disseminate or produce materials which in the judgment of either of them may be considered obscene, including, but not limited to, depictions of sadomasochism, homoeroticism, the sexual exploitation of children or individuals engaged in sex acts and which, when taken as a whole, do not have serious literary, artistic, political or scientific value.

Notwithstanding that language, Mr. Speaker, these are some of the projects that were funded with taxpayers' money:

The NEA gave $8,000 to help produce a show about homosexuality titled "Tongue United." The NEA also provides $250,000 of the $1.1 million budget for PBS's "Point of View" which aired the show. The program includes scenes of two men sodomizing each other in bed and a narration that included the expletive: "motherf—— ——," and the phrase, "anoint me with coconut oil and cum." In a reference to AIDS, the narrator repeats the refrain, "now we think * * * as we f——."

Second, the NEA gave a $15,000 grant to Illinois State University Gallery in Normal, IL, for an exhibit titled "David Wojnarowice: Tongues of Flame." The exhibit contained photographs of men performing oral sex, anal sex, oral-anal sex, and masturbation.

The third item funded with that restriction is that NEA is a regulator contributor to LACE, the Los Angeles Contemporary Exhibitions Center. Here is how a homosexual magazine describes one of LACE's more interesting pieces of art:

"The bleeding naked man leapt into the audience as the drag queen speed-metal band backing him thrashed to disjointed climax," and so on.

The fourth, is the NEA gave an unspecific amount of money to Chicago

film makers which put on a militant feminist show called "Rattle Your Cage," featuring the display "Sister Serpents * * *" and so on.

Mr. Speaker, currently there is language in the NEA authorization which is the law today that says that artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public.

Now some of the projects that have been funded by the NEA under these guidelines included a $15,000 grant to Ms. Holly Hughes, a self-described lesbian performer, to produce a show titled "No Trace of the Blond," The production revolves around two pubescent girls around 12 years old who, as the application reads, investigate the gothic image of vampires as an expression of irrepressible sexuality.

Second, a group named "Frameline" received $12,000 to help defray the costs of the 1991 San Francisco International Lesbian and Gay Film Festival. Featured films include "Queers Bash Back," "S&M Sex and Music," "Multiple Orgasm," "Yearning for Sodom," and "Portraits of Lesbian and Gay Youth."

Third, the NEA funded the Maryland Art Place that recently sponsored a performance of Annie Sprinkle. The performance is the same as usual, "Nurse Annie's Sex Education Class."

And fourth, on March 8, 1991, the NEA sponsored a forum on art and AIDS. Only after inquiries of a local think tank was this invitation-only, closed-door meeting opened to one individual outside the arts community or selected press. According to the Washington Post, the forum included slide and video presentations that showed members of the same sex together in various stages of undress. Additionally, the Post reports one presentation contained homoerotic photographs and political messages aimed at the President using explicit language.

Well, if these projects can be funded under the existing law, I think it points up very clearly the need for the language that is involved in this motion to instruct conferees now pending before the House. It very simply says that notwithstanding any other provision of law none of the funds made available to the National Endowment for the Arts under this act may be used to promote, disseminate or produce materials that depict or describe in a patently offensive way sexual or excretory activities or organs.

I ask for your "aye" vote.

□ 1200

Mr. YATES. Mr. Speaker, I yield myself such time as I may use.

Mr. Speaker, let me say at the outset that the gentleman has cited a list of grants that he says were made by NEA. Several of those have not been funded by NEA. Several are from years gone by. A few of them have been funded by NEA, and of those few, several have received critical acclaim.

But what this dispute is all about today is language. What kind of language can be drafted to give the artists a chance to express themselves and still protect those who say that the work the artist is coming out with is depraved?

We have tried for years to find the appropriate language. The gentleman from California has sought to do that. A few years ago the gentleman from Texas [Mr. ARMEY] came to see me. He was offended by the Mapplethorpe show, he was offended by the Serrano show, by the Serrano photograph, and he came to see me because of the fact that I was chairman of the Subcommittee on the Department of the Interior and related agencies of the Appropiations Committee, and he wondered whether appropriate language could be written that would prevent such artifacts from being shown to the public with NEA grants.

I said to him, "You draw the language. Let me see it. Let's see if it is good enough to put into the bill."

He said, "I can't do it." He said, "It's too difficult a job to find that kind of language." He said, "Why don't you do it, Congressman YATES?"

I said, "I can't do it because it is so difficult. I can't do it."

Both of us asked the then-director of the NEA to draft the appropriate language that would serve this purpose. He came back with language that neither the gentleman from Texas [Mr. ARMEY] nor I thought was appropriate for the bill.

I see my friend, the gentleman from Montana [Mr. WILLIAMS] is on the House floor. Last year he was chairman of the subcommittee that worked 3 years on appropriate language, and that language was finally agreed upon. The House voted for it, and the Senate voted for it. That language is now the law. We knew that the language would never have pleased everyone involved. We knew the language would not appeal to those who wanted total freedom for the artists who were getting grants from NEA. We knew it would not be approved by those who wanted greater restrictions. But it was a compromise we all accepted as being appropriate at the time.

We now have the same kind of a fight taking place over language that has been offered by the Senator from North Carolina [Mr. HELMS]. His language has the effect of vitiating or wiping out for a period of 1 year the work of the legislative committee last year. That will happen because his amendment begins like this:

Notwithstanding any other provision of law, none of the funds in this act may be used by NEA to depict sexual activity or excretory organs in a patently offensive way.

But the language of the gentleman from North Carolina is not necessary. We can compare his language, the language of the Helms amendment, with what is already in the law, and let me read to the Members what is already in the law. In the law that we enacted last year and which became the law, it says this:

The term obscene for this purpose, means that * * * the average person, applying contemporary community standards, would find that such project, production, workshop, or program, when taken as a whole, appeals to the prurient interest;

(2) such project, production, workshop, or program depicts or describes sexual conduct in a patently offensive way;

How does that differ from the language that the gentleman from California wants this House to instruct this committee? It does not differ in any material way. As a matter of fact, the Senator from North Carolina uses the phrase, "patently offensive way," in the language that was accepted by the other body.

I continue with item No. 3—

Such project, production, workshop, or program, when taken as a whole, lacks serious literary, artistic, political, or scientific value.

The language that was used last year also says this: It recognizes no grant shall be made that does not—

Recognize that obscenity is without artistic merit, is not protected speech, and shall not be funded; and * * * ensure that projects, workshops, productions, and programs that are determined to be obscene shall receive no funds under this act.

What else can we say that is not included under that language that will achieve the goal that the gentleman from California wants? How many times must Congress consider amendments to the National Endowment for the Arts to try to surround obscenity and pornography in such a way that no grants will be given to any artifact that is obscene?

What happens is that every time there is a senatorial campaign there is an attack on pornography. It has a long history that goes back to the famous or infamous Smoot-Hawley tariff of the 1920's. The "Smoot" of that tariff was Senator Reed Smoot of Utah. His tariff had an antipornography amendment in it that said nothing obscene could be imported into this country, like James Joyce's "Ulysses." That was banned by Customs officials and was only permitted to come into this country when a Federal judge ruled that it was not obscene. Customs officials held up art; Customs officials held up tremendous numbers of other items that they said were obscene.

Indeed at that time Ogden Nash composed a poem directed at Senator Smoot. This is the way it went:

Smite smut, Smoot, rough and tough.
Smut when smitten is first-page stuff.

So we have an amendment in the Senate which the gentleman from Cali-

fornia [Mr. DANNEMEYER] wants the House to accept. The Smoot smut amendment was the law 70 years ago, and now we have the gentleman from California [Mr. DANNEMEYER] offering the same kind of language again.

Mr. Speaker, I hope the House will not vote for this language. I hope the House will sustain the authorizing committee, which last year, after 3 years of hard work on finding appropriate language, submitted a law that was approved by both the House and the Senate and is now the law of the land. I hope the House will not instruct conferees and wipe out for 1 year the language that was accepted last year.

□ 1210

Mr. WILLIAMS. Mr. Speaker, will the gentleman yield?

Mr. YATES. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I thank the gentleman from Illinois [Mr. YATES] for reading the current law of the land into the RECORD. I want to emphasize the words of the gentleman by assuring Members in the House that when the House and the Senate changed the law affecting the National Endowment of the Arts in the last Congress, we did so in a very significant and major way. We found, correctly, that pornography is not free speech and is not protected by the Constitution of the United States, and we reaffirmed the congressional position that the funding of pornography through the use of taxpayer money was illegal. Today, it remains illegal.

The question is should the courts decide through the normal process what is pornography, or should this House decide it? The gentleman from California [Mr. DANNEMEYER] would have this House determine what is pornography. The gentleman from Illinois [Mr. YATES] would prefer to stick with the language which Congress adopted in the last Congress, language which requires that pornography is not protected speech, is illegal, and that Federal money cannot be used for it, but allows the courts to determine on a case-by-case basis that which is pornography.

Mr. Speaker, the position of the gentleman from Illinois [Mr. YATES] is precisely correct, and I commend the gentleman for it.

Mr. YATES. Mr. Speaker, reclaiming my time, I thank the gentleman from Montana [Mr. WILLIAMS] for his contribution.

Mr. Speaker, I reserve the balance of my time.

Mr. DANNEMEYER. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. CUNNINGHAM].

Mr. YATES. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Speaker, the gentleman from Illinois [Mr. YATES] has stated that they worked hard with the language, that there is a law, and that it took 3 years of hard work to establish that language. But what we are talking about here is accountability.

Mr. Speaker, the captain of a ship has got accountability, Members of Congress have got accountability, and I think the NEA needs to have accountability. When it does not, it needs to be punished.

We still have pornography being released at taxpayer dollars. The courts, it is very difficult to get anything through. The House does need to state a position to stop it, if that is what it takes.

Mr. Speaker, I supported the original NEA vote. We have things like the Old Globe in San Diego that is supported by the NEA. We have the symphony. We have a lot of very good things. We have the university play which was put on, Brigadoon, and West Side Story, and those are good.

Mr. Speaker, in the military budget we have bad items and we try to take those things out. The agriculture budget, we try to take bad things out. I think this House owes it to the American people to take out bad things from NEA, when they exist, whatever language we have to draft, even if it takes 3 more years.

Mr. Speaker, this Nation was mesmerized when a quiet, intelligent young woman alleged verbal pornography against a judge. Mr. Speaker, our Government is sponsoring and paying for pornography 10 times worse than was ever uttered by Ms. Hill. We need to stop that, whatever it takes.

Mr. Speaker, many Members want to support the NEA, for the good that it does in the field of education and the humanities, but we need to stop some of the things that are going on. I would ask conservative Members on the other side of the aisle, I would ask liberal Members on the other side of the aisle, to support the gentleman from California [Mr. DANNEMEYER].

Mr. Speaker, the gentleman from Illinois [Mr. YATES] comes from the Jewish faith. I come from the Christian faith. I think both of our value systems in the church, the Judeo-Christian values, do not support pornography. I do not think the gentleman does either. I do believe that additional language would help send the message that we do not support such things in the Congress.

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. CUNNINGHAM. I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, the gentleman from California [Mr. CUNNINGHAM] is, of course, aware of the Helms language in the Senate. How does that differ, may I ask the gentleman, from the language which is now in the law that says that the term "obscene" means such project, production, workshop or program that depicts or describes sexual conduct in a patently offensive way?

Mr. CUNNINGHAM. Mr. Speaker, whatever message it sends, if we have to send the same thing 100 times, the question is right now pornography is being committed over and over and over again. If the House has to send the same exact message again, then that is what we should do, whatever it takes to stop it.

Mr. YATES. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, let me read the Helms language. May I say to the gentleman from California [Mr. CUNNINGHAM], it says "Notwithstanding any other provision of law."

Mr. Speaker, do you know the effect of that phrase? The effect of that phrase, which is the beginning of the Helms amendment, is to wipe out the language of last year's bill that the House and Senate enacted.

If the gentleman from California [Mr. DANNEMEYER] prevails, the Helms language will not become the standard. None of the other standards that are in the law would apply. It becomes the sole, single standard for judging what the basis for granting applications are for the National Endowment for the Arts.

Mr. Speaker, is that what the gentleman wants? Does the gentleman want to erase from the books for the period of this appropriations bill, which is 1 year, that standard? Is that what the gentleman wants?

Mr. CUNNINGHAM. Mr. Speaker, will the gentleman yield?

Mr. YATES. I yield to the gentleman from California.

Mr. CUNNINGHAM. Mr. Speaker, I would say again to my friend from Illinois [Mr. YATES], whatever it takes. I do not think that the gentleman believes that such things as "Queers Bash Back," "S&M Sex," and "Yearning Sodom," are appropriate. Would the gentleman from Illinois [Mr. YATES] work with us to stop obscene art?

Mr. YATES. Mr. Speaker, reclaiming my time, I would ask, did the gentleman hear my statement?

Mr. CUNNINGHAM. Yes, sir.

Mr. YATES. Mr. Speaker, I tried 3 years ago to work with the gentleman from Texas [Mr. ARMEY] and the gentleman from Texas [Mr. DELAY] to find appropriate language. I said I could not write it, the gentleman from Texas [Mr. ARMEY] said he could not write it, and the gentleman from Texas is a talented guy.

We turned it over to the then Director, the then Chairman of the NEA. He came back with language that neither of us wanted.

The House committee last year worked for 3 years trying to find that language. It is a very, very tough thing. I do not think that the Helms language does it. That is why I am op-

posed to it. I think that the language and the sections of the law that were approved last year go much closer toward achieving what the gentleman wants and what I want.

Mr. CUNNINGHAM. Mr. Speaker, if the gentleman will yield further, we know some of the things that have been sponsored by the NEA at taxpayer expense are considered obscene. Would the gentleman from Illinois [Mr. YATES] move to restrict the funding of those particular films, art work, and plays?

Mr. YATES. Mr. Speaker, reclaiming my time, what the gentleman from California [Mr. CUNNINGHAM] is saying is that he does not approve of the way John Frohnmayer, the Chairman of the Endowment, is doing his job. If I understand correctly, what the gentleman is saying is Frohnmayer has approved those grants. They are bad grants. Therefore, Frohnmayer is not doing a correct job.

If I understand what the gentleman from California [Mr. CUNNINGHAM] wants, he wants Frohnmayer replaced, rather than changing the law. That is the only way you will get your complaint remedied or rectified.

Mr. CUNNINGHAM. Mr. Speaker, if the gentleman will yield further, does the gentleman from Illinois [Mr. YATES] think that such things as "Queers Bash Back" is not pornography? Does the gentleman think some of the plays and films that I just mentioned should be presented to the American public at taxpayer dollars? If Mr. Frohnmayer is making those judgments, and evidently the same type of pornography is coming out, then we need to remove that.

□ 1220

Mr. YATES. Mr. Speaker, if the gentleman would permit me to reclaim my time, I do not know the particular artifacts the gentleman mentioned, the dramas. I do know that when I made inquiry of NEA concerning the eight artifacts that the gentleman from California [Mr. DANNEMEYER] listed last time, two of then had not yet been written. Three of them were done before 1991, and before Mr. Frohnmayer took the job.

Two of them, they said, were approved by the NEA and both of them had received critical acclaim.

So that when the gentleman asks me, and I do not know what is in them, when the gentleman asks me do I approve of that, I am only repeating to the gentleman what Mr. Frohnmayer told me.

Mr. DANNEMEYER. Mr. Speaker, I yield 9 minutes to the gentleman from California [Mr. DORNAN].

Mr. DORNAN of California. Mr. Speaker, if we run from this, we are engaged in a cowardly exercise in this great legislative body. I say to my colleagues on both sides of the aisle, in the best spirit of healing, the kind of healing that soon to be sworn in Associate Justice Clarence Thomas was talking about last night, the kind of healing that I am sure Prof. Anita Hill is talking about in Norman, OK today, my colleagues, "Don't you get it, why the American people hold us in such low esteem?"

Do we not get it in this House that the American people would not care a bit about floated checks in our soon to be closed cooperative bank or the tabs down in the restaurant. They would not care about those things if they thought we really represented their interests across this country.

But when they see us fund with their tax dollars this type of depraved, filthy gutter material and call it art, they get utterly disgusted with this Chamber and the other house.

The American people have had it up to here. They used to put us down with garbage men, an honorable profession, because we all put out garbage. They used to say we were below used car salesmen. I had that job for a while when my wife and I had five children under 10. There is nothing to compare us to now. There is not a profession in this country that does not rate miles above the Congress of the United States.

It is because of issues like this. I am not going to stand in this well and read what was funded, as the gentleman from Illinois [Mr. YATES] my good friend says is old stuff. Last year and the year before is not that old.

Under the language that we tried to come up with in this House, Mr. Frohnmayer, who should be replaced tomorrow by the President of the United States and, brace yourselves, I mean this suggestion of his replacement with all seriousness, he ought to be replaced with Prof. Anita Hill. There is a healing move.

If the President wants to consider it. I read in the White House that my friend, Chief of Staff John Sununu, and the President himself have had it with Frohnmayer, but nobody seems to have the guts to take the action to remove this man who sat in the office of the gentleman from Illinois, PHIL CRANE, our colleague, a few weeks before he was confirmed and said he was going to stop this gutter nonsense. He lied to us.

There were about 10 Republican Members in the office of the gentleman from Illinois [Mr. CRANE] and John Frohnmayer lied.

Then after he started this nonsense, his brother lost a race for Governor, I think in Oregon, a part of the fallout of his brother who lied to the country and then proceeded to fund this garbage under the old language here of 2 years ago, which came out of this House.

Then we came up with new language a year later. Here are the words of the new language:

> Artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public.

Diverse beliefs, of course, includes sadomasochists, child pedophiles, child abusers, bondage discipline, all the garbage that is out there across America. That is diverse. So what does John Frohnmayer do at the National Endowment for the Arts? He funds Holly Hughes again, on a stage inviting people to come up with a flashlight and probe all of her body cavities. I am cleaning up the language here. No. 2, Frameline, another $12,000 for the film titles that Mr. CUNNINGHAM was trying to get across to the gentleman from Illinois [Mr. YATES]. Portraits of lesbian and gay youth. There is that word "youth" again; queers bash back, sadism and masochism sex and music.

Here is another one, Maryland Art Palace, Annie Sprinkle lying on a stage with a flashlight, again inviting the audience up. Here is one on March 8, NEA sponsored a forum on art and AIDS. It was, of course, invitation only, closed door meeting, what we call around here executive session.

They let one outside person in and he writes, here is all the homophobic erotic photographs again, people on the stage, various stages of undress.

Here is what gets me, Mr. Speaker. We cannot address anybody in the executive branch through this microphone, or from this floor, but I think it is clear what I am saying. Here is President Bush in filthy so-called art on all the walls being derided with explicit language, and it is paid for by NEA money under John Frohnmayer to attack the President of the United States. It is not just Cardinal O'Connor that has taken these blows and strikes now. This is not what American taxpayers want to fund.

I, like the gentleman from California [Mr. CUNNINGHAM], have had worthy projects in my southern California district, native art projects, little school projects, Shakespearean little theater taking over a closed movie theater. I would like to support this.

I tell my colleagues what this nonsense debate has done to me on this floor. It has made a libertarian out of this conservative. I do not see why I should send a nickel to public broadcasting to go through an NEA grant to watch a bunch of what Gov. Pete Wilson would call them now our fascist demonstrators desecrating St. Patricks Cathedral where my parents were married and I was baptized. That was my parish church for the first 10 years of my life.

I am to the point now where I cannot determine why any money for the most worthy project, which is 95 percent of them, should go to any artistic endeavor in this country when people ought to have a right as taxpayers to say, "I

don't care how minuscule the garbage is."

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. DORNAN of California. I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, the gentleman said 95 percent of the projects of the NEA.

Mr. DORNAN of California. Mr. Speaker, I will up it to 99.

Mr. YATES. If the gentleman will continue to yield, it is 99¾.

Mr. DORNAN of California. I will up it to that.

Mr. YATES. Ninety-nine and forty-four one-hundredths.

Mr. DORNAN of California. I will go with that, pure as Ivory soap. But the American taxpayers, I say to the gentleman again, the check scandal brings about an anger based on us funding one-millionth of 1 percent of child abuse, so-called erotic garbage with their tax dollars, mine and decent American people all across this country, one-millionth of 1 percent is an insult to the people of this country, and it causes them to hold the gentleman and me and 433 other Members in low repute.

Did we not hear Anita Hill? Did we not hear the verbal—relating in her mind—her allegations of what pornography is?

The gentleman says we cannot come up with a definition in this House. I may not be able to. And JESSE HELMS did not write that language. It was written by legal scholars like the great Alexander Bickel.

Mr. YATES. If the gentleman will continue to yield, why has he not written it?

Mr. DORNAN of California. Mr. Speaker, I already have the language written. For 3½ years I traveled throughout this country.

Mr. YATES. Mr. Speaker, where is that language? Did the gentleman submit that language?

Mr. DORNAN of California. I only missed Alaska. I traveled around this country from 1973 to when I was elected in 1976, and I am not a lawyer. But I became a good guardhouse lawyer based on the eight Milner decisions. I was able to take that definition. I had it memorized then, and I was able to explain to people all across this country why no Supreme Court in the history of our land, Potter Stewart notwithstanding, has ever said pornography was constitutionally protected free speech.

I alone in this Chamber, with unanimous consent, got the Post Office Service an amendment that declared pornography contraband.

Do my colleagues know what was happening up to then, to the ACLU? The one issue where Michael Dukakis, during the presidential race, separated himself from the ACLU. He said, "I don't think child pornography once produced is protected by free speech."

□ 1230

Do you know the power that the Dornan amendment gave the Postal Service? It was to go to a child pornographer and say, "Where did you develop this film? Where did you transport this from?"

"In my home or my car."

Good, then we own your car and we own your home, and the U.S. Postal Service is taking all of this contraband from one unanimous-consent amendment on this House floor.

We are gutless in this Chamber about pornography, and that is why no Senator had the guts to bring that up to Clarence Thomas, because the liberals on the right side facing them, they knew that the liberal philosophy, and the gentleman from Illinois can wave his hand all he wants to, the liberal philosophy has drenched, soaked our country in child pornography along the lines of Long John Silver and other street names for the male genitalia inserted, and that is why Congressman and Senators are held down in the gutter by the American people, because of the innate stupidity of blocking good language like this to protect the young of our country and to protect the mothers, the grandmothers, the sisters, the daughters. I do not care what people who do not want children feel about that. But that is what Americans want.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. MCNULTY). Members should avoid such references to the other body.

Mr. DANNEMEYER. Mr. Speaker, I yield 2 minutes to my colleague, the gentleman from Florida, [Mr. STEARNS].

Mr. STEARNS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I think the crux of the argument here which can be brought to bear on a comment that the gentleman from Illinois [Mr. YATES] said "why not let the courts decide." I would say to the gentleman from Illinois, that is what he said. The language is there, "why not let the courts decide."

Mr. YATES. If the gentleman will yield, it is not what I said, but it is what I believe.

Mr. STEARNS. It is what you believe, and I think implied in your conversation, that we should let the courts decide.

I think on this side of the aisle what we are trying to say is this: let us make a strong attempt to define it and not have the courts decide, because if we can get a decision by Mr. Frohnmayer on the NEA granting a project early on to not fund the kind of projects that are embarrassing the Members of Congress, then we can prioritize our money and we will not be funding these things. Better than going to the courts later, because once we go to the courts that is going to tie up the decision forever and a day. It can go on and on and on. This way the American people are sure their dollars are going for something that is in the mainstream of what they all believe.

So I think the crux of our argument here today on this side is that we do not want the courts to decide. We want to be able to have Mr. Frohnmayer feel comfortable in granting something that mainstream America will accept, and for that reason we do not want to have all of this money tied up in court cases. Their comes a point when we in Congress have to prioritize the money that is being spent. All of us feel that the NEA has certain very commendable projects. But there are those few projects that even you, Mr. YATES, admit we do not want to see go to the courts. Therefore, we want to see use of this language to stop that funding which end up in the courts.

Mr. YATES. If the gentleman will yield, I will tell the gentleman that if he is supporting Mr. DANNEMEYER, he is going contra to the purposes that he says he wants, because what will happen as a result of the adoption of the Dannemeyer language, the gentleman's language is that you will have the Helms language as a single standard for the grants.

Let me read what the law is now that would be vitiated by Helms.

The SPEAKER pro tempore. The time of the gentleman from Florida [Mr. STEARNS] has expired.

Mr. YATES. Mr. Speaker, I yield myself 1 minute.

The gentleman wanted the average person's wishes considered, and this is what the law says:

> The term obscene means that the average person applying contemporary community standards would find that such project, production, workshop, program, when taken as a whole appealed to the purient interests.

Is that not what the gentleman wants?

Mr. STEARNS. If the gentleman will yield, I like the Helms language better. That is why I am supporting the amendment.

Mr. YATES. There is no use talking to a closed mind.

Mr. STEARNS. If the gentleman will yield, will he not say though that the intent, what we are trying to do is to not have it go to litigation?

Mr. YATES. Who does the gentleman want to judge it then?

Mr. STEARNS. I think we should make the guidelines specific enough so that it does not go to litigation.

Mr. YATES. You do not do that with Helms.

Mr. STEARNS. I think over on this side we feel that it would stop those projects that are debatable, and we would prioritize taxpayers' money.

Mr. YATES. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Speaker, I am sure that the people who observe the busi-

ness of this Chamber note that on a semiannual basis the House of Representatives engages in a debate which has gone on for decades if not centuries as to what is obscene. I think it is fair to say that regardless of your partisan stripe on the floor, most if not every Member of Congress objects to the Federal funding, taxpayer funding of obscene material. Whether you are a Democrat or a Republican, you agree with that conclusion.

Second, though one might note that we have some differences of opinion as to what obscenity really is, I would suggest that people in good faith have tried to define this term for many years, including justices of the Supreme Court, with limited success. But the House of Representatives is never daunted in their approach to trying to come up with a new definition, one that is so inclusive, as the previous speaker said, that there can be no doubt in anyone's mind that if something is put before them it is either obscene or it is not obscene. So each year we engage in this debate, redefining the term, trying to get so specific there will never, ever possibly be an exception.

I think everyone realizes that this is a futile effort. Obscenity still is going to be in the eyes of the beholder, and ultimately the decision will have to be made on funding this material when some human takes a look at the work of another human and decides whether or not it fits the definition.

The gentleman from California [Mr. DANNEMEYER] thinks he has a better definition this year. Let me say what I think this gets down to. It is not a question of a definition; it is a question of who is making the judgment. The judgment in this case by the NEA is being made by Mr. Frohnmayer, who I have not met and do not know personally, and those other people who work for the National Endowment for the Arts.

Make no mistake, these people are not appointed by Congress. These people are appointed to this task by the President of the United States, George Bush. They are political appointees of the President. These men and women who decide what is obscene and what will be funded are the choices of the President or their surrogates. They are not the choices of the Democratic leaders in Congress, nor are they the choices of the House of Representatives or the other body. These are in fact the President's appointees who take the language and apply it, and I would suggest that the current language in the authorizing bill is as comprehensive as we can make it. It makes it clear that they are not to approve projects which describe sexual conduct in a patently offensive way. It makes it clear they are not to approve obscenity, but ultimately Mr. Frohnmayer and the other Bush appointees will take this language and apply it to a play, to a book, to a film, to some stage production or whatever it happens to be, and then and there is where the process has broken down. We do not agree with their judgment.

But frankly, let us not try to sit here and redefine obscenity every 6 months or every year. Let us say that the buck must stop in the White House where the appointments are made and the people actually make the decision as to what is obscene and what is not.

Mr. DANNEMEYER. Mr. Speaker, I yield 3 minutes to my friend, the gentleman from Montana, [Mr. MARLENEE].

Mr. MARLENEE. Mr. Speaker, there are a number of questions that have been raised here, and one of the questions that I have is why should I and our wage earners have to pay for offensive material produced with taxpayers' dollars? Why should I have to go to court in order to stop them from using my taxpayer dollars?

With the argument and the attitude that they have, that is Frohnmayer and the, "So sue me", crowd, it looks like it is going to cost our taxpayers more money, and it will come out of their own pockets.

And who decides? Who is going to decide what is obscene material?

In an attempt to service my constituents I thought perhaps a certain number of them would like to see the Mapplethorpe photographs. But before I sent them out, I was wise enough to contact the Postmaster General. I asked him if I could send these materials through the U.S. mail without being brought up for litigation because I was distributing pornographic, obscene material. The response from William Johnson was:

> I would recommend that you contact the Department of Justice for an opinion on whether that agency believes the photographs might constitute a violation of Federal or postal laws.

In other words, the U.S. Postal Department would not tell me if I could send the Mapplethorpe photographs that were funded by taxpayers' dollars through the U.S. mail.

So I contacted the Attorney General. I contacted that Department of Justice. Could they give me an answer? Could they make the decision? Could they clear the way, pave the way for me to send this material through the U.S. mail?

□ 1240

I was seeking an answer so I could serve my constituents. "The Department of Justice cannot provide private legal advice." I did not know that my advice was private legal advice, although I did seek to abide by the law and not violate it, and I did not want to be charged, "While the Department of Justice cannot provide private legal advice of the type you request, that is, advising you of the legality of such a mailing—the Federal codes—criminalize the knowing use of the mails to send or receive obscene materials and child pornography, respectively."

In other words, they could not tell me that I had the clearance to mail this material through the U.S. mail.

Mr. Speaker, the legacy of shame will continue until someday the decent family-oriented people of the United States of America will rip the plaque of liberalism from the walls of the U.S. Congress. They will say, "Stop the doubletalk and our sponsorship of the obscene."

Mr. YATES. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. WEISS].

Mr. WEISS. Mr. Speaker, this fight really is not just about content restriction of works of art sponsored or subsidized by the NEA. What this really is all about is the elimination of the NEA.

There are small-minded people in and out of Congress who cannot and will not see the benefits that art and culture provide to this great Nation of ours and want to eliminate Federal support of it by eliminating the NEA.

The people of this country know what the NEA has done in its some 25 years of existence; art in every aspect, dance, opera, theater, you name it, has burgeoned in communities large and small throughout this country, but the opponents of the NEA, for reasons small minded at best, want to eliminate it. They fly in the face of the very freedom of expression guaranteed by the first amendment to the Constitution.

Mr. DORNAN of California. Mr. Speaker, will the gentleman yield before I take a point of personal privilege?

Mr. WEISS. I am pleased to yield to the gentleman from California.

Mr. DORNAN of California. Mr. Speaker, I know that small minded is not that heavy a word or an insult. I guess my brain is 3 pounds like yours. Victor Hugo and Lord Byron are the only people I know with 5-pound brains. Einstein was a 3-pounder. So I am about 48 ounces.

Mr. WEISS. Is this coming out of your time or mine?

Mr. DORNAN of California. I know what you meant was view and scope, but I will tell you, I do not think you are small minded, and I think you missed my point. Find out why America hates this Congress. It is because of issues like this, Mr. WEISS. I still like you.

Mr. WEISS. Mr. Speaker, let me get to the point where this legislation differs from last year's. The authorization bill adopted last year had the saving grace of vesting in the courts the power to determine that the material is pornographic.

But in this instance, you would be required to create art content police under JESSE HELMS or WILLIAM DANNEMEYER or somebody, because ultimately somebody has to make a judgment as to what is or is not pornographic. For me, I would rather the courts do it than Mr. HELMS or Mr. DANNEMEYER. The fact is that our society's standards of what is pornographic, what is obscene have changed regularly throughout the years.

In my lifetime and yours, "Ulysses" was banned. It is now accepted classic literature. Obscenity and pornography should not be determined by the politicians.

Stick with the courts.

Mr. DANNEMEYER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, this is an agonizing issue. Everybody in this body supports the Constitution.

When you look at these issues, you basically have to interpret the Constitution and the purpose of the Constitution. There is no question that the Constitution assures the rights of freedom of expression and freedom of speech, but one thing for sure the Constitution does not mandate is that the Government should subsidize and pay for one individual's freedom of speech perspective.

Now, we have come down to some issues: Pictures of a crucifix submerged in urine, photographs of women naked spread-eagle, homosexuals engaged in explicit sexual acts, children photographed in erotic sex positions.

What does it come to, folks? The American people are saying maybe we have gone overboard.

Now, we can still debate the fine line of what is the constitutional right of free speech, assembly, and expression, but you cannot deny the issue here, that the taxpayers do not have to pay for this garbage. Very simple to me.

I think I have been all over this issue, and I think I have finally settled in my mind, at least, what my vote from here on out will be. I will continue to abide by and preserve those rights of Americans to have free speech and free expression, but I will be damned if I am going to commit one more penny from my district to pay for this garbage.

Mr. YATES. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, I am puzzled when Members say that the controversial or objectionable activities that have been funded reflect on the Congress.

I do not think any Member of this body has ever voted on a grant. No Member of this body, to my knowledge, has been responsible for any funding decision. The National Endowment for the Arts, since many years ago, was controlled first by appointees of Ronald Reagan and now by appointees of George Bush, so the issue before us is not whether or not the Endowment has a perfect record.

The gentleman from California and the gentleman from Illinois, in a colloquy, agreed it has about a 99.5 percent perfect record.

There is agreement that some of what they do is inappropriate. I agree with part of what the gentleman from Ohio said. Free speech is one thing, but you do not have a right to have funded everything that you have a right to say.

The question we have is not whether the National Endowment for the Arts is perfect but whether or not the best way to handle it is for Congress to intervene in its day-to-day affairs.

Some of us feel that these difficult decisions are best left to George Bush's appointees, and that is who makes the decision.

People said they are angry at Congress because of these grants. No one in Congress has made a grant. Ronald Reagan appointed people, and they made grants. Then George Bush appointed people, and they made grants. This is a wholly executive decision.

My colleagues on the other side are very angry at the President of their party in this particular instance, and I congratulate them on their nonpartisanship. I think it is admirable that they are prepared to use such harsh language about decisions made by appointees of their Presidents. Mr. Speaker, I caution them in their anger at the decisions made by these Reagan and Bush appointees, in the scorn which they pour on the disregard the Reagan and Bush appointees have shown for their sensibilities in this instance, they should not deviate from good administrative practice.

They have often been the ones who warn us against micromanaging. The issue here is not whether this or that grant is correct, but whether or not Congress must seize control from the Bush administration of this agency, and I do not think they have done that bad a job.

Mr. YATES. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. ATKINS].

Mr. ATKINS. Mr. Speaker, I hope that the conferees are not instructed.

This amendment is an amendment that would be impossible to enforce. It suggests the National Endowment for the Arts cannot fund anything that depicts anything in a patently offensive way. It is an absolutely absurd and unconstitutional standard.

The real question is the National Endowment for the Arts which has functioned so well, has been such an important part of our economy, such an important part of the enormous export of American arts and American leadership in the arts, whether decisions about grants will be made by 535 Members of Congress or whether they will be made by a panel of experts appointed by the President of the United States.

If I were to suggest a group of people who were perhaps the most unsuited by temperament, by training to make decisions about what is art and what is not and what is pornography and what is not and what is artistic expression and what is not, it would be the Members of the Congress.

□ 1250

We have a lot of important things to do. Making these determinations is not one of them. It is time to stop the nonsense, to leave the decisions in the hands of the National Endowment for the Arts and in the President's appointees and to get on to the real issues that face us, the real concerns about education, about getting our economy started again, but doing the things to make sure that America is preeminent in the world, in our economy and in our standard of living.

This debate is a waste of time. This effort is an effort to have us meddle in an area where we have no ability to make judgments.

Mr. YATES. Mr. Speaker, in the time remaining I should only like to point out to those who have declaimed against the NEA for grants that it has made and have indicated they propose to support the gentleman from California because they think that he offers greater hope that there will no longer be any approval of obscene materials, let me point out what the effect of the Helms language is again.

Let me first say that like the gentleman from Ohio [Mr. TRAFICANT], I despise the obscene works that occasionally crop up in the theater, in the museums and in the paintings and in the photographs.

The question we have to look at, I say to the gentleman from Ohio [Mr. TRAFICANT], is language, as I pointed out before. Which language will reach the result that the gentleman wants and that I want. Will it be the Helms language or will it be last year's language that the authorizing committee submitted to the Congress and which the Congress approved.

Let me read the Helms language. This vitiates the language of last year because it says: "Notwithstanding any other provision of law," it does away with the laws that are on the books. It may even do away with the laws on child pornography. I am not sure of that. But it does away with last year's language.

It says:

Notwithstanding any other provision of law, none of the funds made available to the National Endowment for the Arts under this Act may be used to promote, disseminate, or produce materials that depict or describe, in a patently offensive way, sexual or excretory activities or organs.

Is there anything else that is offensive, other than sexual or excretory ac-

tivities? If there are, the Helms language does not stop them from being the subject of grants by the NEA. It is a very limited field.

Contrast that with the language that is in the law now. It says:

We recognize that obscenity is without artistic merit, is not protected speech and shall not be funded.

That is done away with.

Insure that projects, workshop productions and programs which are determined to be obscene shall receive no funds under this Act.

That is done away with. That is in the present law.

It goes on and says:

The term obscenity means that the average person applying contemporary community standards would find that such project, production, workshop or program when taken as a whole appeals to prurient interests.

That is done away with.

2. Such project, production, workshop or program depicts or describes sexual conduct in a patently offensive way.

I do not know how Helms is different than that, but that is done away with, too. That is what the effect of the Helms language is.

So that if you want what you said you want, you are not going to support Dannemeyer. You are going to support Yates.

Mr. DANNEMEYER. Mr. Speaker, I yield myself the remaining time.

Mr. Speaker, the problem that we have with the necessity of revisiting this issue again today is because the existing law, although it defines obscenity in the classic Miller definition, also then goes on to provide what the NEA shall use by way of a standard when it acts upon grants that come to it.

The language that is the wiggle room that authorizes those running the NEA is what will be repealed by this motion to instruct that is now pending before the body, and I will read it to be specific.

Artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public.

This language that I have just read is the wiggle room whereby under the existing standard the NEA feels they are justified in authorizing and funding the projects that have been able to slip through the prohibition existing in the current law. That is the reason for the necessity of putting this language in the law.

And may I add to my colleague that the phrase, "patently offensive" has been used by the Supreme Court in every major obscenity case decided since 1966. The phrase is in full accord with whatever legal precedent on issues of obscenity and indecency for more than a quarter of a century.

This specific language has been sustained by the U.S. Supreme Court in the case of FCC versus Pacifica, upholding the power of the FCC to enforce its definition of indecency.

I think we should understand where we are. It is one thing for a citizen in this country to produce written material and seek to distribute it on their own nickel, and if they do and if it is obscene they must meet the definition that would be faced in a criminal prosecution; but in the FCC versus Pacifica case that we were talking about, the ability of the Government to regulate indecent language when it is over the radio network that is regulated by the Federal Government, and here we are talking about expending taxpayers' money.

Now, Mr. Frohnmayer, in my judgment, has committed serious errors of judgment heading the NEA, and he ought to be fired; but in our system, even though he is an appointee of President Bush, the buck stops here. We are the stewards of the taxpayers' money in this country. We decide what is to be funded, and I admit there are many serious problems facing this country that we should be debating, but this matter of what is decent in our society is just as important as any other issue facing the American people.

I believe that we will come back to this issue and come back to it until we get it right, namely, that none of the taxpayers' money is going to be used to fund this trash. That is what this whole debate is all about. We are going to have a vote up or down on whether or not we are going to use the language that was adopted in the Senate. It significantly narrows the definition so that hopefully the people running the NEA are going to get the message to cut it out.

So, Mr. Speaker, I ask for an aye vote.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. DANNEMEYER].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. YATES. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 286, nays 135, not voting 12, as follows:

[Roll No. 309]

YEAS—286

Alexander	Archer	Barton
Allard	Armey	Bateman
Andrews (TX)	Baker	Bennett
Annunzio	Ballenger	Bentley
Anthony	Barnard	Bereuter
Applegate	Barrett	Bevill
Bilbray	Horn	Price
Bilirakis	Hubbard	Pursell
Bliley	Huckaby	Quillen
Boehner	Hunter	Rahall
Borski	Hutto	Ramstad
Boucher	Hyde	Ravenel
Brewster	Inhofe	Ray
Brooks	Ireland	Regula
Broomfield	Jacobs	Rhodes
Browder	James	Ridge
Bruce	Jenkins	Riggs
Bryant	Johnson (CT)	Rinaldo
Bunning	Johnson (SD)	Ritter
Burton	Johnson (TX)	Roberts
Bustamante	Jones (NC)	Roe
Byron	Jontz	Roemer
Camp	Kanjorski	Rogers
Campbell (CO)	Kaptur	Rohrabacher
Carper	Kasich	Ros-Lehtinen
Chandler	Kennedy	Rose
Chapman	Kennelly	Rostenkowski
Clement	Kleczka	Roth
Coble	Klug	Roukema
Coleman (TX)	Kolbe	Rowland
Combest	Kolter	Russo
Condit	Kyl	Sangmeister
Cooper	Lagomarsino	Santorum
Costello	Lancaster	Sarpalius
Coughlin	Lantos	Saxton
Cox (CA)	Laughlin	Schaefer
Cramer	Lehman (CA)	Schiff
Cunningham	Lent	Schulze
Dannemeyer	Lewis (FL)	Sensenbrenner
Darden	Lightfoot	Sharp
Davis	Lipinski	Shaw
DeLay	Livingston	Shays
Dickinson	Lloyd	Shuster
Dicks	Long	Sisisky
Donnelly	Lowery (CA)	Skeen
Dooley	Luken	Skelton
Doolittle	Marlenee	Slattery
Dorgan (ND)	Martin	Smith (NJ)
Dornan (CA)	Mavroules	Smith (OR)
Dreier	McCandless	Smith (TX)
Duncan	McCloskey	Snowe
Dwyer	McCollum	Solomon
Early	McCrery	Spence
Edwards (TX)	McCurdy	Spratt
Emerson	McDade	Staggers
English	McEwen	Stallings
Erdreich	McGrath	Stearns
Espy	McMillan (NC)	Stenholm
Ewing	McMillen (MD)	Stump
Fawell	McNulty	Sundquist
Fields	Meyers	Swett
Franks (CT)	Michel	Tallon
Frost	Miller (OH)	Tanner
Gallegly	Miller (WA)	Tauzin
Gallo	Moakley	Taylor (MS)
Gaydos	Molinari	Taylor (NC)
Gekas	Mollohan	Thomas (CA)
Gephardt	Montgomery	Thomas (GA)
Geren	Moody	Thomas (WY)
Gibbons	Moorhead	Thornton
Gilchrest	Morrison	Torricelli
Gillmor	Murphy	Traficant
Gingrich	Myers	Traxler
Glickman	Natcher	Upton
Goodling	Neal (MA)	Valentine
Gordon	Neal (NC)	Vander Jagt
Goss	Nichols	Visclosky
Gradison	Nussle	Volkmer
Guarini	Olin	Vucanovich
Gunderson	Ortiz	Walker
Hall (OH)	Orton	Walsh
Hall (TX)	Oxley	Weber
Hamilton	Packard	Weldon
Hammerschmidt	Pallone	Wheat
Hancock	Parker	Whitten
Hansen	Patterson	Wilson
Harris	Paxon	Wise
Hastert	Payne (VA)	Wolf
Hayes (LA)	Penny	Wylie
Hefley	Perkins	Yatron
Hefner	Peterson (FL)	Young (AK)
Henry	Peterson (MN)	Young (FL)
Herger	Petri	Zeliff
Hoagland	Pickle	Zimmer
Hobson	Porter	
Hochbrueckner	Poshard	

NAYS—135

Abercrombie	Andrews (ME)	Atkins
Ackerman	Andrews (NJ)	AuCoin
Anderson	Aspin	Bacchus

Beilenson	Grandy	Olver
Berman	Green	Owens (NY)
Boehlert	Hayes (IL)	Owens (UT)
Bonior	Hertel	Panetta
Boxer	Horton	Pastor
Brown	Houghton	Payne (NJ)
Campbell (CA)	Hoyer	Pease
Cardin	Hughes	Pelosi
Carr	Jefferson	Rangel
Clay	Johnston	Reed
Clinger	Jones (GA)	Richardson
Coleman (MO)	Kildee	Roybal
Collins (IL)	Kopetski	Sabo
Collins (MI)	Kostmayer	Sanders
Conyers	LaFalce	Sawyer
Cox (IL)	LaRocco	Scheuer
Coyne	Leach	Schroeder
DeFazio	Lehman (FL)	Schumer
DeLauro	Levin (MI)	Serrano
Dellums	Levine (CA)	Sikorski
Derrick	Lewis (GA)	Skaggs
Dingell	Lowey (NY)	Slaughter (NY)
Dixon	Machtley	Smith (FL)
Downey	Manton	Smith (IA)
Durbin	Markey	Solarz
Dymally	Martinez	Stark
Eckart	Matsui	Stokes
Edwards (CA)	Mazzoli	Studds
Engel	McDermott	Swift
Evans	McHugh	Synar
Fascell	Mfume	Torres
Fazio	Miller (CA)	Towns
Feighan	Mineta	Unsoeld
Fish	Mink	Vento
Flake	Moran	Washington
Foglietta	Morella	Waters
Ford (MI)	Mrazek	Waxman
Ford (TN)	Murtha	Weiss
Frank (MA)	Nagle	Williams
Gejdenson	Nowak	Wolpe
Gilman	Oakar	Wyden
Gonzalez	Oberstar	Yates

NOT VOTING—12

Callahan	Hatcher	Obey
Crane	Holloway	Pickett
de la Garza	Hopkins	Savage
Edwards (OK)	Lewis (CA)	Slaughter (VA)

□ 1319

Messrs. PAYNE of New Jersey, MARKEY, and DERRICK changed their vote from "yea" to "nay."

Messrs. ESPY, JONTZ, and DICKS changed their vote from "nay" to "yea."

So the motion to instruct was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1320

PARLIAMENTARY INQUIRY

Mr. GINGRICH. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman from Georgia will state his parliamentary inquiry.

Mr. GINGRICH. Mr. Speaker, I wanted to report to the Chair that at 12:36 p.m. the other body sustained the President's veto on unemployment, and I wanted to inquire of the Chair if it would be willing to ask the Rules Committee today to meet and make in order a signable unemployment bill which we would be able to pass this week.

The SPEAKER pro tempore. The Chair will state that that is not a parliamentary inquiry.

REQUEST FOR CONSIDERATION OF THE DOLE-MICHEL UNEMPLOYMENT BILL

Mr. GINGRICH. Mr. Speaker, I ask unanimous consent to bring up the Dole-Michel unemployment bill at this time.

The SPEAKER pro tempore. Under the Speaker's announced guidelines, the Chair will not entertain that request.

PROVIDING FOR CONSIDERATION OF H.R. 3371, OMNIBUS CRIME CONTROL ACT OF 1991

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 247 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 247

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3371) to control and prevent crime, and the first reading of the bill shall be dispensed with. All points of order against consideration of the bill are hereby waived. After general debate, which shall be confined to the bill and the amendments made in order by this resolution and which shall not exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment recommended by the Committee on the Judiciary, as modified by the amendments printed in part 1 of the report of the Committee on Rules accompanying this resolution, as an original bill for the purpose of amendment under the five-minute rule, said substitute, as modified, shall be considered as having been read, and all points of order against said substitute, as modified, are hereby waived. No amendment to said substitute, as modified, shall be in order except those printed in part 2 of the report of the Committee on Rules. Said amendments shall be considered in the order and manner specified in the report and shall be considered as having been read. Said amendments shall be debatable for the period specified in the report, equally divided and controlled by the proponent and a Member opposed thereto. Said amendments shall not be subject to amendment except as specified in the report of the Committee on Rules. Where the report specifies consideration of amendments en bloc, then said amendments shall be so considered, and such amendments en bloc shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. It shall be in order at any time for the chairman of the Committee on the Judiciary to offer amendments en bloc consisting of amendments, and modifications in the text of any amendment which are germane thereto, printed in part 2 of the report of the Committee on Rules. Such amendments en block shall be considered as having been read and shall be debatable for not to exceed twenty minutes, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. All points of order against the amendments en bloc are hereby waived. The original proponents of the amendments en bloc shall have permission to insert statements in the Congressional Record immediately before disposition of the amendments en bloc. Such amendments en bloc shall not be subject to amendment, or to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against the amendments in the report of the Committee on Rules are hereby waived. If both amendments numbered 9 and 10 are adopted, only the latter amendment which is adopted shall be considered as finally adopted and reported back to the House. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. In the preparation of the engrossment of H.R. 3371, the Clerk of the House of Representatives is authorized and directed to insert as a new title at the end thereof the text of H.R. 7 as passed by the House on May 8, 1991.

SEC. 3. Upon adoption of this resolution, House Resolution 246 is hereby laid on the table.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from New York [Mr. SOLOMON], pending which I yield myself such time as I may consume. During the consideration of this resolution all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 247 is a modified open rule providing for the consideration of the Omnibus Crime Control Act of 1991.

The rule waives all points of order against consideration of the bill and provides for 2 hours of general debate, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The rule makes in order the Judiciary Committee amendment in the nature of a substitute, as modified by the Ways and Means Committee amendments printed in part 1 of the report of the Committee on Rules, as an original bill for the purposes of amendment under the 5-minute rule. The substitute, as modified, shall be considered as read and all points of order against the substitute, as modified, are waived.

The rule makes in order only the amendments printed in part 2 of the report of the Committee on Rules. The amendments are to be considered only in the order and the manner specified in the report and are considered as read. All points of order against the amendments in the report are waived.

The amendments printed in part 2 of the report are debatable for the period specified in the report, equally divided and controlled by the proponent and opponent. These amendments are not subject to amendment except as specified in the report.

The rule further specifies that amendments numbered 9 and 10, the amendments to be offered by Representatives HYDE and BRYANT relating to funding for habeas corpus litigation, will be considered under king-of-the-hill procedures. Under the king-of-the-hill procedure provided in this rule, both amendments may be considered. If both amendments are adopted, only the last amendment adopted will be reported back to the House.

The rule also makes in order amendments en bloc, if offered by Chairman BROOKS, consisting of amendments printed in part 2 of the report and germane modifications. The en bloc amendments shall be considered as read and are debatable for 20 minutes, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. All points of order against the amendments en bloc are waived and the original proponents of the amendments included in an en bloc amendment may insert statements in the CONGRESSIONAL RECORD to appear immediately before the vote on the en bloc amendments. In addition, the en bloc amendments shall not be subject to amendment or to a demand for a division.

At the conclusion of the bill, any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute. The rule also provides one motion to recommit with or without instructions.

The rule also authorizes and directs the Clerk of the House to insert a new title, during the engrossment of H.R. 3371, consisting of the text of House-passed H.R. 7.

Finally, section 3 of the rule lays on the table House Resolution 246, the rule we reported out last Thursday night.

Mr. Speaker, the Omnibus Crime Control Act of 1991 authorizes $1.2 billion in funding for programs aimed at curbing crime. The bill covers a wide range of anticrime initiatives, with emphasis on drug treatment in prisons, community police patrols, and other provisions that deal with harsher penalties and programs aimed at stopping crimes before they occur.

The bill prohibits the possession or transfer of 13 assault-style semiautomatic weapons and large capacity ammunition feeding devices. In addition, the bill authorizes $100.5 million for the Drug Enforcement Agency as well as $45 million for Border Patrol personnel and $25 million for domestic violence grants.

The bill also reforms Federal habeas corpus and responds to criticisms voiced with respect to the habeas corpus proposals considered in the 101st Congress.

Specifically, the bill establishes a 1-year deadline within which death row petitioners must file habeas corpus petitions in Federal court. The bill also provides for an automatic stay of execution to permit the Federal courts to consider claims in capital cases and to avoid 11-hour petitions to stay executions. In addition, the bill prohibits virtually all second and successive habeas corpus applications in capital cases and removes the current requirement that prisoners under sentence of death obtain a certificate of probable cause in order to appeal from an unfavorable judgement.

Finally, the bill specifies the law to be applied in habeas corpus cases and requires the States to provide competent counsel to indigent prisoners at all stages of capital litigation in State courts.

The habeas corpus language in the bill reflects various recommendations made by the Judicial Conference of the United States, the Powell Committee, the American Bar Association, the National District Attorneys Association, the National Association of Attorneys General, as well as distinguished Federal and State judges.

Mr. Speaker, House Resolution 247 is a fair rule that will expedite consideration of this very important legislation. I urge my colleagues to support the rule and the bill.

□ 1330

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, it is with some reluctance that I must forcefully oppose this rule.

I say that because I think the chairman of the Rules Committee, in his dealings with me, and the leadership on both sides, made a good-faith effort to negotiate a fair rule.

But while that effort made significant progress, it came up short. This rule is less than fair.

And that is extremely unfortunate because I would rather avoid these procedural confrontations.

Mr. Speaker, our Republican leader and I both wrote to the chairman of the Rules Committee, and we both submitted statements to the committee urging an open rule.

I moved such a rule and it was predictably rejected on a party line vote.

But we both realized our chances for an open rule were dim given the Rules Committee's request that amendments be filed in advance of our hearing.

And so, as a fallback position, we asked that, at a minimum, amendments be allowed on all the major issues considered in the Judiciary Committee, and beyond that, that Republicans be treated equitably with Democrats, with regard to other amendments made in order.

How did the Rules Committee measure up on these minimal standards? They flunked.

First, on the 10 top priority amendments we submitted to the Rules Committee—an 11th having been taken care of by a Ways and Means Committee amendment—the committee made in order 6 amendments, only 6 of the 11 major issue amendments requested by the President of the United States.

These include the amendments—by Representative HYDE on habeas corpus reform; by Representative GEKAS on the death penalty; three by Representative MCCOLLUM on the exclusionary rule, an Equal Justice Act, and the death penalty for drug kingpins; and one by myself on drug testing in State criminal justice systems.

But even then, the committee decided once again this year, to give unequal treatment to the Hyde habeas corpus reform amendment. My colleagues may recall that last year on the crime bill, this House defeated the first rule on an overwhelming vote of 166 to 258.

That was because the rule was too restrictive, and among other things, denied a vote on the Hyde habeas corpus reform amendment.

The Rules Committee came back with a new rule that finally included the Hyde amendment and the rule easily passed by voice vote. The Hyde amendment went on to pass the House by a resounding margin of 285 to 146, and the House worked its will, as it should.

This year the Rules Committee did not make the same mistake in attempting to torpedo the Hyde habeas corpus reform amendment.

No, this year it made a new and different mistake by first trying to divide the question on the Hyde amendment and thereby force two separate votes.

But not satisfied with that, the Rules Committee went back into session yesterday to report a new rule that would split the Hyde amendment into three separate amendments, offered at different parts of the bill, subject to three separate votes.

The Rules Committee has moved from last year's failed tactic of deny and delete, to this year's tactic of divide and defeat. Well, my colleagues, this kind of subterfuge should not be allowed to stand.

Oh, our colleagues on the majority side will try to tell us that this triple-split ploy was done because the Hyde amendment goes to different parts of the bill.

But that kind of rationalization just doesn't hold water when you look closely at this rule. The fact is that there are seven other amendments which also go to different parts of the bill, and they are not subject to a division of the question.

And not too surprisingly, six of those indivisible amendments are by Democrats, namely, Representatives WAXMAN, STAGGERS, DINGELL, FORD of Michigan, and VOLKMER in two instances.

But then the majority counters that the Hyde amendment is objectionable because it goes to more than one title of the bill.

Well, the same is true of the en bloc amendments of Representatives WAXMAN, STAGGERS and FORD, and GEKAS. So that objection has no validity either.

No, Mr. Speaker, there is no rational or objective reason for denying the Hyde amendment which deals solely with the subject of habeas corpus, from being indivisible. There remains only one explanation, and that is blatant partisan politics.

Mr. Speaker, this rule is also unfair because it does not permit the offering of 4 of our top 10 priority amendments.

All four of those amendments were offered in the Judiciary Committee.

And conservative and moderate Democrats should listen carefully.

These include the McCollum-Schiff amendment on coerced confessions; the gallegly amendment on drug sales to minors; the Gekas Anti-Corruption Act amendment; and the Molinari prior history amendment relating to evidence in sexual assault and child molestation cases.

These are all major issue areas, all important amendments considered in the Judiciary Committee. And yet all are denied consideration under this rule for no apparent reason.

Again, Mr. Speaker, this kind of treatment of the minority and of the President is unfair. These 4 additional amendments from our top 10 priority list, must be included in a new rule.

Finally, Mr. Speaker, we asked that the minority be treated equitably on other amendments compared to the majority.

By that, we did not mean we should have an equal number of amendments, but, that they should be roughly proportionate to the number of amendments offered by both sides of the aisle, but, Mr. Speaker, we were not treated equitably.

This rule makes in order 46 amendments, only 13 or 28 percent by Republicans. The other 33 amendments made in order, or 72 percent, are by Democrats.

This is hard to swallow from a party that is trying to wrap itself in the mantle of fairness in its national political campaigns.

Mr. Speaker, I indicated at the outset that the chairman of the Rules Committee, my good friend for whom I have the greatest of admiration and respect, did make a good-faith effort to negotiate a fair rule with us on the Republican side.

I again want to commend him on making an honorable effort in that direction. But I can only conclude that the effort has fallen far short of anyone's definition of fairness.

And it is on that basis that I must respectfully, yet forcefully, urge the defeat of this rule so that we can come back today with one that makes at least 5 changes—and again, conservative and moderate Democrats should listen carefully—first: The Hyde habeas corpus reform amendment must be restored as one, indivisible amendment, as the 7 other en bloc amendments in this rule are; and second, we must make in order the 4 remaining amendments from our top 10 priority list: McCollum on coerced confessions; Gallegly on drug sales of minors; Gekas on anticorruption; and Molinari on prior history evidence in sexual assault and child molestation cases.

In conclusion, Mr. Speaker, this rule and this bill have been a long time coming. It would be a crime at this point if we did not get things right by failing to provide a fair amendment process on this floor.

The President challenged us back on March 6, to send his violent crime control bill to his desk in 100 days. That was 223 days ago.

And instead of the tough bill the President recommended, we have been presented with something of a wet noodle without full opportunity to change the bill from a pro criminal bill to an effective anti criminal bill that protects the victims of violent crime.

Last year we managed to get a good bill through the House after the first rule was defeated and additional amendments were made in order. But that measure was sent to conference as a tiger shark and came back as an anemic guppy.

That's why we are back here today, just 1 year later, trying to get things right this time. Let's not repeat the failings of the past. Vote down this rule, so that we can learn and build on those mistakes, and send the President that tough antiviolent crime bill he has asked for and which the American people demand.

Mr. HUNTER. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from California.

Mr. HUNTER. Mr. Speaker, I thank our distinguished minority leader on the Committee on Rules for his analysis of this rule. I just want to ask him a question because the gentleman from Illinois [Mr. HYDE] is not here today because of pressing personal matters to advance his amendment. But I think that amendment, as the gentleman said, is very important to every neighborhood in America because its habeas corpus reform is going to keep the jail doors from swinging open and spewing robbers, rapists, and murderers back into the community.

I just want to ask the gentleman if what I heard, if what I think I heard is correct, in that what we have done with the very popular Hyde amendment that the American people want to reform habeas corpus is, the Democratic leadership has divided it now into three parts that are found in three separate sections of the bill, so that they have the habeas corpus itself, the habeas corpus provisions in one section. They have funding for prosecutors in another one, and they have the striking of the Berman language in yet another section, so that they have divided this very, very important provision up in a way that it cannot be coherently debated and voted on with a single vote.

I ask the gentleman, is that right?

Mr. SOLOMON. Mr. Speaker, not only that, but the third part that the gentleman mentioned is subject to a king-of-the-hill operation which means the third part of the Hyde amendment could pass with 300 votes and yet be followed by a Bryant amendment that would supersede it with only 218 votes. That is how bad this rule is.

Mr. HUNTER. Mr. Speaker, if the gentleman would continue to yield, I am reminded of what Scoop Jackson once said with respect to foreign policy, "The best policy in foreign policy is no politics."

I want to remind my friends on the Democratic side of the aisle that while we had young people fighting in the Persian Gulf, we were losing more young people in America, in fact in this city, struck down by gunfire and by criminal acts. It is absolutely imperative to the American people that we have no politics in this bill.

The only way we can achieve a fair bill that is fairly developed and fairly debated is to beat this rule.

I think the gentleman from New York has stated it excellently.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman for his comments.

Mr. Speaker, I reserve the balance of my time.

Mr. DERRICK. Mr. Speaker, I yield myself such time as I may consume.

The gentleman from New York is certainly correct in that the Hyde amendment was split up three ways. But the sum of the totals still goes back to the sum of the whole. It is the same amendment. It is only split up in three parts, as it properly should be, to give the Members of this body an opportunity to concentrate as they vote and as they speak on one issue at a time, and not to bog the whole thing down with three different issues.

Mr. Speaker, I yield 5 minutes and 30 seconds to the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I rise in opposition to the rule.

There are a number of features of the bill that I find unsatisfactory, unfair, and not in the interest of producing the best product for the House to move into conference with the other body on this all-important legislation.

Among these bad features of the rule are the fact that it does not permit us to debate and vote on one of the most critical issues in contemporary Federal criminal justice. That issue is mandatory minimum sentences.

The Federal judiciary strongly feels that mandatory minimums are fundamentally inconsistent with the sentencing guideline system which we adopted with much fanfare and acclaim just a few years ago, and which is still being fine tuned. The Sentencing Commission, which the Congress established to carry out the new system, agrees.

Many experts, in all three branches of Government, believe we should declare a moratorium on all new mandatory minimums until a fuller study and analysis can be done of the value and effectiveness of the many mandatory minimum sentences which we have enacted in the past few years. The rule does not make in order amendments I offered to let us make a judgment on such a moratorium.

Similarly, the rule does not allow us to offer amendments to improve the habeas corpus reform provisions in the bill. Our only choices is an up-or-down, head-to-head, choice between the provisions of the bill as reported and a radical substitute which would destroy habeas corpus as a redress for Federal constitutional violations in the course of State criminal proceedings.

Important as these issues are, these provisions of the rule, standing alone, would not lead me to vote against the rule.

The matter that does, though far less important from a substantive viewpoint, represents such an outrageous violation of normal rules of parliamentary procedure, not to mention fundamental fairness, that I cannot support the rule.

While the crime bill was being developed in committee, I successfully offered an amendment designed to address the problem of illegal diversion of licit narcotic material into illicit drug traffic.

Under a current Department of Justice [DEA] administrative regulation, U.S. drug-manufacturing firms must acquire 80 percent of their opiate raw materials from either India or Turkey. According to United States State Department and DEA reports, India continues to leak like a sieve—anywhere from 10 to 50 percent of their legal opium production is being diverted to illegal drug traffic, some no doubt bound for our borders.

India refuses to deal with the problem, and our DEA refuses to even begin a formal examination which might lead to eliminating or reducing this reward to India for conduct which should be criticized, not rewarded.

The provision which our committee included in the bill addresses this inaction by directing the Attorney General to reduce the guaranteed share for India. It does not—I repeat, does not—change in any manner or degree the amount of raw materials being imported—this is dictated by demand for the finished product.

An amendment was offered to the Rules Committee by a member of the Committee on Foreign Affairs to strike this provision of our bill. We would have no problem with this amendment being made in order, and I would concede that the Committee on Foreign Affairs shares jurisdiction with us on this matter.

However, the rule does not make in order an amendment to strike.

The rule adopts a self-executing amendment by the Ways and Means Committee to strike our provision. Our provision is stricken by the rule itself, with no opportunity to vote against the amendment to strike, or to offer an amendment to restore the provision in some form.

Under the rule, the Ways and Means Committee not only exercises joint jurisdiction over an internal rule of the Drug Enforcement Administration of the Department of Justice, but exclusive jurisdiction. Even in the case of provisions of a reported bill which are within the exclusive jurisdiction of another committee, the normal and fair practice is to allow an amendment to strike, not a dictatorial, self-executing unilateral elimination of the provision by the rule itself.

For these reasons, I will vote to reject the rule.

Mr. DERRICK. Mr. Speaker, let me just say in response to the gentleman in the well that the Ways and Means provision struck all revenue provisions, and the amendment of the gentleman from New Jersey [Mr. HUGHES] was a revenue provision, and that is why it was struck.

Mr. HUGHES. If the gentleman will yield just briefly, I talked to the Parliamentarian and he tells me that that was remote, that was remote.

Mr. DERRICK. The Senate Finance Committee flagged it as well as the Ways and Means Committee. That is all I can tell the gentleman.

Mr. SOLOMON. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. REGULA].

Mr. REGULA. Mr. Speaker, I rise in opposition to the rule for consideration of H.R. 3371, the omnibus crime bill.

This bill is a budget buster. It disregards the need to be conscious of Government spending. Fighting crime is important, but throwing money at our problems doesn't solve them.

There are ways to devise effective programs at lesser costs. We know the problems. We don't need to create any more commissions, conduct any more studies, or devise grant programs where existing programs already fit the need.

I had offered an amendment to the Rules Committee which would have allowed States and localities to use closed military bases and surplus equipment for prison boot camps. It would have provided needed assistance to States at very little cost to the Federal Government.

Instead of this cost-effective program, the bill provides $200 million in grants in 1992, $200 million in 1993, and another $200 million in 1994 for correctional grants to States to establish boot camps. That's $600 million for what could be accomplished for a few million.

I sit on the Appropriations Subcommittee with jurisdiction over the Department of Justice. With the programs authorized in this bill, I see no way that we will be able to fund them next year.

We are making promises to the American people in this bill which we cannot fulfill. We are creating new programs and raising authorization levels for existing programs which we cannot fund. I urge my colleagues to vote against the rule.

Mr. SOLOMON. Mr. Speaker, I yield 3½ minutes to the gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Speaker, I thank my colleague for yielding time to me.

Mr. Speaker, I rise in strong opposition to the rule and urge my colleagues to vote against it. We have just gotten some very good ammunition as to parts of this bill, and I assure my friend from New Jersey that we are in the process of drafting amendments to be made in order by the rule to be offered by the minority.

Mr. Speaker, the rule before us today fails to allow some very important amendments offered by Republicans during the consideration of H.R. 3371 by the Committee on the Judiciary.

Crime legislation is a top priority for all of us. It is also, understandably, a matter of great concern to all of our constituents.

Crime legislation is always, by its very nature, controversial. This year's crime bill is no exception. Among those issues which are controversial are habeas corpus, coerced confessions, racial fairness in the imposition of the death penalty, death penalty procedures, new death penalty crimes, and firearms bans. These issues are important to us, to our constituents, to law enforcement officers, to prosecutors and defense attorneys and to President Bush.

Mr. Speaker, controversy is not settled by prohibiting the opportunity to vote for alternative provisions. As you will remember, the modified closed rule for last year's crime bill was defeated on the House floor by a vote of 166 to 258 due to its omission of several key amendments.

This House should be permitted to work its will on this important legislation. To do so requires a new rule, a rule making in order amendments offered by Republicans during consideration in the Committee on the Judiciary. The Members who labored in subcommittee and full committee to bring this bill before us.

The rule before us fails to provide for a single vote on my colleague, Mr.

HYDE's amendment on habeas corpus and instead divides it into three parts—the divide and conquer approach. Also, it did not allow the McCollum-Schiff amendment which seeks a study by the Attorney General on the effect of the Arizona versus Fulminante case involving the erroneous admission of an involuntary statement by the defendant.

The amendment submitted by Mr. GALLEGLY, originally offered by Mr. RAMSTAD before the Judiciary Committee, increases the prison sentences for drug sales to minors, should be made in order, as should be Mr. RAMSTAD's amendment which requires a mandatory life imprisonment sentence for criminals who are convicted for a third time of a violent crime.

Other important, yet omitted, amendments include Mr. GEKAS' amendment expanding Federal jurisdiction over State and local political corruption and voter fraud; Mr. MOORHEAD's amendment treating State drug offenses as qualifying for the Federal armed career criminal statute if that offense would have been punishable by 10 years or more had it been federally prosecuted; Mr. SCHIFF's two funding amendments, one permitting the Bureau of Judicial Assistance to provide grants to Federal agencies and one requiring that at least 25 percent of the special forfeiture fund moneys be dedicated to community-based drug treatment programs. Mr. Speaker, these are provisions that the majority of Americans support.

Mr. Speaker, while the rule does include some key Republican amendments, it does not go far enough. The rule before the body provides for 33 amendments by the majority and only 13 by the minority.

I urge my colleagues to vote to defeat this rule and to require a new rule making in order all Republican amendments previously offered at the Judiciary Committee.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the distinguished gentlewoman from Washington [Mrs. UNSOELD].

Mrs. UNSOELD. Mr. Speaker, I thank the distinguished gentleman from South Carolina for yielding time to me.

Mr. Speaker, I rise in support of the rule and of the Volkmer amendment.

There is no question, Mr. Speaker, we have a serious crime problem. Banning certain types of guns, however, not only will not solve that problem, but restricting civilian access to certain firearms might actually impede our own police officers' ability to fight crime.

Our domestic firearms manufacturers invest millions of dollars into research and development for example to create accurate weapons that have the lowest potential to harm innocent bystanders. Olympic Firearms developed a special AR–15 which uses .11 caliber bullets that will not penetrate walls, thus protecting individuals in adjacent rooms during a drug raid. The innocent deserve the best protection our American ingenuity can provide. Without a healthy domestic market, Olympic Firearms would not have had the capital to make that investment.

Does this House really want to make our military and law enforcement dependent upon foreign manufacturers?

Ultimately, to curb the scourge of violence, we will have to address the breakdown of the American family, our value system, and how we educate our young. We must fight crime by recognizing that our society has undergone profound economic and demographic change, and that our social and educational institutions haven't kept pace. Unless we act swiftly, we jeopardize America's place as a free and prosperous society and condemn much of a new generation to lives of poverty, despair, and violence.

In this year that we celebrate the 200th anniversary of the signing of the Bill of Rights, let us not dismiss this Nation's freedoms, including the right of law abiding citizens to keep and bear firearms. If we weaken one of the amendments, the whole package is in jeopardy. Passing feel-good legislation at the expense of our Bill of Rights is not something I can do—even in the name of fighting crime.

Mr. Speaker, I urge support of the rule and Mr. VOLKMER'S amendment.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, sometimes Members of this body wonder why the American people become nauseated when they watch Congress at work. This is a good example of why they are worried about what is happening in their Congress.

They are concerned about crime and Congress is trying to figure out ways in which to protect criminals. And this is a good example of it. What we have before us today is a bill and a rule crafted by the liberal antigun, soft-on-crime crowd that has already made it unsafe to walk America's streets. Let me give an example of what is going on here.

I hear, and I will say that it is strictly rumor at this point, but I hear, and the gentleman from New York I think is aware of this, that in order to pass this rule a deal was cut with the liberals that would have somehow a process that will assure that language now in the bill will be stripped out, language which now says that police and military would be limited to seven rounds in their clips. And somehow that language is going to be stripped out so that the Volkmer amendment will have less of a chance of passing. Is that something the gentleman has also heard?

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from New York.

Mr. SOLOMON. Mr. Speaker, I am just hearing that rumor right now, and if that happens, that means that the Volkmer amendment has no chance of passing the House. That means that any Member who represents gunowners, like I do in the Adirondack and the Catskill Mountains, are going to get stuck today if they vote for this rule. That rumor is going around.

Mr. WALKER. What I am a little bit confused by is just exactly how they are going to do that too. When I read through the rule, the only way they can do that is probably with the consent of the chairman of the Judiciary Committee who would have to include it in his en bloc amendments. So I assume that this deal has been cut with the Speaker, that it has been cut with the liberals, that it has been cut with the people who are supposedly carrying the gunowners' position on the floor, and what we are going to have here is a sellout that was a deal cut behind closed doors but now is going to be endorsed under this rule. Is that the gentleman's impression?

Mr. SOLOMON. I will say to the gentleman that is absolutely correct. And the worst part is the Speaker and the chairman of the Rules Committee gave their word that there would be no chicanery in playing around with this issue. It is terribly upsetting to this Member of Congress, I will tell the gentleman.

Mr. DERRICK. Mr. Speaker, I yield myself such time as I may consume just to make a remark before I yield to the next speaker. I remember when I practiced law that folks would come to me that got in trouble and say they fell in with the wrong crowd. It was always that. It kind of reminds me of the way we hear "liberal" thrown around. If they cannot think of anything to blame it on, they blame it on the "liberals." It is kind of running around with the wrong crowd.

□ 1400

Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Speaker, I thank the gentleman very much for yielding me this time.

Mr. DERRICK. Mr. Speaker, will the gentleman yield?

Mr. SCHUMER. I am happy to yield to the gentleman from South Carolina.

Mr. DERRICK. Mr. Speaker, one other thing, I might say that I have been authorized to say that the gentleman from Missouri [Mr. VOLKMER] is going to support the rule in case there is some question about that.

Mr. SCHUMER. Mr. Speaker, I rise in support of the rule.

Doing a crime bill is a very difficult thing to do, particularly when we seem

to have a situation where everything is politicized. The issue to many on that side of the aisle is not making the streets safer but is, rather, having a political issue. We found that on every single issue that we have dealt with.

I think the Committee on Rules has tried to deal fairly with the rule by and large. It is a difficult job, no question about it, and not everyone's amendments are in order, but basically they have tried their best, and I think at least to this Member's satisfaction.

I would like to just talk about the situation brought up by the gentleman from New York and the gentleman from Pennsylvania. Very simply, does anyone in this body believe that clips ought to be limited? No. I do not, to the military and to the police. I do not. I do not think there is a Member on this side of the aisle that does, and I do not think there is a Member on that side of the aisle that does.

And so because the committee and the chairman of this committee want to make ironclad sure, and I think it was sure before, but they want to make sure in an ironclad way that our police are protected, that our armed services are protected, what do the gentleman from Pennsylvania and the gentleman from New York say? They say they should not do it. That is not debating the issues on the merits.

If I have ever seen a situation where politics has prevailed, this is the situation.

Again, does anyone in this body believe that we should limit the military in terms of the number of clips that they have, that we should limit the number of police in terms of the clips they have? No. They have an amendment to make that crystal clear, which is now opposed by the other side.

If we want to debate these issues on the merits, we should. If we care about preventing the little old lady from being hit over the head, then we should have a rule that allows a clear debate on the rule.

My point is simply that there is a great debate in this Chamber over whether we should ban 13 assault weapons or not. That deserves to be heard on the merits. That deserves to be heard so that people who are for banning these assault weapons can vote yes, and people who are against banning assault weapons should vote no.

What the gentleman from New York and the gentleman from Pennsylvania are saying is they do not want a clear vote on that, that they rather want to let the police and military be pawns in their game so that they will not have an up-or-down vote.

Mr. SENSENBRENNER. Mr. Speaker, will the gentleman yield?

Mr. SCHUMER. I am happy to yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, my reading of the bill where you wrote the assault weapons provision indicates that your bill does provide the limitation on the clips to the police and the military.

Does the gentleman not think he should admit he made a mistake?

Mr. SCHUMER. Reclaiming my time, the way I read the bill, it does not limit police and does not limit the military. But some on the other side claim that it did and, therefore, all we are doing is making it crystal clear. Stop using the police, stop using the military, stop using our law enforcement as a pawn in your very Machiavellian game.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER].

Mr. SENSENBRENNER. Mr. Speaker, we have just heard a tirade from someone who is running full-speed reverse from provisions that he wrote in his own bill, and because his own bill will not withstand the scrutiny of what it covers and who it applies to, now, he is trying to wiggle out of what he did by blaming us for his support of the modification.

If that is not twisted logic and twisted reasoning, I do not know what it is, and it is beneath the dignity of the House of Representatives.

All too often, a vote on procedure dictates the outcome of substance, and this is clearly true in the case of this rule. If this rule is adopted, as it has been submitted by the Committee on Rules, there will not be clear up-or-down votes on the issue of whether the police and the military are exempt from the assault-weapons clip ban, on habeas corpus, on the exclusionary rule, on the use of prior confessions and all of the other major issues.

All we are asking for is to give us a clear up-or-down vote so that we can debate the issue, make a reasoned judgment, and stand on our voting records to the American people.

An "aye" vote on this rule prevents those kinds of votes from taking place. That is why this rule ought to be defeated.

Mr. DERRICK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to say once again that the gentleman from Missouri [Mr. VOLKMER] is going to vote for the rule, in case anyone did not hear me the first time.

Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, I want to command the gentleman from South Carolina. He is now one of the leaders of the Democrat Party. I think that he offers a ray of hope with his stand on tax and trade, but he also shows something as a leader when he gives a Democrat who opposes the rule an opportunity to say why.

I was told earlier here that as a sheriff, even though I had some amendments, does not necessarily mean that a sheriff should be writing the crime bill.

Let me say this to the Members: One of the problems in America is we have had crime bills written by lawyers, with lawyers, of lawyers, for lawyers, and that is one of the reasons the country is going to hell.

The gentleman from Illinois [Mr. HYDE], whether we agree with him or not, has been a leader on a very important issue in this Congress. The wisdom should have been to let the gentleman from Illinois [Mr. HYDE] come forward, place his issue before the American people, debate that issue, and vote on it up or down, not play around.

I am upset with this bill because this bill supposedly deals with the death penalty, capital punishment. But there is not one provision in here to help mom and dad at home.

This bill leaves it up to the States once again, leaves it in the hands of bleeding-heart liberals who have basically passed open season on innocent victims in many of our States.

I had an amendment that said. "Look, let us reduce some of those law enforcement funds to those States that do not enact the death penalty for first-degree murder," protecting mom and dad, but, no, we cannot do that. I said, "Well, let us make it a capital offense, a Federal crime, and expand the statute for first-degree murder, put a new division in in each district court with a prosecutor to handle capital cases, a judge to handle capital cases," but no.

Then we have another element in this bill that is sickening to me as a sheriff. Many of these felons are being released from prison, and when they get convicted, they look right at a witness and say, "When I get out of here, I am going to kill you," and when they are released, they go and kill them.

I wanted a provision that would cause for a notice to be made to interested parties, witnesses, people who testified against these felons. "Cannot do that."

Mr. Speaker, the bottom line is we have got a hell of a mess on our hands.

□ 1410

In my opinion, the Congress cannot pass a bill because the Congress is not dealing yet with the issues, and the American people are fed up with us. They are not worried about the bank. They are not worried about the restaurant. They do not know what they are worried about. They are just upset with the way we are governing.

Let me say this as far as the gentleman from Illinois [Mr. HYDE] is concerned, the way I feel today Congress cannot govern by suppression. This should be word to the wise around here.

When you have Democrats as well as Republicans question the way this place is run, important bills of the House should be brought out under an open rule.

Let me say one thing. I have great respect for all the chairmen, then when I offered my Buy American bill with a criminal penalty for affixing a fraudulent label on an import, I was told, "That's Ways and Means."

Well, damn it, if the gentleman from Florida [Mr. GIBBONS] and the gentleman from Illinois [Mr. ROSTENKOWSKI] are going to write all the laws, you are going to support it, I am not.

I am tired of saying that it is Ways and Means jurisdiction. Then when I go to Ways and Means, they say, "It's the crime committee's jurisdiction."

This is a Democrat that is upset, damn it. I am opposed to the rule. I want the rule defeated. I would like to see it go back and be brought back out on the floor and get everybody's initiative a chance to be voted on.

Mr. SOLOMON. Mr. Speaker, we have heard from a number of irate Democrats who were gagged by this rule. Let me yield to another irate Democrat who was gagged by this rule.

Mr. Speaker, I yield 1 minute to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Speaker, this is the first time in 9 years I have ever risen to speak against a rule in this House. I do it because I offered an amendment to this crime bill which I considered to be very important, to make it a Federal crime to possess or discharge an illegal firearm in a Federal housing project.

Why did I offer this amendment? Because the mayor of Chicago came to meet with the Illinois delegation and said, and I quote him, "The worst slums in the city of Chicago are owned by the Federal Government."

Let me tell you what the statistics are. In the city of Chicago in Federal public housing projects, one innocent person is shot at every day. One innocent person is injured by a firearm every week, and one innocent person is killed by a firearm every month, and it is not just a big-city problem. It is not just New York and Chicago. It is Evergreen Terrace in Springfield, IL, and it is a problem across the Nation.

If we do not rid our Federal housing projects of these gun-wielding gangs, we condemn the innocent people living there to a life of terror and violence.

Now, I do not know who decided this amendment was not important enough to be debated, whether it was the Rules Committee, the Judiciary Committee, or the gun lobby, but I will tell you this: If Congress does not have the time or the inclination to clean up crime in Federal housing projects that we own, we have no reason to believe we can pass a law which will reduce crime across the Nation.

Mr. DERRICK. Let me say, Mr. Speaker, the reason, although the amendment of the gentleman from Illinois [Mr. DURBIN] is certainly very meritorious, this is a crime bill. It is not a gun bill. The Rules Committee tried its best not to load it down with all these amendments; not to say that it is not meritorious, but that is why it was not made in order.

Mr. Speaker, for the purpose of debate only, I yield 3 minutes to the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, it is customary when speaking on a rule bringing a major bill to the floor to thank the Committee on Rules for taking this action. In the case of this rule, however, the Committee on Rules and its chairman, Mr. MOAKLEY, deserve special credit. H.R. 3371, the Omnibus Crime Control Act of 1991, is a complex and multifaceted piece of legislation which embodies some of the most emotional—and yet most essential—issues to come before this body during this session of Congress for this reason, it is not surprising that over 100 proposed amendments were presented to the Committee on Rules for its consideration.

Mr. Speaker, I am particularly grateful to the Rules Committee for bringing forward this rule because it skillfully balances two goals: First, it provides the Members ample opportunity to debate and work their will on all of the major issues contained within this legislation. Nobody is being foreclosed from being heard on a major point of contention, and nobody's rights on these major issues are being violated. There will be votes on these issues; and in some cases there will be multiple opportunities for the Members to shape the final product by making their collective judgment known.

At the same time, the rule before us also serves the goal of allowing us to proceed through consideration of H.R. 3371 expeditiously. It incorporates authority for the consideration of minor or noncontroversial amendments en bloc. This provision, coupled with a collective agreement by the Members to move at a steady pace through this bill's many provisions, will enable us to advance this worthwhile piece of legislation and get on with other pressing issues coming before this body.

I commend the committee for their hard and judicious work, and urge support for the rule.

Mr. SOLOMON. Mr. Speaker, the gentleman from South Carolina just said this is not a gun bill. Here are 20 pages of this bill dealing with firearms, with 22 sections, and the gentleman himself is amending 1 section of this gun bill.

Mr. Speaker, I yield 2 minutes to the gentleman from New Mexico [Mr. SCHIFF], a former district attorney.

Mr. SCHIFF. Mr. Speaker, it is with some reluctance, certainly, that I say I oppose the rule.

I have an amendment allowed under the rule which permits me to address the Bureau of Justice Assistance grants to State and local governments. Under the bill, the Federal Government would be locked in forever at a 75-percent share of all seed-money grants. My bill would keep 75 percent, but under the current law, which is a temporary measure so Congress could look at whether it can afford to grant 75 percent.

I offered two other amendments which deal with the Justice Department which were not accepted by the Rules Committee, and although I think they are important I would not oppose the rule simply because my proposed amendments were not accepted by the Rules Committee. I do understand they cannot accept everything.

Nevertheless, I introduced a fourth amendment which will not be debated on the House floor during this bill, which I think should be.

Specifically, the bill, as written, overrules the U.S. Supreme Court in the Fulminante decision. The U.S. Supreme Court recently ruled that if a statement by a defendant was admitted in error, that the same rule of law would apply to that error as applies to all other errors; that is, a review would be made to determine whether a new trial had to be ordered or whether evidence was so overwhelming of guilt that there was no reason to order a new trial. That is the same standard as every other error that I know of.

Now, the point is that the bill sets another standard. The bill chooses a different standard for a new trial than has been determined by the U.S. Supreme Court.

Mr. Speaker, in my judgment, overruling the U.S. Supreme Court is such a grave and important matter, that the House of Representatives should examine that individually, to determine if the House thinks it knows more about criminal procedure than the U.S. Supreme Court knows.

Because that is not allowed, Mr. Speaker, I urge the rule be rejected.

Mr. SOLOMON. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. BARTON].

Mr. BARTON of Texas. Mr. Speaker, I rise in opposition to the rule on H.R. 3371, the Omnibus Crime Control Act. I do so because many, many anticrime amendments were not made in order, including the one I had offered. The Barton amendment would have required every Member of the House of Representatives to be randomly tested for illegal drugs.

More and more Americans are being tested for illegal drugs in their workplace. In fact, the last Congress passed drug-free workplace legislation that mandates every company contracting with the Federal Government to establish a drug-free workplace environment.

It is my opinion that the U.S. House of Representatives should set a positive example in the area of drug testing. Every Member will agree that this Congress needs to reestablish

some credibility with the American people, and a drug testing program for the House would be a fair step in that direction.

To my knowledge, I am the only Member of the House that currently has a mandatory drug testing program in place for myself and my staff. It has been in place for over a year, and is paid for out of my personal funds. I might add that no check of mine has bounced in paying for the program. The program has been very successful; I can state without reservation that my office and my staff is totally drug free.

The Barton amendment would require that 10 percent of the House each month be randomly tested for illegal drugs. The test results would be made available to the Member tested and the House Committee on Standards of Official Conduct. Once each Congress, in October of the second session, a public report would be released detailing the results of all tests during that Congress.

Every opinion poll I have seen supports drug testing. Specific polls I have conducted in my district support drug testing for Members of Congress by over 90 percent. The Houston Post conducted a poll of their readers on the Barton amendment, and it was supported by 94 percent of the respondents.

This Congress has voted to require drug testing for millions of American workers. Recently, the House voted to require drug and alcohol tests for an additional 6 million transportation workers. I believe it is time for the House of Representatives to practice what it preaches, and also test overselves.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I also rise to oppose this rule—because I, like many others, am being gagged, not being able to offer an amendment which is very important.

□ 1420

And I must oppose this not only because my amendment is not being offered but also other amendments that have been mentioned before.

In Texas we have a revolving-door prison system caused, in large part, by a Federal judge who is micromanaging our prison system. He dictates how many prisoners per cell, how many feet per cell, cable TV, how many TV sets, temperatures, quality of food, exercise facilities, and so forth and so on. In fact, it is so good in Texas that Henry Lee Lucas, a mass murderer, said in a Houston Chronicle story on October 10 of this year, "It is nice to be in Texas."

Now I would like to come to this floor today and offer several amendments. I would like to offer an amendment that puts prisoners in tents just like our soldiers, or at least allow us to use abandoned Army barracks. But I did not do that. I came with a simple amendment that does a simple thing; that is, it requires States to impose a mandatory work requirement for able-bodied prisoners, otherwise lose Federal funds if they do not impose that type of an amendment.

Correctional officers report that the No. 1 problem they must combat is idleness, which gives inmates time to construct plans of mischief.

The Bureau of Prisons reports that their No. 1 management tool, the best way to combat idleness, is the requirement to work.

If you look at some of the precedents, criminal history records, implemented in 1988 and enforced in 1992, States must be computerizing records of criminal histories by 1992; HIV tests for arrestees, administrative revocation of licenses and so forth and so on.

So there are plenty of precedents. But I say to my colleagues this rule should be defeated. I say particularly to my colleagues from Texas, if you vote for this rule you are voting against a mandatory work requirement that begins to put common sense back into the Texas prison system.

Mr. SOLOMON. Mr. Speaker, the next speaker is a young woman who was denied one of the most important amendments to be offered on this floor, the gentlewoman from New York, Ms. SUSAN MOLINARI, from Staten Island. Mr. Speaker, I yield 2½ minutes to the gentlewoman from New York.

Ms. MOLINARI. Mr. Speaker, I thank the ranking member for yielding me this time.

Mr. Speaker, we were in a courtroom in New York when the following evidence was presented: In the case of People versus Sanchez, the defendant began taking photos of his first victim. When she refused to permit him to photo her in the nude, he forced her into a bathtub where he raped her and where he sodomized her.

Then he forced her to sign a consent form used by professional photographers.

It was also considered relevant, in that courtroom in New York, to explain that the defendant was also charged with approaching a second victim on the street, telling her that he was a professional photographer. He accompanied her to her house, ordered her to disrobe in the bathroom, threatening to kill her if she did not succumb to rape and sodomy.

She threw rubbing alcohol in his face and she got away. The defendant's conviction of rape and sodomy, in the first case, was reversed because of the introduction of evidence of the second attempted rape, considered prejudicial by the appellate court.

The court, functioning under current statute, ruled that the cases were not similar enough to allow for the introduction of the second charge.

Current statute has served to place criminals back on the streets to rape again, in the name of protecting the criminal, not the rights of the victims, not the rights of the future victims. Under current statute, many of these victims are children because this statute also applies to child molestation.

My amendment would change the presumption for Federal rules of evidence so that when a defendant is on trial for sexual assault or child molestation, evidence that the defendants may have committed other offenses with similar circumstances would be admissible.

Why not, my colleagues? It would still be up to a judge to rule that it would be relevant.

Why not, my colleagues? Only in these two charges would we extend these Federal rules of evidence, two charges, where there are no witnesses and no corroboration and where there is a record of repeat offending.

The National Institute of Mental Health says child molesters molest children 117 times in their lifetime. How could you not?

This Nation has been riveted to their TV's as the other Chamber deliberated the charges of sexual harassment. My colleagues were appropriately concerned that this issue had not been aired enough.

Mr. Speaker, how do you then come before this floor and say that the issues of sexual abuse and child molestation are not even important enough to debate in this well?

Mr. SOLOMON. Mr. Speaker, I yield the remaining time to the gentleman most hurt by this rule, a man who would make a great Supreme Court justice himself, the gentleman from Illinois, the Honorable HENRY HYDE.

The SPEAKER Pro tempore (Mr. MCNULTY). The gentleman from Illinois [Mr. HYDE] is recognized for up to 2½ minutes.

Mr. HYDE. I thank the Speaker, and I thank my dear friend from New York. Mr. Speaker, the prospect of going through a confirmation hearing is chilling, I must say, I decline the honor, but I thank you for nominating me.

My friends, if you were to ask your folks back home what are the two or three biggest issues confronting them, crime would surely be one. It is really appealling, and I say this more in sorrow than in anger, that we are capsulizing into such a short time discussions, debate, and determinations of so many important issues.

Habeas corpus reform, something that I am interested in, under this rule they have generously given us 30 minutes. That is 15 minutes per side to talk about Teague versus Lane, the Batson case, deference to State judgments, the whole process of habeas corpus up and down the State system, direct appeal, collateral appeal, Federal appeal; 15 minutes to discuss a major reform on the issue of crime.

I cannot escape the notion that Mr. TRAFICANT had it exactly right. I identify and relate to what Mr. TRAFICANT

said and the way he said it. I think this is really outrageous. This is a seminal, critical issue, and it is being trivialized by being encapsulated into just 15 minutes. I am just speaking about habeas corpus.

There are other issues; the Berman amendment, really, would take half a day to discuss properly. The Racial Justice Act, or whatever this week's title is for that, the notion that you can apportion the death penalty by statistics. We cannot do that in a few minutes. And yet the chairman wants to finish by tomorrow evening for some reason or other. Well, whatever it is, I am sure it is a good one. But this subject takes time to discuss properly, and we should not deal with this as a triviality, as something we can just race through and hope that we have solved the problems.

Let me just say, finally, what happens on the floor is important, but, folks, watch the conference committee, where the real action will be.

Last year we passed a strong crime bill. When it got to the conference, it came back eviscerated, emasculated. It was, as I said, that it left here as Arnold Schwarzenegger and came back as Woody Allen. I am trying to think of some other names to use this year when it happens again, but, watch the conference committee.

Mr. SOLOMON. Mr. Speaker, in yielding back the balance of my time, let me note that we are going to be here until Christmas; let us vote down the rule and we will have plenty of time to debate these important issues.

Mr. DERRICK. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The gentleman from South Carolina [Mr. DERRICK] is recognized for up to 3½ minutes.

Mr. DERRICK. Mr. Speaker, I was interested in the gentleman from Illinois' [Mr. HYDE] comment about Arnold Schwarzenegger. I think that that is possibly part of what the problem is here today, that there are a lot of people out there who think they are Arnold Schwarzenegger, think they are Terminator No. 1, 2, or 3. You know, most of the streets in this country today make the "Gun Fight at O.K. Corral" or Dodge City back in the last century look rather tame.

What I cannot figure out is why we think people, the average guy in this country, needs an assault weapon. You know, I, like everyone, just about, in this House, support the ownership of firearms for protection, the ownership for sporting purposes, but why we need assault weapons is beyond me.

We are the most violent country in the world. Assault weapons have become almost the weapon of choice in this country for committing crimes. They overpower our police officers. They have better equipment than our police officers do.

One of the former speakers was certainly correct when they said there were some 20 pages in the bill dealing with firearms. But I might suggest to you that about 90 percent of those 20 pages came directly from the White House on the arms business.

□ 1430

But anyway, be that as it may, habeas corpus is one thing that I have heard, and I say to the gentleman from Illinois [Mr. HYDE], "I'm sure you have, Mr. HYDE, for most of your career," that people are disgusted with the length of time that appeals take; as my colleagues know, 8 or 10 years. I mean it is ridiculous, and what we have done, tried to do, in the bill that is before the House is to limit that time substantially by putting provisions in, the limitation of the number of petitions, and the time the statute runs, and so forth and so on, and I think it is very positive. And I think that this bill that is before the House is not everything I want. Obviously it is not everything my colleagues want. But it is certainly a good middle course to start in the direction that we both would like.

Now, as to the matter of this rule and to the fairness of it, let me tell my colleagues that the Committee on Rules made 46 amendments in order. We had presented to us 110 amendments, and we made 48 amendments in order.

I regret to tell the gentleman from Texas [Mr. BROOKS] that I doubt very seriously we are going to get through with this bill tomorrow night because in this rule there are 13 hours of voting time—13 hours of voting time. That is how much time we are going to be on this floor just to accommodate the amount of time needed for votes.

Mr. Speaker, as far as I am concerned, and there may be those who disagree, I think that most major amendments to this bill were made in order by the Committee on Rules. I understand that maybe there are a few in the House that do not think it was proper that we split up the amendment of the gentleman from Illinois [Mr. HYDE], but our position on that and my position on that is that we really define the issues much closer by splitting that up on the Hyde amendment than we would have done if we had just left it in one large amendment to go, and we would not have given the Members of this body an opportunity to focus on the three different issues that came forth in the Hyde amendment.

Mr. Speaker, this is a good rule. There is no one that is going to ever agree with a rule completely or a bill completely that is this controversial and covers this wide a range of subjects, but I want to remind my colleagues, when they say this rule is unfair, that we had 48 amendments that were made in order by the Committee on Rules, and I ask my colleagues to support this rule.

Mr. MICHEL. Mr. Speaker, I rise in opposition of the rule on the crime bill.

I do so on behalf of the millions of American citizens who desire tough efficient action on crime, not tender, loving care for criminals.

If Republicans were in control of this body, the crime bill would be considered under an open rule with days of debate instead of hours.

We wouldn't have self-executing rules.

We wouldn't protect all amendments from divisions save the most important, the Hyde amendment.

This rule is too clever by half. It is the latest in a long line of rules to protect the majority party from tough votes but leave the American public with a weak bill.

The power to craft a rule is the legislative power to destroy free and open debate. The majority has clearly abused that power in this case.

A Republican crime bill rule would allow all amendments: the McCollum-Schiff amendment on coerced confessions; the Gekas amendment on anticorruption; the Molinari amendment on prior history of sexual abuse or child molestation; the Barton amendment on drug testing for Members; and the Gallegly amendment on drug sales to minors.

Mr. Speaker, fraud is defined as "intentional perversion of truth" in order to gain a desired end.

Under such a definition, any crime bill that lacks some of these Republican provisions is a fraud.

A weak crime bill will be like sending law enforcement officials into the mean streets with blanks in their weapon, broken handcuffs, and fancy liberal rhetoric to combat hardened criminals.

A weak crime bill will turn its back on the victims of crimes and their families.

Mr. Speaker, the American people are dialing 911—let's answer the call.

I urge defeat of this rule.

Mr. RAMSTAD. Mr. Speaker, I rise in opposition to the rule.

Last week, I testified before the Rules Committee in support of the three time loser amendment, which would target repeat offenders of violent crimes—the 6 percent of criminals who commit 70 percent of all crimes in America. I was sorely disappointed that this committee of 13 individuals did not see the need for my amendment.

Mr. Speaker, as a result of lenient sentencing, American prisons are becoming temporary way stations for violent criminals. A study by the Bureau of Justice Statistics reveals that, of 108,580 persons released from prisons in 1983, 63 percent were rearrested for a felony or serious misdemeanor, 47 percent were reconvicted, and 41 percent were returned to prison within a period of 3 years.

What's worse is the fact that these repeat offenders are among the most violent and dangerous criminals around. For example, released rapists were 11 times more likely than other offenders to be rearrested for rape, and released murderers were 5 times more likely than other offenders to be rearrested for homicide.

These statistics make one thing clear: Our criminal justice system needs to target violent recidivist offenders. Currently, the U.S. Code

provides the sentence—life imprisonment without release—for those who are convicted three times for a serious drug offense. Surprisingly, however, there is no such sentence for those who commit crimes of violence.

That is where my amendment came in. It would have included crimes of violence, which we narrowly defined as those crimes which use, attempt to use, or threaten to use physical force against another person, or involve a substantial risk that physical force against another person may be used. In addition, such crimes would have to carry a term of imprisonment of 10 years or more under Federal or State law. So, you can see this amendment would have applied only to the most serious crimes of violence by three-time repeat offenders.

Because of the urgent need for my amendment, I was disappointed that the rules committee would not allow me to offer it on the floor. After all, I did offer the amendment in committee and revised it to meet the concerns of some committee members, a similar amendment with language vaguer than mine was included in the Senate crime bill, and, as we speak, rapists, murderers, and other violent criminals are committing more and more serious offenses.

I have found that I am not alone. The rule omits a number of vital amendments offered by Republicans, including a study on the impact of coerced confession decisions, increased prison sentences for drug sales to minors, the use of prior history into evidence in sexual assault and child molestation cases, and others.

Crime affects all Americans, and it shouldn't be made into a partisan issue. But that is what the majority on the rules committee has done, and for that reason, I will vote against the rule and urge my colleagues to do the same.

Mr. DERRICK. Mr. Speaker, I yield back the balance of my time.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. DERRICK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 233, nays 193, not voting 7, as follows:

[Roll No. 310]

YEAS—233

Abercrombie	Aspin	Borski
Ackerman	Atkins	Boucher
Alexander	AuCoin	Boxer
Anderson	Bacchus	Brewster
Andrews (ME)	Barnard	Brooks
Andrews (NJ)	Beilenson	Brown
Annunzio	Berman	Bruce
Anthony	Bilbray	Bryant
Applegate	Bonior	Bustamante
Cardin	Jones (NC)	Perkins
Carper	Jontz	Peterson (FL)
Chapman	Kanjorski	Peterson (MN)
Clay	Kaptur	Pickett
Clement	Kennedy	Pickle
Coleman (TX)	Kennelly	Poshard
Collins (IL)	Kildee	Price
Collins (MI)	Kleczka	Rahall
Conyers	Kolter	Rangel
Cooper	Kopetski	Reed
Cox (IL)	Kostmayer	Richardson
Coyne	LaFalce	Roe
Darden	Lancaster	Roemer
de la Garza	Lantos	Rose
DeFazio	LaRocco	Rostenkowski
DeLauro	Laughlin	Rowland
Dellums	Lehman (CA)	Roybal
Derrick	Lehman (FL)	Russo
Dicks	Levin (MI)	Sabo
Dingell	Levine (CA)	Sanders
Dixon	Lewis (GA)	Sarpalius
Donnelly	Lipinski	Sawyer
Dooley	Long	Scheuer
Dorgan (ND)	Lowey (NY)	Schumer
Downey	Luken	Serrano
Dwyer	Manton	Sharp
Dymally	Markey	Sikorski
Early	Martinez	Sisisky
Eckart	Matsui	Skaggs
Edwards (CA)	Mavroules	Skelton
Edwards (TX)	Mazzoli	Slattery
Engel	McCloskey	Slaughter (NY)
English	McCurdy	Smith (FL)
Espy	McDermott	Smith (IA)
Evans	McHugh	Solarz
Fascell	McMillen (MD)	Spratt
Fazio	McNulty	Staggers
Feighan	Mfume	Stallings
Flake	Miller (CA)	Stark
Foglietta	Mineta	Stokes
Ford (MI)	Mink	Studds
Ford (TN)	Moakley	Swett
Frank (MA)	Mollohan	Swift
Frost	Moody	Synar
Gaydos	Moran	Tanner
Gejdenson	Mrazek	Thornton
Gephardt	Murtha	Torres
Gibbons	Nagle	Torricelli
Glickman	Natcher	Towns
Gonzalez	Neal (MA)	Traxler
Gordon	Neal (NC)	Unsoeld
Guarini	Nowak	Valentine
Hall (OH)	Oakar	Vento
Hamilton	Oberstar	Visclosky
Hatcher	Obey	Volkmer
Hayes (IL)	Olin	Washington
Hefner	Olver	Waters
Hertel	Ortiz	Waxman
Hoagland	Orton	Weiss
Hochbrueckner	Owens (NY)	Wheat
Horn	Owens (UT)	Whitten
Hoyer	Pallone	Williams
Hubbard	Panetta	Wilson
Jacobs	Pastor	Wise
Jefferson	Payne (NJ)	Wolpe
Jenkins	Payne (VA)	Wyden
Johnson (SD)	Pease	Yates
Johnston	Pelosi	Yatron
Jones (GA)	Penny	

NAYS—193

Allard	Campbell (CO)	Emerson
Andrews (TX)	Carr	Erdreich
Archer	Chandler	Ewing
Armey	Clinger	Fawell
Baker	Coble	Fields
Ballenger	Coleman (MO)	Fish
Barrett	Combest	Franks (CT)
Barton	Condit	Gallegly
Bateman	Costello	Gallo
Bennett	Coughlin	Gekas
Bentley	Cox (CA)	Geren
Bereuter	Cramer	Gilchrest
Bevill	Crane	Gillmor
Bilirakis	Cunningham	Gilman
Bliley	Dannemeyer	Gingrich
Boehlert	Davis	Goss
Boehner	DeLay	Gradison
Broomfield	Dickinson	Grandy
Browder	Doolittle	Green
Bunning	Dornan (CA)	Gunderson
Burton	Dreier	Hall (TX)
Byron	Duncan	Hammerschmidt
Camp	Durbin	Hancock
Campbell (CA)	Edwards (OK)	Hansen
Harris	Meyers	Schiff
Hastert	Michel	Schroeder
Hayes (LA)	Miller (OH)	Schulze
Hefley	Miller (WA)	Sensenbrenner
Henry	Molinari	Shaw
Herger	Montgomery	Shays
Hobson	Moorhead	Shuster
Horton	Morella	Skeen
Houghton	Morrison	Smith (NJ)
Huckaby	Murphy	Smith (OR)
Hughes	Myers	Smith (TX)
Hunter	Nichols	Snowe
Hutto	Nussle	Solomon
Hyde	Oxley	Spence
Inhofe	Packard	Stearns
Ireland	Parker	Stenholm
James	Patterson	Stump
Johnson (CT)	Paxon	Sundquist
Johnson (TX)	Petri	Tallon
Kasich	Porter	Tauzin
Klug	Pursell	Taylor (MS)
Kolbe	Quillen	Taylor (NC)
Kyl	Ramstad	Thomas (CA)
Lagomarsino	Ravenel	Thomas (GA)
Leach	Ray	Thomas (WY)
Lent	Regula	Traficant
Lewis (FL)	Rhodes	Upton
Lightfoot	Ridge	Vander Jagt
Livingston	Riggs	Vucanovich
Lloyd	Rinaldo	Walker
Lowery (CA)	Ritter	Walsh
Machtley	Roberts	Weber
Marlenee	Rogers	Weldon
Martin	Rohrabacher	Wolf
McCandless	Ros-Lehtinen	Wylie
McCollum	Roth	Young (AK)
McCrery	Roukema	Young (FL)
McDade	Sangmeister	Zeliff
McEwen	Santorum	Zimmer
McGrath	Saxton	
McMillan (NC)	Schaefer	

NOT VOTING—7

Callahan	Hopkins	Slaughter (VA)
Goodling	Lewis (CA)	
Holloway	Savage	

□ 1452

Mr. HAYES of Louisiana and Mrs. BYRON changed their vote from "yea" to "nay."

Mr. YATES changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DERRICK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on House Resolution 247.

The SPEAKER pro tempore (Mr. MCNULTY). Is there objection to the request of the gentleman from South Carolina?

There was no objection.

OMNIBUS CRIME CONTROL ACT OF 1991

The SPEAKER pro tempore. Pursuant to House Resolution 247 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3371.

□ 1455

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House

on the State of the Union for the consideration of the bill (H.R. 3371) to control and prevent crime, with Mr. SKAGGS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Texas [Mr. BROOKS] will be recognized for 1 hour, and the gentleman from Illinois [Mr. HYDE] will be recognized for 1 hour.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, no duty of government is more fundamental to the preservation of a civilized society than is the criminal justice system. Just as it is a primary responsibility of government to protect us from foreign aggressors, it is no less essential for government to assure our citizens that they will be safe in their communities, homes, schools, and their streets.

Historically, the role of the Federal Government has been to deal directly with those aspects of criminal activity interstate or international in character, and to provide a support role in those matters that were local in character. This we have done in 1984, 1986, 1988, and 1990. This is the fifth major crime bill in 7 years. In turn, the front line troops in combating day-to-day crime have traditionally been the criminal justice units of our State and local governments—law enforcement officers, the judiciary, and corrections officials. This division of responsibility is as appropriate as it is practical, for the units of government best able to respond to criminal activity are those closest to the people.

Mr. Chairman, H.R. 3371, the Omnibus Crime Control Act of 1991, remains faithful to the federalist principle developed over the years while ushering in a new era of developing innovative responses to the criminal activities that plague our Nation.

During this Congress alone, the committee's subcommittees held 20 days of hearings on matters which eventually were incorporated as provisions of H.R. 3371. At markup, some 106 amendments were considered; and of those, 60 were adopted.

A great deal of the credit for this bill belongs to the chairman of the Crime and Criminal Justice Subcommittee, the gentleman from New York [Mr. SCHUMER], who has looked for responsive and innovative solutions to make a new and real beginning in stemming crime. Other valuable contributions have been made by the Subcommittee on Civil and Constitutional Rights, chaired by the gentleman from California, [Mr. EDWARDS] and the Subcommittee on Intellectual Property and Judicial Administration, chaired by the gentleman from New Jersey, [Mr. HUGHES]. My subcommittee also considered matters which were included in this bill. This bill also has been shaped by the spirited debate and substantive contributions of all the members of the committee.

H.R. 3371 contains major new initiatives both to fight and prevent the kinds of crime that most directly affect our constituents in their daily lives. This is what Americans are clamoring for—and not just the biennial rhetoric coming from the Congress that we are being "tougher on crime." I would like briefly to mention several of those initiatives:

The bill would authorize Federal support we need to put more policemen back on the beat, where they can serve as a link to the community and a visible demonstration of the community's law enforcement effort.

The bill provides assistance to local school districts that are most severly impacted by crime and violence, in order to make those schools real environments for learning, and to reduce drug- and gang-related activities in the schools.

The bill also strikes out at the plague of new crimes by repeat offenders by developing mandatory drug treatment for prisoners. It will assure that by 1995 every Federal prisoner with a substance abuse problem will have the opportunity to receive treatment.

The bill also takes steps to assist the victims of crime, and rightly so. It amends the Victims of Crime Act of 1984 to, among other things, more efficiently distribute resources to crime victims and provide for steady increases in the amounts available to crime victim compensation programs.

The bill makes a multipronged attack on white collar crime and includes a comprehensive insurance fraud provision.

In addition to these new steps—which do not appear in either the President's bill or the Senate-Passed bill—H.R. 3371 also makes several other fundamental changes: The bill significantly expands the number of Federal crimes punishable by death. The bill makes sure that the longstanding rule against coerced confessions will not be subverted. The bill includes the Habeas Corpus Revision Act of 1991, streamlining, reforming, and limiting current habeas corpus procedures in order to eliminate unnecessary delay between the imposition of a sentence of death and the administration of that sentence.

Mr. Chairman, all of us in this body are united in our desire to seek the most effective Federal response to the onslaught of crime that afflicts our streets and neighborhoods, no less than our corporate boardrooms. As this debate continues, it is my hope that the Members will proceed with confidence in the good faith and sincerity of those who hold views different from their own. If we can achieve that, we will, in the end, fashion a crime bill that will serve our citizens well.

Mr. Chairman, I reserve the balance of my time.

□ 1500

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, according to a majority of the chief legal and law enforcement officers of this country, any crime reform effort will be incomplete unless it includes meaningful reform of the Federal habeas corpus process. The reform that is endorsed by a majority of the State Attorneys General of the United States is the habeas corpus amendment that I will offer in due course.

The unnecessary delay and repetitious litigation that is permitted under current law and the need for meaningful Federal habeas corpus reform is best illustrated by examining the case of Robert Alton Harris and the effect that the bill of the Committee on the Judiciary would have on his situation.

The facts of the case are as follows: On July 5, 1978, as part of a planned bank robbery in California, Robert Alton Harris and his brother commandeered a green Ford LTD in which two high school sophomores, John Mayeski, age 15, and Michael Baker, age 16, were eating hamburgers in a parking lot. They were going to use this car in a planned robbery. Harris forced the boys to drive to a deserted canyon and then he brutally shot both teenagers several times. He purposely chased one of the boys down, shooting him four times as the teenager crouched and screamed.

After leaving the scene of the murder, Harris finished devouring the boys' half-eaten hamburgers and laughed at his brother for not having the nerve to join him in the murders.

In 1979 Alton was convicted and sentenced to death for the brutal murders of two California teenagers. His conviction and sentence became final October 5, 1981.

Under current law—current law—despite the fact that Harris has confessed seven times, filed eight State habeas petitions, three Federal habeas petitions, he is still able to challenge his conviction and sentence through Federal habeas petitions. And under the Judiciary bill, the one that is offered by the majority party and chairman, here is what Alton would be entitled to.

First, he is entitled to bring one or more claims under the Berman amendment, whether or not any of the claims have been previously raised or litigated in State court. For example, although Harris have never raised a claim under Batson versus Kentucky, concerning the exclusion of jurors, he would be given 1 year to raise a new challenge or challenges to his sentence.

In order to rebut a Batson type claim, the prosecutor would be forced to remember 12 years after the fact why he struck certain members of the jury for racial or for invidious reasons. Any not only the jury, the grand jury too, before that, were there any invidious racial motives in striking certain members of the jury?

Needless to say with the passage of time and the absence or decay of evidence, it is more than likely that Harris and other convicted murderers on death row would have their sentences vacated, not because they could prevail on the merits but because the evidence to rebut the claim is not available anymore.

Second, he would be entitled to bring an additional claim under the Fairness in Death Sentencing Act. Even though Harris already brought this claim and lost, he would be able to raise it again under the act. The last time this issue was litigated in California, it took 3 years, cost over $1 million. The issue was resolved by the Supreme Court's ruling in McCleskey versus Kemp, that statistical studies are incapable of proving race bias due to the infinite number of important variables in the capital sentencing process. But the bill presented to us by the Committee on the Judiciary reverses this and says in effect. "You can prove race bias by statistics alone."

Third, Mr. Alton Harris would be entitled to bring an additional claim for the application of judicially created new rules to his case. The Edwards habeas proposal overturns the Supreme Court case of Teague versus Lane, which is currently the law of the land.

I repeat, the bill that we are being offered by the majority party reverses the case of Teague versus Lane, which is currently the law to allow a person like Harris to get additional rounds of Federal litigation based on rules that would not be applied under current law and were not even in existence at the time he originally litigated his case.

If habeas reform means shorten the delays, we are going in the other direction with the majority bill.

Fourth, he would be entitled to bring new claims based on the failure of his attorneys to adequately represent him in his case, even though he had two of the finest criminal defense lawyers in California. Under the majority proposal, which I call the Edwards proposal, he would still be entitled to litigate the issue of competency of counsel. If he argued that the attorneys representing him failed to meet standards established by statute in the criminal defense bar, the State court findings would be thrown out and the entire process started anew in the Federal court.

I am not through under the majority bill. Fifth, he would be entitled to bring new claims to challenge the validity of the sentence. He could repeatedly raise any new claim to challenge the validity of his sentence which rejects the central reform of the Powell committee, set up by the Justices to study this problem that successive petitions be limited to the guilt or innocence of the defendant.

The Committee on the Judiciary bill would entitle this convicted murderer to a minimum of five new claims, probably more, to challenge his conviction and sentence. The Committee on the Judiciary bill which includes the Edwards habeas title, the Berman amendment, and the Fairness in Death Sentencing Act is weaker than current law. It is simply antideath penalty legislation masquerading as habeas reform.

□ 1510

One has to ask who is the real victim here, is it Robert Alton Harris, the convicted murderer sitting on death row and eagerly awaiting the passage of this bill, or is it the families and the victims of his brutal murders? How long do we have to keep the families of the victims waiting for justice to be done? Thirteen years after this ruthless crime was committed, there is still no end in sight, and if the majority bill becomes law, there is no telling how much longer these abuses are going to continue.

With every additional round of added litigation, the families of the victims of these inhuman killings relive their suffering and their loss.

There is another part of the amendment that I am going to offer which is real habeas corpus reform and which is supported by the attorneys general and most of the States attorneys in a bipartisan fashion around the country. That is the full and fair adjudication standard of review. This provision has been the subject of all kinds of disinformation and misinformation. It is very simply a rule of deference. It merely avoids relitigation where a State court has reasonably and fairly determined the matter.

When the State has not done so, for example, a disregard of Supreme Court precedent, the Federal court can set the State court ruling aside. This is absolutely not a standard to foreclose Federal review, although all of the "Dear Colleague" letters say so. But it is carefully crafted to preserve Federal review.

My amendment, which will be offered in due course, and for which we have 15 minutes to discuss, provides for deference in Federal habeas corpus proceedings to State court adjudications of prisoners' claims where the Federal habeas court determined that the State court used both constitutionally adequate procedures and reached a substantively reasonable resolution of the crime.

Language was added to the amendment as it passed the Senate to clearly define the full and fair adjudication standard as including a determination of procedural fairness as well as requiring determination on the merits. That is a reasonable application of Federal constitutional law, and this decision, this ruling is made by the Federal court. So we do not foreclose Federal jurisdiction. You bring your habeas petition to the Federal court, but the Federal court decides whether to give deference to the State court's findings of law and fact and procedure, if they were full and fair. The Federal judge makes that decision.

There are so many other things that I could say about the bill and really there is not time. The majority bill allows convicted murderers on death row to delay for a full year the time for applying for Federal habeas corpus, double the 6 months or 180-day limit approved by this House last year in H.R. 5269. It also allows prisoners in noncapital cases to apply for Federal habeas corpus without any limitation of time. The retroactivity is set aside. The majority bill, the Brooks bill, the Edwards bill is a step backward from existing law. It adds further delay, further confusion, and compounds an already dangerously absurd situation.

Real habeas reform will be found in the Hyde amendment supported by the overwhelming majority of the law enforcement and attorneys general and State attorneys in this country, and I am sure you have heard from them, and I hope Members will give it their full consideration.

Mr. Chairman, I reserve the balance of my time.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. EDWARDS], chairman of the subcommittee.

Mr. EDWARDS of California. Mr. Chairman, I thank the chairman for yielding time to me.

Mr. Chairman, the gentleman from Illinois, the ranking minority member of my subcommittee, and a very cooperative member, failed to point out that very few responsible organizations or people support the concept of "full and fair adjudication," which is the heart of the Hyde proposal for habeas corpus.

He also failed to say that the real purpose of the Hyde amendment is to destroy habeas corpus, to take away this venerable right of America that was in English law long before the Magna Carta, and which is embedded in our Constitution.

The heart of the Hyde amendment is "full and fair adjudication," and there is no precedent for saying that it means anything but procedural compliance. A Federal judge cannot accept under the Hyde amendment a petition in habeas corpus if the State proceeding was "full and fair." But full and fair means only procedural fairness.

More importantly, and we are going to debate all three of these important

items and vote on each one, I do not quite understand why the gentleman from Illinois [Mr. HYDE], wants to lump them all together. But the only right way is the way the Rules Committee arranged it so that we are going to have a debate and a vote on each of the three controversial issues that the gentleman from Illinois [Mr. HYDE] describes.

However, he sort of slipped over one thing. He said this Hyde amendment has so much support. It does not have any support to speak of, except the Department of Justice and a few prosecutors back home who really do not want to have their work reviewed by anybody. A recent study indicates that 40 percent of these appeals to a Federal court from a State court in habeas corpus are found faulty, and they have to go back for reexamination.

Last, the gentleman from Illinois said that this amendment of his has so much support. The Judicial Conference of the United States, and that is a pretty distinguished group of people, already voted against full and fair, which is the heart of the Hyde amendment. Justice Rehnquist, and there is a kneejerk liberal for you, he made it very clear in his May 1990 speech that full and fair is something that he does not want any part of. Current and former State court justices and State bar associations have come out for what the gentleman from Illinois describes as the Edwards proposal, the American Bar Association proposal, actually, and State bars in California, Colorado, Florida, Illinois, Mr. HYDE, your own State bar, rejects the Hyde proposal, rejects it, as do numerous other State bar associations as well.

Mr. HYDE. Mr. Chairman, I yield myself 1½ minutes just to respond to my friend from California, and he is my friend, but he just says so many things that are not so.

It is true that the Judicial Conference was unhappy with the full and fair standard until we offered an amendment which covers more than just procedural reasonableness, as the gentleman said. I am surprised he does not know that the amendment that we are offering not only includes a procedural requirement that the Federal law was constitutionally applied, but the law cannot be arbitrarily or unreasonably interpreted or applied, and the facts cannot be arbitrarily or unreasonably determined, as well as the procedure must be reasonable. So the gentleman is wrong in that regard.

He made another categorical statement, and I am surprised again at my friend. I have in my hand, famous last words, a letter in support of my amendment signed by 30 attorneys general across our country. So when the gentleman says nobody supports it, he has just obliterated the legal departments of 30 States.

I agree that my own attorney general does not, but he is a liberal Democrat. He is on your side, and more is the pity. But do not say nobody supports it when the majority of attorneys general across our country do.

Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, the bill that the Judiciary Committee fashioned through its overleaning majority bears no resemblance to the work that has been done by the last several Congresses.

For example, the Senate of the United States recently passed a comprehensive crime bill which included substantially those provisions which the President offered with respect to habeas corpus, the death penalty and other salient provisions of such a comprehensive bill.

□ 1520

But the bill that was fashioned by the Democratic majority in the Committee on the Judiciary leans heavily toward the protection of the individual who is convicted of murder.

Let me give the Members some examples: First of all, the original bill, as fashioned by the President and which we want to bring back to the consciousness of the House through the amendments that we want to offer, is totally different than the substantive notions upon which the death penalty can be set.

For instance, the bill that is before us says that the death penalty by and large must be relegated to only those killings which come about with an intent to kill, but we say, of course, an intent to kill should give the jury the right to impose the death penalty.

But we also say that when an actor, a defendant, acts with reckless disregard or with reckless indifference to life in the actions that he takes like a drive-by killing where an automobile zooms by a particular corner and somebody starts shooting out the window of that car pellmell into a crowd standing on that corner and one or more persons are killed, we believe even though that defendant can say, "I did not intend to kill anybody; I just shot into a crowd. I did not intend to kill anyone"; we believe that that should be dismissed by a jury and if he acted in reckless disregard of life, then that individual should be just as subject to the possibility of the death penalty than one who pointed the gun at a specific target and shot to kill.

That is an outstanding difference that we have between the bill as it is presented and the notion that we want to carry with the amendments that we are going to offer at a later point.

Why is that substantial? Because last year's bill rested on that very same point, and the majority then, the same Democratic liberally controlled majority and the Committee on the Judiciary, put up a bill without this reckless disregard quotient about which I speak. We then fought the entire battle last year on that point. We prevailed.

The majority of the House, as did the Senate, felt that the age-old concept of reckless behavior that amounts practically to intentional killing should be included as an option for a jury when they are determining whether or not to apply the death penalty.

Here we are again, but here is a significant difference that proves our point by the exception that the majority put in their bill. They knew that we on our side last year stressed this drive-by killing which I just described to you. So what did they do?

As a sop to us, to say that they are thinking the same way we are, they put in a provision that says a drive-by killing that results in a death should be considered by a jury as to whether or not the death penalty should be inflicted.

What does that mean? It means they drew it so narrowly in order to say, "See, we are thinking like you are," that if the individual who is driving that car steps out of that car, parks the car, steps a few feet from the car and then fires into this crowd, he would not be subject to the death penalty under the provisions that the majority Democrats in the Committee on the Judiciary imposed on this bill.

So the answer is to impose our standard. Our standard is that when an individual does act in reckless disregard of life and shoots indiscriminately or does other things in reckless disregard of life, then the jury shall have the option under the proper guidelines for bringing in the death penalty in those cases. That is a substantial difference.

If for any reason you feel that the majority bill is adequate, you should reject it on that basis alone. That is an important element of what we are trying to demonstrate should be included in any capital punishment legislation.

I ask the Members to support, when the time comes, the Gekas amendment which will make that abundantly clear and bring justice to the death penalty in Federal prosecutions.

Mr. BROOKS. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. SCHUMER], the chairman of the Subcommittee on Crime.

Mr. SCHUMER. Mr. Chairman, I thank the gentleman for yielding me this time.

First, Mr. Chairman, I want to salute the chairman of our full committee and my colleague, the gentleman from California [Mr. EDWARDS], as well as the gentleman from New Jersey [Mr. HUGHES] and so many others who worked so hard on this bill.

It is a bill we can be proud of. It is a tough bill. It is a strong bill. It is a bill that really tries to deal with the issue of crime rather than the issue of political posturing.

For a long time, Mr. Chairman, we have focused on punishing the crimi-

nal, and that is correct. We now have very tough penalties on the books.

This bill augments some of them, but we have not focused on preventing the crime from happening, not way back in the sociological depths, but preventing that little old lady from being hit over the head, preventing the kid from being assaulted, preventing the automobile from being stolen. We have done very little of that, and the public knows it.

We have had a tough Republican administration for now since 1980. The crime rate has risen up and up and up, so there must be something wrong with what we are doing. What we are trying to do in this bill is reverse Federal policy to some extent, a process that I hope will continue over the future years.

Because, Mr. Chairman, I feel, we all feel, the anguish of our constituents about crime. They are crying out to us, "Do something. Do something real." They are tired of the ideological debates.

They know that exclusionary rule, habeas corpus, and Federal death penalty affect only 3 percent of Federal crimes and do nothing at the State and local levels where the vast majority of crimes occur. They know that the idea of whether an appeal can be limited to 1 year or 90 days, it has some merit way up there in the heavens, but it does not make a darn bit of difference to making our streets safer. They know that there are real things that can be done. Perhaps they are not ideological. Perhaps they do not make a good 30-second commercial in a Presidential campaign, but they do the real job.

In our bill we have numerous provisions for the first time that do that. We are going to aid localities to put the cop back on the street where he and she belong, get them out of those patrol cars, and let them walk the beat or go on the beats in scooters so they can really prevent crime.

We are going to mandate drug treatment in the prisons so that, indeed, when prisoners get out of prison they do not commit another crime again because, finally, they are drug-free.

We had good programs that do this in little corners of America. This bill spreads them around and lets them work.

We are going to deal with intermediate sanctions so that juveniles who destroy property and hurt people are not just brushed off by the criminal justice system because it is too busy with the adult criminals, but, instead, are given real punishment so that they know that the system has teeth.

These are measures, my colleagues, that prevent crime. We are not going to hear much debate on them today. They are not those hot-button issues that we hear about in all the debates, but they will do a lot more than habeas corpus, death penalty, and exclusionary rule, the three pillars of the President's bill.

On those provisions, I would say that we have crafted a tough bill. We have written death-penalty provisions. I am for the death penalty. So are a majority of our committee. We think certainly we want to make sure you do not want to make a mistake in this, the ultimate punishment, but we have a very tough and strong death-penalty provision.

Again, we go through the game of one-up-manship. "Well, you have this, so we have that." That is not the real issue here. You know it, and I know it, my colleagues.

The issue is: Are we doing something real to end crime? The issue is: Are we going to allow people to have a campaign statement, or are we finally going to reduce the anguish of our citizens in doing something that Democrats and Republicans feel alike is government's legitimate purpose?

This bill goes a long way to doing that. Members can vote for this crime bill and have the opportunity to say that they voted for a tough anticrime package for politics' sake, but that they also voted for a tough anticrime package on substance's sake so that they can sincerely answer that anguish of their constituents about the spiraling crime rate.

Mr. Chairman, this is a good bill. It is a tough, tough bill. It is a strong bill that any Member can be proud of.

Please, let us forget the politics right now and finally roll up our sleeves and get on to the business of actually making our citizens safer instead of scoring political points for the 1992 campaign.

□ 1520

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Chairman, yesterday I had the opportunity to attend a ceremony in which President Bush dedicated the National Law Enforcement Officers Memorial just a few short blocks from here where 12,561 names appear on the wall of granite honoring those fallen officers, both male and female, since the inception of this country who paid the ultimate price in protecting us against felons throughout this country.

I was moved, as I think all of us were, with the words that President Bush said when he talked to the survivors of those police officers, the children, the widows, the parents of those who had lost their lives. He made the point about a strong crime bill, not a procrime bill of the kind that came out of the Judiciary Committee, but a strong crime bill that included habeas corpus reform, included a strong death penalty provision, included the exclusionary rule exception for good faith searches.

He asked those survivors and those police officers who came from 50 States to dedicate that fine memorial, to talk to the Members of Congress who he knew would be debating and voting on this important bill to emphasize how important the memory of these fallen officers is to a strong provision dealing with the crime bill.

I am disappointed, as I think most of us at least on this side of the aisle are, with the product of the Judiciary Committee. Many of these issues have been before this House, many of them have been adopted at one time or another, including the amendment of the gentleman from Illinois [Mr. HYDE] on habeas corpus and that somehow found their way into the trash basket after a conference committee report.

I think we can do better. We can do better with the amendments that are going to be offered. I ask for support of those amendments and for a strong crime bill.

Mr. BROOKS. Mr. Chairman, I yield 5 minutes to the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Chairman, I thank the distinguished gentleman from Texas for yielding this time to me, and congratulate him on his, I think, very substantial contributions, making this a very good initiative, as well as my colleague, the gentleman from New York [Mr. SCHUMER], the chairman of the combined Crime and Criminal Justice Subcommittee, my colleague, the gentleman from California [Mr. EDWARDS], and the gentleman from Michigan [Mr. CONYERS] and others who contributed much to this bill.

The Omnibus Crime Control Act of 1991 deals comprehensively with our crime and drug problem in the United States. It has tough penalty provisions that will deter and punish criminal offenders. It will also provide necessary resources to the law enforcement community and for programs that offer the hope of breaking the vicious cycle of crime. I am confident that the Omnibus Crime Control Act of 1991 will fortify us in our fight against crime and I rise today in support of this legislation which contains many important features.

First, the death penalty will again be available in the federal system to combat crime. The bill expands the use of capital punishment for 48 serious Federal crimes including espionage, treason, contract murder, the slaying of protected witnesses, and for murder of the President, among other offenses.

Because the death penalty is an important deterrent, we must be certain that only those who intend to kill are sentenced to death. I have an amendment to assure that the death penalty serves this intended purpose.

Second, we make major improvements in our habeas corpus procedures. The bill limits the appeals which State prisoners on death row can file and streamlines the habeas corpus process. At the same time, the bill preserves, as

we must, the fundamental right to file a writ of habeas corpus. By contrast, the Hyde amendment substitute would destroy the essential right of death row inmates to have their convictions reviewed by a Federal court, the so-called fair, full, but wrong determination by courts in the State system.

Let me pause here, Mr. Chairman. I do not think there is any provision of the bill more important than habeas corpus, and we need to reform it. It is disgraceful that these appeals go up time and again for 14 or 15 years. You can reform it without destroying it, and that is what we are trying to do in the bill.

Third, the bill provides needed funding for boot camps, intermediate sanctions, drug treatment, antidrug anticrime education, and other programs that will help lead our youth away from a life of crime, drugs, violence, and squander. We face a budget crisis and Federal moneys are scarce. Consequently, I have a proposal to use criminal forfeiture funds to support these important programs.

Fourth, the Judiciary Committee rejected, and thus the bill does not contain, numerous unreasonable mandatory minimum sentences without regard to the Federal sentencing guidelines. A more effective approach is to work within the guidelines. When we find that the guidelines are too low for a particular offense or circumstance, we should legislatively direct the sentencing commission to increase the guidelines, and they will follow our direction.

Finally, the bill respects the critical role of the States in fighting crime. The Federal Government is not all-powerful. It does not prosecute street crime. We can not and should not attempt to take over the crime control functions of the States.

We have all been terrorized by criminals in our society. The Omnibus Crime Control Act will help us take back the streets. I urge my colleagues to support this vital effort.

Mr. Chairman, let me just say something else. Like my colleague, the gentleman from Ohio, I was there yesterday when we dedicated the Law Enforcement Memorial, and let me tell you, I also heard some of the statements that were made about the crime bill. One of the things that was suggested was that the President indicated that we should in fact make it a Federal offense to kill police officers in the line of duty. That is the law of the land when police officers are killed in the line of duty.

The President also indicated to the police officers and the victims and the witnesses who were assembled that we should make a mandatory 10-year prison term for using a semiautomatic weapon, an assault weapon, in the commission of a violent offense or drug-related offense. It is in the bill.

Now, I wish my colleagues would lower the rhetoric and talk about the substance of the bill. Much of what is in this bill came right from the President's crime package, and it is reasonable for us to debate the differences on habeas corpus and the exclusionary rule and all the other hot button items as has been suggested, capital punishment and the rest; but the fact remains that that is not where the battle is going to be won. The provisions in this bill that deal with intermediate sanctions that try to reach young people coming into the system with minor offenses the first time, instead of the fifth time, when they were serious offenses, will make all the difference in the world. I do not ever remember losing a case in the 10 years that I prosecuted cases involving the exclusionary rule.

The bill addresses those provisions. It will make a difference.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from California [Mr. MOORHEAD].

Mr. Chairman, will the gentleman yield briefly to me?

Mr. MOORHEAD. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I thank my friend for yielding to me.

Mr. Chairman, in response to the distinguished gentleman from New Jersey who just spoke, for whom I have the highest admiration, he said something that I really must take issue with. He talked about the deference on full and fair adjudication which is in my bill and certainly not in the bill that the gentleman supports.

I would just like to read from a letter signed by the attorney general of the gentleman's State of New Jersey. It says:

(a) a standard of federal court review which defers to full and fair adjudication by state courts and respects the integrity of state court processes.

This is something we support.

Importantly, the full and fair standard would not bar federal habeas review but would merely avoid federal relitigation of those issues already reasonably and fairly resolved in state court.

So I do not want to emasculate this. We want to keep Federal habeas corpus viable. We want to make it work. We want to reform it, not ruin it, and I thank the gentleman for yielding to me.

Mr. HUGHES. Mr. Chairman, will the gentleman from California yield to me?

Mr. MOORHEAD. I really do not have too much time, if the gentleman will yield further time to me.

Mr. HYDE. Mr. Chairman, I yield another minute and a half to the gentleman from California, if the gentleman will yield to the gentleman from New Jersey.

□ 1540

Mr. HUGHES. Mr. Chairman, I have the greatest respect, let me just say that I have the greatest respect for Bob Del Tufo our attorney general, but he is absolutely wrong. Now let me just tell you that I have a letter from the chief justice.

Mr. HYDE. And the other 29 attorneys general?

Mr. HUGHES. Mr. Chairman, I have a letter from the former chief justice of our court, Richard Hughes, who tells me just diametrically the opposite of what our attorney general suggests. And Chief Justice Hughes indicated to me, and I will be happy to supply it for the record, that a fair and full adjudication would destroy the habeas corpus process.

Mr. MOORHEAD. Mr. Chairman, on a recent weekend there were seven murders right here in the city of Washington, DC. In the paper yesterday it told about a woman less than a mile from the Capitol executed in the street.

In my own district, every time a crack house is closed up, it seems to move only a few doors away and opens up again. As the debate over the crime bill moves forward in this Chamber, it is abundantly clear that we need to enact tough Federal laws to punish more effectively violent criminals and drug traffickers. So far the Congress has not been able to hit the point.

We have passed a law to build, but we have not done anything that effectively stops the drug traffic and crime running rampant in our streets.

I was pleased to be one of the original cosponsors of H.R. 1400, which addresses issues of great significance; habeas corpus procedures, death penalty litigation, alternatives to the exclusionary rule, obstruction of justice, gangs and juvenile offenders, increased penalties for firearms use, sexual violence and child abuse, equal justice for victims rights, deportation proceedings of illegal aliens, increased penalties for immigration document fraud.

Mr. Chairman, the President's crime bill is a reasonable approach.

Now I know the bill that is before us has some of the recommendations of the President's crime bill. But unfortunately it has been watered down too much, so that its effectiveness will just not be there.

There are many amendments that should have been able to be brought up during the debate on this bill that have been closed out, that cannot be, and for that reason we are going to still be continuing with this same problem.

Our prison systems are overburdened, and Federal inmate populations are expected to increase even more. Today the bureau's population is approximately 27 percent non-U.S. citizens, a 600-percent increase since 1980. We have to streamline the deportation process of illegal aliens convicted of felonies, while still retaining procedural due process.

Street gangs are widely recognized as a major element in our Nation's pat-

tern of violent crime. The gang problem in Los Angeles is exacerbated by a loophole. There have been 561 gang-related homicides reported throughout Los Angeles in the past 9 months. In the majority of these instances, the gang members who pulled the trigger had an extensive criminal history record. I wanted an amendment to be adopted here that was supported by the Federal Department of Justice which would make an habitual criminal any person who has had a penalty of three consecutive felony convictions where the penalty in any area could have been 10 years, would give him an extra 30 years and keep him off the streets.

Unfortunately that amendment was not adopted.

Some are saying that that 10-year period is already in the law. But in some States, like California, it will give a 5-year sentence where other places have it at 10. Let us be fair, let us get the law fixed up so that we could take care of the crime problem.

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan [Mr. CONYERS], a distinguished member of the Committee on the Judiciary and also chairman of the Committee on Government Operations.

Mr. CONYERS. I thank the distinguished chairman of the Committee on the Judiciary, the gentleman from Texas [Mr. BROOKS], and commend the subcommittee chairman for the work that they have done on a very important and controversial bill.

Mr. Chairman, I come to the well feeling that there is one part of this bill that, if we can preserve and get into the Federal law, that we will be doing as much as we can in 1991 to have an important contribution made, and it is called fairness in death sentencing.

Only yesterday I was able to meet and talk with relatives of a person who was executed 2 weeks ago, Warren McCluskey. His sisters, two of them, were here on Capitol Hill. They were here because he was executed because he is one of the persons that the death sentence was imposed because of the race of the defendant.

Mr. Chairman, we can all agree that no one should be executed under a death sentence imposed because of race. Unfortunately recent studies have confirmed, that in some jurisdictions the single most important factor in determining whether a person receives a death sentence is either the race of the victim or the race of defendant. We cannot allow this situation to continue.

The fairness in death sentencing provision of this crime bill is one of the most important civil rights issues that you will have an opportunity to support in this Congress. This provision would make it unlawful to execute someone whose death sentence is the product of racial discrimination. Contrary to what you will hear during debate on a substitute amendment, it will not end the death penalty.

The fairness in death sentencing provision would merely allow courts to consider statistics of a consistent pattern of racial discriminatory death sentencing in determining whether a defendant's death sentence is influenced by racial factors. This is based on the same premise we have work on in virtually all civil rights bills, that is that discrimination is now sophisticated. Rarely, will prosecutors, judges, and jurors admit purposeful discrimination. Therefore we allow the use of comprehensive statistics to establish a prima facie case of racial discrimination, just as we have done in title VII of the Civil Rights Act of 1964 and in the Voting Rights Act.

If a defendant can meet the heavy burden of demonstrating that at the time the death sentence was imposed, race was statistically a significant factor in imposing the death sentence, than an inference that a sentence was based on race is established. The State then has the opportunity to show that the sentence was the product of nonracial aggravating factors, or that the statistics on pattern to apply to this particular case.

You will hear a number of specious argument by opponents of this provision. The one used most often is that once an inference of racial discrimination has been established, it is virtually impossible for a prosecutor to rebut the inference of discrimination. This is wrong. A State merely has to rebut the evidence by a preponderance of the evidence—as opposed to clear and convincing. Second, the bill does not limit the grounds on which the State may rebut a statistical inference of race discrimination:

First, the State can show that the sentence does not fall within the statistical pattern because of the existence of nonracial factors aggravating factors or prior records of the offenders.

Second, the State could show that the evidence of statewide pattern is irrelevant and that the evidence in the local jurisdiction where the sentence was imposed shows no pattern of racial bias in that locality.

The other argument opponents like to use is that the real aim of this bill is to stop the implementation of all death sentences. In reality this provision does not affect the lawfulness of any sentence of death which does not show racial bias. It prohibits only the execution of those specific death sentences that are the product of racial bias. There are jurisdictions where there is no racial pattern to death sentencing. No death sentence in those jurisdictions would be subject to challenge under the act.

Finally, is opponents use same old race-baiting argument that we heard in the debate on the Civil Rights Act of 1991, that act would encourage death sentencing by quotas. This is simply wrong. This provision requires the comparison of similar cases. This means that an overall balance or imbalance in death sentencing is irrelevant. Achieving a certain number or percentage of white death sentences and a certain number or percentage of black death sentences will not bring a State in compliance with the act; instead, such a charging and sentencing process would violate the provision, since the decision would be based on race and not on legitimate factors.

The fairness in death sentencing provision is strongly supported by every major civil rights organization in this country, as well as the American Bar Association.

Mr. MCCOLLUM will offer amendment No. 14 to replace the fairness and death sentencing provision. This is a mischievous amendment that is misleadingly called the Equal Justice Act. It does not seriously address the problem of racial bias in death penalty sentencing that has been documented in numerous studies, several congressional hearings and an independent evaluation by the General Accounting Office.

Frankly, because no hearings have been held on this proposal. I am not sure that anybody knows what this amendment does or how it would work. None of us on the Judiciary Committee have had an opportunity to hear from any witnesses or to ask questions about how this proposal would respond to the problem of racial bias in the criminal justice system.

We can only speculate about the prohibition in the bill on using statistical tests to achieve a specified racial proportion or racial quotas in executions. Nobody in the civil rights community has argued in favor of racial quotas nor has there been any testimony that such a problem exists. I urge you to vote against this amendment.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the distinguished gentleman from California [Mr. PACKARD].

Mr. PACKARD. I thank the gentleman for yielding time to me.

Mr. Chairman, today the House takes up the crime bill. H.R. 3371 is a comprehensive piece of legislation, one which proposes many needed reforms. However, the bill does not go far enough. We need to strengthen Federal criminal law, not weaken it; we must eliminate delays which clog the court system; we must strengthen the punishment so that it fits the increasingly violent wave of crime which threatens this Nation.

Americans are tired of living in fear. They will no longer tolerate a system which gives criminals more rights than the victims of crime. As each day passes, our neighborhoods become more and more like communities under

siege. In a struggle for drugs and territory, gangs indiscriminately gun down the innocent caught in their crossfire. Rapists do far too little time in prison for their inexcusable violence against women. Criminals are set free on technicalities that totally ignore the substantive evidence which could convict them.

The judicial system of the United States should assure people that they are protected against those elements of society which choose to disregard the law. Americans should feel safe in their neighborhoods, their homes, and their businesses. They should feel that they have adequate recourse against criminals when they are victimized. Our judicial system must provide them with this protection. Americans should feel that the system is just.

Several key amendments to this legislation will seek to reform the process by which we seek a just remedy when we are wronged. I support efforts to include the Senate-passed restrictions of habeas corpus petitions, in order to decrease the delay in carrying out death sentences as well as to decrease prolonged litigation.

I advocate broadening the existing law with regard to the exclusionary rule. Presently, a conviction can be thrown out for something as simple as a mistake on a search warrant. Criminals are going free because of a loophole exploited by lawyers. I believe the courts should allow admission of evidence by officers if it was obtained in reasonable reliance of a search warrant.

I also support capital punishment for the most serious crimes. During consideration of the 1990 Crime Control Act, I supported a measure to sentence drive-by killers and drug kingpins who are responsible for gangland-style murders to death. As my colleagues know, this is an issue which strikes close to home in California, where these types of crime are on the rise.

I ask that my colleagues support these reforms to strengthen the system and reaffirm American's faith in their judicial process. The Congress must act responsibly to present President Bush with a tough anticrime bill that Americans want and the President will sign.

□ 1550

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the gentleman from Nebraska [Mr. HOAGLAND].

Mr. HOAGLAND. Mr. Chairman and colleagues, I would like to begin by congratulating the chairmen of the full committee and the subcommittee, and the gentleman from New Jersey [Mr. HUGHES], who was earlier chairman of the subcommittee, in bringing to the committee and to the floor what is truly an excellent and a comprehensive bill, and I hope in the debate on the bill that begins today that people will be fair to this bill and will argue its various provisions with at least some modicum of intellectual integrity. I mean to call this a procrime bill is ridiculous. This is a very tough bill.

Now I recognize that the death penalty and the habeas corpus provisions are going to get most of the attention. With respect to the death penalty let me remind my colleagues that this legislation adds 52 new Federal death penalty offenses, 52, and, with respect to the habeas corpus provisions, this is a major reform in habeas corpus. What the bill provides basically is that a 1-year statute of limitations in which to file a habeas petition begins to run from the time that the State conviction is finalized, with a couple of exceptions, and it also basically limits one to one habeas corpus petition.

Now this is a major, major improvement over current law, and I recognize the gentleman from Illinois [Mr. HYDE] provides a different approach. But let us keep in perspective the fact that we are talking about differences in degree, that this bill, this legislation, contains a major habeas corpus reform.

But most important let us talk about the things that are really going to affect street crime in communities like Omaha and other commnities around the Nation. We understand that 97 percent of street crime is prosecuted in local court, and it is limited with respect to what we here at the Federal level can do. But, as the gentleman from New York [Mr. SCHUMER] and the gentleman from New Jersey [Mr. HUGHES] have indicated, there are a lot of very constructive provisions about this bill that are going to lost, lost in the sound and fury over death penalty and habeas reform, if we are not careful, and let me just mention a couple of those.

One of those provisions is allowing communities to develop programs to test people for drugs upon arrest. Now many, many communities in America, including Omaha, have no program for testing somebody for drugs upon arrest, no program for requiring that abstinence from drug use is a condition of release pending trial, no requirement for making abstinence from drug use a condition of probation. We need test facilities right there in the local court so, when somebody is arrested, we can find out right away if they have a drug problem. The way it works in Omaha right now is somebody can go through the entire system, 5 years, including a year waiting for trial, and 4 years on probation without anyone ever knowing whether they have a drug problem. That does not make sense.

So, there is that and several other very constructive provisions in this bill that are going to help the problem of crime on the streets.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from California [Mr. RIGGS.]

Mr. RIGGS. Mr. Chairman, to my colleagues I rise as one of the few former police officers and a deputy sheriff in this body, having worked the mean streets of California for 6, going on 7, years, having married a female police officer, and having seen my share of violent crime during that time period, and I want to just at the outset say from that perspective, unless we adopt the Hyde and McCollum amendments to H.R. 3371, what we have gotten again is a convoluted, watered-down crime package out of the House Committee on the Judiciary. Allow me, first of all, to share with my colleagues an infamous case from my home State of California and why it establishes the need for sweeping habeas corpus reform.

On July 5, 1978, Robert Alton Harris and his crime partner abducted and brutally murdered two teenagers on the outskirts of San Diego, and then, after accomplishing that crime, proceeded to finish the remainder of the meal that they had purchased at a fast food restaurant, a truly awful crime. Mr. Harris was convicted and sentenced to death in the following year. His conviction on first degree premeditated murder, a capital offense in California, became final in 1981. Yet despite having confessed at least four times to the gruesome murders he committed, Mr. Harris is still able today to challenge his final conviction more than 10 years later, already having filed eight State and three Federal habeas corpus provisions.

Quite simply, the habeas corpus provisions in H.R. 3371 are weak, to say the least. For example, the statute of limitations to file an appeal is twice as long as that contained in the Hyde amendment. H.R. 3371 yields a 12-month period, as opposed to 6. The so-called Fairness in Death Sentencing Act is very misleading. The more one learns about the act, the more one discovers that it is truly one of the greatest possible impediments to meaningful capital punishment reform, and I want to remind my colleagues on the other side of the aisle that once again we stand poised to thwart the will of the American people. Mr. Chairman, over and over national polls have shown us; this is particularly true in California, that the American people support the death penalty. They support the death sentence penalty for a wide variety of capital offenses. In fact, if enacted, this bill would effectively abolish the death penalty because it imposes a burden on the prosecution that is too onerous and places an expense on the taxpayers of this Nation that is too great. Moreover, the Berman amendment to H.R. 3371 would enable death row prisoners to reopen otherwise settled cases by allowing race bias claims to be raised in Federal court.

Mr. Chairman, law-abiding citizens do not care to hear about fairness for murderers coming from this body. What about fairness for victims and the families of crime victims?

I urge my colleagues to support the Hyde and McCollum amendments. I urge my colleagues to show that indeed they are not captives of the liberal special interest groups and stooges for the soft-on-crime crowd.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the distinguished subcommittee chairman, the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. Mr. Chairman, I appeciate the gentleman from Texas [Mr. BROOKS] yielding this time to me, and let me commend him and the gentleman from New York [Mr. SCHUMER], the gentleman from New Jersey [Mr. HUGHES], the gentleman from California [Mr. MOORHEAD], the gentleman from Illinois [Mr. HYDE], as well as the gentleman from New York [Mr. FISH], who have helped fashion this legislation. I think it is a good piece of work, and I hope that it passes. Let me just try to briefly describe some aspects of it.

Mr. Chairman, this bill helps us fight crime before the crimes are committed. It restricts the availability of assault weapons, and for those of us who live in Louisville and Jefferson County, KY, we well remember just a year ago when an individual using an AK–47 fired upon his former employees at Standard Gravure, killing eight persons and injuring many more. This bill would restrict the access to those weapons.

In addition, it provides safe school zones. It also puts more cops on the beat in a $150 million program so that they could deter crime.

In addition to stopping crime before crime happens, this bill will help us apprehend criminals. We have DNA research in there. We have more drug assistance administration agents, more immigration agents at the border trained in drug apprehension.

Furthermore, in addition to stopping crime before it happens and in apprehending the criminals who commit crimes, the bill also helps punish crimes sternly.

□ 1600

We penalize those who traffic in drugs or are involved in drug-related offenses. It limits habeas corpus appeals. I could limit them more, but this bill does limit them.

It does provide death penalties. I could go further, but it does have additional death penalties. It does ease the exclusionary rule. I could ease it further. But, the bill does ease the rule.

So essentially we have a balanced, multi-faceted bill which I think would add to our arsenal in the war against crime. Later in the day or perhaps tomorrow there will be an amendment offered by my friend, the gentleman from New Mexico [Mr. SCHIFF], to the committee bill. I hope that the House supports the committee bill which makes permanent the 75–25 percent Federal-local match on law enforcement assistance grants.

Mr. HYDE. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I just want to explain again what full and fair means so we get this clear. It seems to me one of the problems with habeas corpus, if we want to make it work, is to avoid relitigating the same questions again and again and again.

Now, how do we do that? Well, how we do it is to give deference to the Federal courts to do what the State courts have done if the State courts—and those are the trial court, the appellate court, and the State supreme court—have dealt with the law, with the facts, and with procedure in a full and a fair way. So if the State courts have handled it properly, fully and fairly, then the Federal court, when it moves over on Federal habeas, gives deference to courts' rulings rather than relitigating them.

The people who oppose full and fair want to relitigate the issues again and again and again. That is wrong. That is not reform. The Federal court looks at full and fair. The Federal court makes the determination whether the State court has fully and fairly dealt with the law, the facts, and the procedure, so they do not emasculate Federal habeas corpus, but they let the State courts have credit for what they have done fairly and fully. That is sensible reform of habeas corpus. If you eschew that and you want to relitigate those issues, you may do so, but do not go home and say you are for reform of the criminal process; you are helping the criminals, not the victims.

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from California [Mr. TORRES].

Mr. TORRES. Mr. Chairman, I rise in support of the passage of the 1991 omnibus crime bill.

We have a crisis in this country and we have an opportunity today to solve this problem.

H.R. 3371 is a tough anticrime bill. It provides for increased penalties for the use of a firearm in commission of a drug-related crime, and tougher, fairer, and more timely sentencing procedures.

The bill also authorizes funds for a variety of crime prevention programs at the State and local levels. The bill further seeks increased oversight of our police forces to stop patterns of unconstitutional conduct or police brutality. Make no mistake, it is tough.

The crime bill includes sections dealing with crimes committed against children, and doubles the penalties for recurring sex offenders.

One of the provisions of the 1991 omnibus crime bill that is especially important to me and to the people I represent is the section relating to criminal street gang activity. I worked very closely with Congressman MEL LEVINE and Chairman CHARLES SCHUMER of the Judiciary Committee to come up with a bill that will send a clear message to criminal street gang members: "You do the crime, you'll do the time!" We have to show these young people that criminal gang activity leads to one of two places, either you end up in jail or you end up in the morgue.

Each year more and more lives are being lost in gang warfare. Even more tragic are the many innocent lives sacrificed in this no-win situation. Every day I pick up the paper or read a letter from one of my constituents, detailing the death of another bystander caught in the crossfire between gangs. So far this year, in Los Angeles County, there have been over 840 drive-by shootings according to the Los Angeles Police Department.

Just in the past month, in my district in California, a schoolbus was rifled with bullets from a drive-by shooting and two girls inside the bus were injured. In other gang-related shootings, 12-year-old Ricardo Escobar died while riding his bike near his home after being shot in the head by a gang member with an assault rifle, and 13-year-old Marco Velasquez was killed after being shot in the back while trying to run away from gang members.

In June of this year another constituent of mine, 19-year-old Army Pvt. Cesar Gardea, who had just come home from serving his country in the Persian Gulf, was killed in a gang-related, drive-by shooting. He was shot at his own homecoming party. It was his first night home, and his last night home. Cesar survived a foreign war, but was killed by the one here, on the home front.

Mr. Chairman, gang violence is not limited to California or New York. You can pick up any paper and read about gang-related crimes in your own state.

The University of Chicago concluded that criminal youth gangs are found in almost all 50 states, including Alaska and Hawaii, and in the District of Columbia and Puerto Rico. Two of the more powerful street gangs, the Crips and Bloods, have spread gang life and violence to other parts of the country in search of fresh drug trafficking markets.

Gangs have turned our neighborhoods and streets into war zones. Before the gulf war, the U.S. Army would send its surgeons and medical teams to train in hospital emergency rooms in Los Angeles, because there the doctors could get 24-hour-a-day experience treating the kind of gunshot wounds normally seen only in battle.

The streets of America should not have to be the training ground for combat doctors. I am tired, and so are my constituents, of these killings. Private Gardea, Ricardo Escobar, and Marco Velasquez all had meaningful lives, but died meaningless deaths.

I know law enforcement is not the complete answer in detering crime, that is why the passage of this crime

bill is so crucial. The bill authorizes additional funds for a variety of grant programs that are targeted especially for high-at-risk youth.

Successful grant programs such as DARE, the safe school project, and the Midnight Basketball League would receive additional money under this bill.

But for the tough, hardened gang members, who could care less about whatever innocent individual got in the way, they must be shown, that they are going to pay for their crimes. State and local law enforcement are swamped, overcome by the sheer numbers of the situation.

Mr. Chairman, I urge my fellow colleagues to pass the Omnibus Crime Act of 1991.

Mr. HYDE. Mr. Chairman, I yield 4 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER].

Mr. SENSENBRENNER. Mr. Chairman, I think the best description of this bill is that it is a feel-good bill, a feel-good bill full of empty promises and little if any real reform of the criminal justice system to put teeth in our law and get criminals in jail.

Within the text of this bill, there is $1.2 billion of authorizations for various kinds of criminal justice programs, some good, some not so good. But we all know that under the budget agreement that was passed, to fund these programs we will have to take money out of other discretionary spending, and that is not going to happen in a month of Sundays.

So those who support this piece of legislation will go around the country saying that we have taken care of this problem and taken care of that problem, but they know full well that when the vote comes on the budget next year, there will not be the money to actually send to the communities for things like safe schools, cops on the beat, and what have you. I think that is dishonest because it seems to me that if we are going to be making these promises in the context of this bill, we ought to be prepared to back it up with money, and we know we do not have the money under the budget agreement and the Deficit Reduction Act.

Second, there are very few provisions in this bill that actually improve our criminal justice system, to represent the interests of society rather than the interests of criminal defendants.

We have talked at some lengths and we will talk at greater lengths on issues such as habeas corpus, the exclusionary rule, and the death penalty and the Fulminante decision. In each of these cases the committee bill does not provide the teeth in the system to earn the support of the criminal justice community, our district attorneys, our State attorneys general, our police officers out on the beat, and our deputy sheriffs. I think that is the most ringing indictment, that this bill is really nothing more than a fraud. There are provisions in this bill that attempt to tie the hands of the Supreme Court, something about which my friends on the majority side of the aisle are in increasing disagreement.

On the exclusionary rule, for the first time there will be a move to try to statutorily define what the exclusionary rule is. My friends on the other side of the aisle are against that. The death penalty procedures, as explained by the gentleman from Pennsylvania [Mr. GEKAS] really make it more difficult to execute someone who deserves execution than leaving the law alone, and that is wrong, too.

□ 1610

That is wrong, too. In summation, this bill is merely a continuation of the failed congressional programs since the Omnibus Crime and Safe Streets Act was passed in 1968. It attempts to deal with the problem of crime by throwing money at it rather than changing our criminal justice system so that there is more balance between the rights of criminal defendants and the rights of society and victims on the other side.

We have a chance during the amending process to make this bill a good bill. If we fail to take that chance, to grasp that opportunity, then we will perpetrate another fraud on the American people, just like we did in 1990.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from Connecticut [Mrs. KENNELLY], the assistant majority whip, recently elected and widely acclaimed.

Mrs. KENNELLY. Mr. Chairman, I rise in support of H.R. 3371, the Omnibus Crime Control Act of 1991. I want to draw the attention of my colleagues to section 1706 of the bill which concerns a matter within the jurisdiction of both the Committee on the Judiciary and the Permanent Select Committee on Intelligence.

Section 1706 represents a very narrow and carefully drawn expansion of the Federal Bureau of Investigation's authority to utilize the "national security letter" under the Electronic Communications Privacy Act [ECPA].

ECPA was enacted in 1986 to provide privacy protection to telephone subscriber information and toll billing records. In general, government entities may only have access to this information, without the subscriber's consent, pursuant to a subpoena, court order or search warrant, and only if the information is relevant to a legitimate law enforcement inquiry. ECPA provides an exception for counterintelligence cases, however, which allows the FBI to obtain subscriber information and toll billing records where the FBI certifies in writing to the telephone company that the information sought is relevant to an authorized foreign counterintelligence investigation and the subscriber is believed to be a foreign power or agent of a foreign power.

A national security letter is an extraordinary device which allows the FBI to compel the production of information without the judicial review and association with a criminal investigation normally required by law. Expansion of the reach of the national security letter is not to be undertaken lightly.

Nevertheless, the FBI has made a compelling case to the Judiciarly Subcommittee on Civil and Constitutional Law and to the Intelligence Subcommittee on Legislation which I chair, that the national security letter should be available in cases in which individuals contact suspected foreign intelligence officers or suspected terrorists, or where the substance of the conversation concerns international terrorism or clandestine intelligence activities that may involve spying or an offer of sensitive information protected by law. These conservations in which individuals volunteer to commit espionage are not now covered by the national security letter exception. In fact, the FBI argues it might have been able to prevent the compromise of highly sensitive information given to the Soviets by Ronald Pelton, a former employee of the National Security Agency, if it had had this expanded authority.

The Subcommittee on Legislation has held hearings for the past 2 years on this issue. The FBI did not, however, make a persuasive case that its proposed legislative solution, which would have required phone companies to identify all persons who had been in touch with foreign powers or suspected agents of foreign powers, should be adopted. In my judgment, the FBI's language was too broad and not narrowly focused on its demonstrable needs.

We have worked closely with the Subcommittee on Civil and Constitutional Law to fashion an amendment to ECPA that would addess the legitimate concerns of the FBI in a way that is sensitive to the dangers inherent in the national security letter exception. Chairman EDWARDS and his staff are to be congratulated on their leadership on this issue and their persistence through protracted negotiations over several years.

Section 1706 amends ECPA to allow the FBI to request the name, address, and length of service of a telephone subscriber where the FBI certifies in writing to the telephone company that the telephone service has been used to contact a suspected foreign intelligence officer or suspected terrorist or the circumstances surrounding the conversation indicated that the conversation involved international terrorism or an offer to spy.

Section 1706 is a delicate balance between our desire to give the FBI the means to fight terrorism and espionage and our responsibility to protect indi-

viduals from unreasonable intrusion by the government. I assure my colleagues that the Intelligence Committee will continue vigorous oversight of the FBI's use of national security letters.

Mr. SENSENBRENNER. Mr. Chairman, I yield 4 minutes to the gentleman from Arizona [Mr. KYL].

Mr. KYL. Mr. Chairman, while I am pleased that we are finally considering a bill dealing with violent crime, unfortunately, H.R. 3371 will do little to prevent violence, and may, in fact, cause considerable problems for those on the front lines of the war on crime.

I recently contacted the U.S. district attorney of Arizona, Linda Akers, to ask her opinion of the impact of H.R. 3371 on prosecution of cases in the district of Arizona. Besides the normal Federal jurisdiction, the U.S. attorney in Arizona is also responsible for prosecuting offenses occurring on 17 Indian reservations and crimes occurring along the international border between the United States and Mexico. I am including her response to me in the RECORD, because I believe it is especially important that we consider the impact of so-called crime legislation on the real life efforts of law enforcement officials to fight crime where it occurs in our districts.

I recommend Ms. Akers' letter to my colleagues. She presents very compelling arguments against three provisions of H.R. 3371, including title IX, coerced confessions; title XI, habeas corpus; and title XVII, exclusionary rule. For example, instead of the provisions recommended in H.R. 3371 regarding coerced confessions, she supports the Supreme Court's decision in Arizona versus Fulminante, which holds that a conviction should not be reversed on the basis of a constitutional error if it appears beyond a reasonable doubt that the error had no effect on the outcome of the proceedings.

Ms. Akers also endorses much needed reform of the use of the writ of habeas corpus—reform that would limit delay and abuse of the judicial process by convicted felons. I quote from her letter as follows:

> Section 1104 of Title XI adopts a new retroactivity standard in both state and federal cases. As you correctly point out, this new standard would allow offenders to challenge convictions imposed in full conformity with existing law. It will essentially eliminate finality of decisions. This potential for endless litigation will, I believe unduly undermine confidence in our judicial system.

And I will include her entire letter for the RECORD.

Finally, she supports the amendments offered by Mr. MCCOLLUM which would establish a good faith exception to the exclusionary rule, under which a court would admit evidence if it determined that the conduct of law enforcement officers obtaining the evidence was objectively reasonable. As Ms. Akers points out in her letter, describing circumstances involving border agents:

> Agents are required in a split second to make a decision that may be debated through the courts for years. If the agents act in objectively reasonable good faith, what more can we ask of him or her?

Mr. Chairman, in the debate on anticrime legislation, let us not lose sight of the ultimate goal, stopping crime. We must enact legislation which helps, not hinders, our local law enforcement officials in their work towards this goal. I urge my colleagues to support the amendments offered by Mr. HYDE, Mr. MCCOLLUM, and Mr. GEKAS and oppose the amendment of Mr. BERMAN.

U.S. ATTORNEY,
DISTRICT OF ARIZONA,
Phoenix, AZ, October 16, 1991.

Hon. JON KYL,
U.S. Representative, Washington, DC.

DEAR CONGRESSMAN KYL: This letter is in response to your request for the impact of three particular provisions of the Crime Bill on cases in the District of Arizona. I will address each issue in the order of your letter.

As you know, the U.S. Attorney in the District of Arizona prosecutes felony offenses occurring on the 17 Indian Reservations within the state as well as crimes occurring along the international border. In this respect, our case load resembles that of a typical county or district attorney's office rather than a typical U.S. Attorney's office. I make this distinction only to emphasize the impact of the Crime Bill provisions on the work of this District.

First, the Crime Bill reported by the House Judiciary Committee contains a provision that admission of a coerced confession shall not be considered harmless error, where a "coerced" confession is defined as any confession elicited in violation of the Fifth or Fourteenth Amendments. As you correctly point out, this provision effectively overturns the Supreme Court's decision in *Arizona v. Fulminante* and applies a different standard of harmless error to involuntary statements than that applied to other claims of constitutional error. Under normal harmless error standards, a conviction is not reversed on the basis of constitutional error if it appears beyond a reasonable doubt that the error has no effect on the outcome of the proceedings. There is no rational reason why a different rule should apply to claims relating to involuntary statements by the defendant.

The practical effect of this "automatic reversal rule" is to overturn the convictions of murderers, child molesters, and drug dealers, among others, even where the independent evidence of guilt is overwhelming, and the Government shows beyond a reasonable doubt that the offender would still have been convicted if the improper admission had not occurred. (Notably, the improper admission is with the approval of the trial judge.) This outcome denies justice to the victims of crime and the innocent public.

In the District of Arizona, our victims and public, include the Indians on our many reservations. Cultural and language differences and a lack of familiarity with the criminal justice system make it difficult for them to understand appellate court reversals. They will be especially perplexed by the idea that the defendant would get a new trial even when the evidence establishes guilt beyond a reasonable doubt and any error could not have affected the outcome. The victim believes that if it is proven that the defendant committed the crime, then a second trial to reestablish guilt is (in their opinion) is a denial of justice. I agree.

You also inquire about the provision in Title XI which would weaken Supreme Court decisions that currently limit delay and abuse of the judicial process by prisoners. Specifically, Section 1102 sets a one-year time limitation for filing habeas corpus petitions in capital cases. As you accurately point out this time frame is more than twice the 180-day period proposed by the Powell Commission and many times greater than that provided for seeking review of criminal judgments in other contexts.

We currently do not have any federal death penalty cases in this District so the impact of these provisions would be felt in Arizona primarily on the state level. I can, however, tell you from personal experience that post conviction review of death penalty cases in the State of Arizona routinely goes on for years and years. During this time, the victim's or victims' surviving family members come to understand the old adage that "justice delayed is justice denied" with painful clarity. Time is jealously considered by survivors as the one thing the defendant by his or her actions denied the victim: time to grow up, time to realize their dreams, time to live and share with their loved ones. As recognized by the Powell Commission, there is no legal reason why errors claimed to have occurred in the trial can not be ferreted out in a much shorter time frame.

Section 1104 of Title XI adopts a new retroactivity standard in both state and federal cases. As you correctly point out, this new standard would allow offenders to challenge convictions imposed in full conformity with existing law. It will essentially eliminate finality of decisions. This potential for endless litigation will, I believe unduly undermine confidence in our judicial system.

The final provision of the Crime Bill that you mention concerns the exclusionary rule in Title XVII. This provision would draw the line at searches involving warrants. As such it would provide a basis for defense arguments that it is impermissible to go any further and that existing decisions recognizing the "good faith" exception in non-warrant cases should accordingly be reconsidered, leading to a narrowing of the admissibility of evidence as compared to current law.

Any narrowing of federal law respecting the exclusionary rule would have a tremendous impact on this District. Motions to exclude evidence are routinely filed in practically every drug case that we prosecute. Many of these cases do not include a warrant, but may include other constitutionally recognized exceptions to the warrant requirement, such as hot pursuit and plain view. If the officer's conduct is objectively reasonable, it should not matter whether he acted pursuant to a warrant or one of the exceptions to the warrant requirement. The rationale expressed in *United States v. Leon*, 468 U.S. 897, 918–20 (1984) applies equally to either situation. Excluding evidence where the officer's conduct is objectively reasonable, "will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that . . . the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty."

An amendment offered by Representative McCollum would establish a general "good faith" exception to the exclusionary rule, under which a Court would admit evidence if it determined that the conduct of officers in

carrying out a search and seizure was objectively reasonable. Limiting the "good faith" exception to searches involving warrants will arbitrarily exclude evidence that is currently admissible. We encourage you to support the amendment.

In this District, we work with local agencies to train border agents to ensure that they are familiar with all developments in the law relating to the Fourth Amendment. Nonetheless, circumstances still occur that are not covered by any prior interpretation of the law. Agents are required in a split second to make a decision that may be debated through the courts for years. If the agent acts in objectively reasonable good faith, what more can we ask of him or her?

Sincerely,

LINDA A. AKERS,
U.S. Attorney, District of Arizona.

Mr. Chairman, I rise today in strong support of the Hyde amendment which strikes the weak habeas corpus provisions of H.R. 3371 and inserts instead the strong habeas reform provisions proposed by the President and recently adopted by the Senate.

Both the attorney general of Arizona and the U.S. district attorney of Arizona have told me that the current provisions of the House bill would promote unnecessary delay in the habeas corpus process and result in repetitious litigation of previously settled claims in Federal court. Additionally, these provisions would cause the repeated raising of disputable new claims, especially in death penalty cases. Allowing the reopening of settled or never-raised claims by habeas corpus writs could reopen virtually all of the 103 cases currently on death row in Arizona.

The Hyde amendment would provide real and effective reform to the habeas corpus process, including a full and fair adjudication standard, which would avoid needless relitigation of issues properly resolved at trial, but would not bar Federal habeas review when there was clear disregard for Federal precedent. Additionally, this amendment would establish time limits for filing habeas petitions. This limit would still allow defendants ample time to seek review following the conclusion of proceedings, but would avoid the acute difficulties of proof that currently arise when habeas corpus is sought by a prisoner years or decades after a trial.

I ask my colleagues here today to join me in supporting the only real reform of the Federal habeas corpus process, the Hyde amendment.

Mr. Chairman, I rise today in strong support of the Volkmer-Sensenbrenner amendment to strike needless and ineffective gun control provisions from H.R. 3371.

This bill, which in its current form can be more accurately described as a criminal protection act rather than a crime control act, would ban the sale and manufacture of 13 categories of firearms defined as assault weapons, and would prohibit the possession or transfer of ammunition feeding devices with a capacity of greater than 7 rounds. This isn't crime control, it's gun control, plain and simple. Such measures will not keep criminals from acquiring guns, legally or illegally, but instead will infringe upon the right of law-abiding citizens to own and use such firearms for legitimate sporting purposes as well as self and family protection.

We need to attack the real problem, criminals who use guns in violent offenses. The best approach to the abuse of weapons is stricter penalties for their criminal use. This is why I support tougher penalties for criminals who use guns illegally, such as those contained in the President's crime bill. Mandatory prison terms for violent crimes committed with firearms will deter future criminal activity and help keep our homes and streets safe.

We don't need to control guns of law abiding citizens; we need to deter violent crime and criminals. Let us pass the Volkmer-Sensenbrenner amendment.

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. FEIGHAN], a member of the Committee on the Judiciary.

Mr. FEIGHAN. Mr. Chairman, I am proud to stand up today on behalf of the anticrime bill before us. Crafting a crime bill on the eve of a Presidential election year is always a treacherous and thankless task, and I want to commend Mr. SCHUMER, the chairman of the Crime Subcommittee, and Mr. BROOKS, the distinguished Judiciary Committee chairman.

One of the bill's best provisions is perhaps one of the least known—the Anti-Terrorism Act of 1991. Finally, American victims of terrorism will be able to bring civil suits in American Federal courts. The need for this provision was clearly and dramatically demonstrated by the case of the Klinghoffer family. They are currently pursuing a civil judgment against the PLO for the execution of Leon Klinghoffer, a passenger on the ill-fated *Achille Lauro* cruiseliner.

Because this crime violated certain admiralty laws, a Federal court in New York was able to establish jurisdiction. But for the vast majority of such crimes, no civil cause of action exists for American victims of terrorism. With this provision, we offer the opportunities to other American families—like those who lost loved ones in the attack on Pan Am Flight 103—to pursue claims in U.S. courts.

Terrorism against Americans—bombings, hijackings, and taking of hostages—continues to threaten our interests. On the eve of a potential Middle East peace conference, it is essential that we not forget these American families and the continued terrorist acts that threaten any long-term peace.

I want to address three other issues that seem to be causing some controversy. The first has to do with a ban on assault weapons. I cannot for the life of me understand why any single member of this body could rise in opposition to a ban on 13 of the most dangerous weapons in America. Do they really want some one in their neighborhood to carry an AK-47 or a Streetsweeper/Striker 12? Should drug dealers be permitted to walk the streets with guns like the TEC-9, which can fire dozens of rounds a minute?

H.R. 3371 would simply fortify the President's own ban on the importation of assault weapons, and strengthen it by adding several other killing machines. Every hunting rifle in America—including every semi-automatic hunting rifle—is exempt from this bill. If we can again summon the courage to defy the screams and shouts of the National Rifle Association—as we did on May 8 when we passed the Brady bill—we might be able to reduce the blood that is spilled each year at the hands of criminals with assault weapons.

I also want to express my support for the bill's habeas corpus reform procedures, and my opposition to the Hyde habeas amendment. H.R. 3371 strikes a rare balance: It insures that capital defendants are treated fairly while preventing wasteful, repetitive, and frivolous appeals. But the Hyde amendment shoves the Bill of Rights to one side, and fiddles perilously with what our Founding Fathers called the great writ—the writ of habeas corpus. By extending the pale full and fair standard to our entire system, by unnecessarily cutting off habeas petitions after half a year, and by denying death row inmates a right to competent counsel at each stage of the judicial process, the Hyde amendment would weaken our Bill of Rights—even as liberated peoples all across Eastern Europe and the Soviet Union are discovering theirs.

Finally, I hope my colleagues will avoid any temptation to weaken the exclusionary rule, which has deterred improper police conduct for more than a generation. Its never satisfying to hear that a defendant escaped justice on a technicality, but the rule is in fact rarely invoked—a clear sign that the exclusionary rule has been successful in preventing police misconduct before it can happen. Police can work with it, the courts know how to apply it can happen. Police can work with it, the courts know how to apply it sensibly, and it essential to the proposition that the American fight against crime will adhere to the American creed of fairness.

I would like to take a moment to address one more issue—improving the lives and livelihoods of our law enforcement officers. As the original sponsor of the Law Enforcement Scholarships Act, I am pleased to see that it is part of today's bill. Officer education pays for itself several times over: bet-

ter-educated officers communicate better with the public, are better decisionmakers, and are the subject to fewer complaints. New technologies, the drug war, and a more complicated society all demand more sophisticated, well-educated police officers. By allocating a modest amount of money to State-run law enforcement scholarships, we are making an investment in the future of our police officers—and the safety of our streets.

Mr. Chairman, the bill before us is a good one—it takes the fight against crime to the streets, while honoring the greatest liberties our Constitution's framers guaranteed us. I hope that the Members of this body will think twice before they rush to amend it, and support its final passage.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Chairman, I rise in strong support of the Hyde amendment for meaningful habeas corpus reform. My good friend, the freshman Member from California [Mr. RIGGS], was a police officer for 6 years and has seen duty on the frontline. He talked about a case, the Harris case, in San Diego, CA.

□ 1620

I am very familiar with that case. Those boys lived right down the street from me.

Those boys' killer, Harris, killed them not too far from Mira Mesa, CA. After they were dead, Harris sat over on the side of a bank and continued eating their hamburgers out of a McDonald's bag.

Harris has seven times on seven separate occasions testified that he was guilty, that he committed these crimes. He was sentenced to death, but yet, 13 years later, Harris is still on death row.

The facts of the case are clear. Harris did brutally murder the two boys. He admits it. Yet his lawyers filed eight State habeas corpus petitions and three Federal.

This is a travesty in itself. The Hyde amendment would end this kind of travesty. The families of the Harris murder victims have been denied justice. The appeals process is out of control, Mr. Chairman.

The Hyde amendment adopts the recommendations of the blue-ribbon Powell Commission. It protects the rights of defendants, but ensures that justice will be done.

Mr. Chairman, the California attorney general, Dan Lungren, has repeatedly called on Congress to enact meaningful habeas corpus. He strongly supports the Hyde amendment. All 58 California district attorneys, Republicans and Democrats alike, have called on Congress to enact meaningful habeas corpus.

Let us listen to the men and women who are in the trenches and let us not be so worried about police misconduct but misconduct of the criminals.

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the gentlewoman from the District of Columbia [Ms. NORTON].

Ms. NORTON. Mr. Chairman, our large cities, our small communities, every part of America is crying out for relief, real relief from crime. Members should decide their vote on this crime bill by the standard I believe most of our constituents expect. Is it likely to deliver real relief from crime? Some sections of this bill provide real relief. Others deliver false promises, and worse, undermine fairness and offer a needless false trade-off between liberty and real relief from crime.

Surely no real relief from crime should be achieved at the cost of one of the great guide posts of American liberty. Yet that is what the Senate crime bill attempts in its provisions for habeas corpus reform. Though the concern has been for capital cases, the Senate included the administration's proposal, which essentially eliminates the review of the constitutional claims of all State prisoners in Federal court, not just defendants in capital cases. Serious constitutional violations would be immunized from Federal review if a Federal judge were restricted to procedural aspects of State cases.

The bill before us now takes a more reasoned and targeted approach to habeas reform. Title XI directly and more narrowly attacks the problem which the American Bar Association has found to be the primary cause of habeas petitions—costly errors made by inadequate counsel in capital cases. The committee's bill ensures that States provide competent counsel in such cases from trial through the appellate process.

Habeas corpus is one of the great hallmarks of American justice. It would be a perversion of the traditions we have maintained throughout our constitutional history to use this crime bill to destroy the great habeas corpus remedy.

Mr. Chairman, no provisions in this bill demand a real relief standard more than the death penalty provisions that assume, in spite of all the evidence, that the State, by taking a life, can deter those who would take the lives of others. This bill thoughtlessly and aimlessly takes the death penalty, now permissible at the Federal level in two instances—airline hijacking where death results, and homicides ordered by drug kingpins—and expands its use to over 50 additional Federal crimes, including some where no homicide has occurred.

This leap to attach death to as many Federal crimes as possible makes a mockery of the real relief standard I have suggested. In leading death sentence States, for example Florida, Louisiana, and Texas, murders and violent crimes continue to increase. In States with similar population demographics, but no death penalty—for example, Massachusetts, New York, and Minnesota—murder and violent crime rates are comparable or lower. Imposing death at the Federal level will no more meet a real relief standard than it has in these States. Replacing Federal death penalties with mandatory life sentences without possibility of release achieves the necessary relief.

However, the problems with the death penalty in this country are far deeper. We must not avoid them in this bill. One of the reasons so few countries allow the death penalty is that it is almost always used politically, which is to say, against powerless groups. That is why almost invariably when countries overturn totalitarianism, one of their first acts is to abolish the death penalty, as was done most recently in the Eastern bloc nations.

One of the great racist stains still left in our country is the racial imposition of the death penalty. Mountains of studies have shown that the race of the victim and of the defendant continue to significantly guide prosecutor's decisions to seek the death penalty. The reliability of this substantial body of data was validated last year by the General Accounting Office. Bay County, FL is an example of this awful racism. There, 40 percent of the murder victims are black, but in all of the cases where the death penalty was sought, the victims were white between 1975 and 1987. Yet the statistical evidence that would almost surely show racial use of the death sentence cannot be introduced today because the Supreme Court says legislative authority is required. We should give the courts that authority by passing the Fairness in Death Sentencing Act of 1991. This body simply cannot allow itself to expand the use of capital punishment before racism as an ingredient in the discretion to impose it is removed.

The bill's vital provisions which ban the sale and possession of 13 types of assault weapons, do pass the real relief test. The law enforcement community says that such measures are essential to its efforts to curb the proliferation of drug and gang related violence. We in the District of Columbia have seen how these weapons make city streets into battlefields. The overwhelming majority of Americans know the difference between sporting goods and military hardware. And the framers would have been astonished at the constitutional claims opponents make against the Government's legitimate and compelling public safety obligations.

Perhaps no section of this bill fails the real relief standard more than provisions for increased uses of mandatory minimum sentences. What a pretense at getting tough on crime it is to fill

jails and prisons, now so overcrowded that they sometimes must be run by judges because of constitutional violations. What a diversion of public money wasted in bricks and mortar that turn back on the streets criminals educated in finer points of crime than those that brought them there. We already need 250 new cells a day to keep up with the current rate of incarceration. That comes to $12.5 million per day. We spend on the average $29,600 a year on a juvenile offender. We could send him to Harvard for $18,000 a year. We do much too little to divert criminals using mandatory house arrest, restitution, and other alternatives to incarceration clearly appropriate for significant numbers. And we use incarceration often when we should be using drug treatment.

There is a better way. Just 2 months ago, the U.S. Sentencing Commission issued a special report to the Congress which concluded that:

> The most efficient and effective way for Congress to exercise its powers to direct sentencing policy is through the established process of sentencing guidelines * * * rather than through mandatory minimums.

The Judicial Conference of the United States, which represents the judges of every Federal judicial circuit, concurred. Just 7 years ago, the Congress passed the Sentencing Reform Act to correct past patterns of undue leniency—and disparity—for certain categories of serious offenses. Why not give our new sentencing guidelines, which became law only in 1987, an opportunity to work before undermining them with mandatory minimum sentences.

These are not the only problems I have with this bill, Mr. Chairman. It enacts into law a judicially created good faith exception to the exclusionary rule. This will permit courts to consider evidence obtained by police who relied in good faith on a warrant later determined to be invalid.

Finally Mr. Chairman, it is important for me to point to provisions in this bill that do meet the real relief test. I commend the bill's provision for substance abuse treatment in Federal and State prisons, for alternatives to incarceration for youthful offenders, Federal funding assistance to States and localities which have been designated drug emergency areas, grants to local police departments for community policing programs, and funds to hire 350 additional DEA agents. These are provisions sure to have a beneficial effect. So are proven crime prevention tools such as safe schools and midnight basketball leagues.

In the District of Columbia there have been 378 murders this year compared to 374 this time last year. Our need for real relief is desperate. Our Nation's need is desperate. We owe the people of the United States a bill that will give them real relief.

Mr. SENSENBRENNER. Mr. Chairman, I yield 6 minutes to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Chairman, I rise in support of several amendments that will be offered to correct the flaws in H.R. 3371. In particular, I strongly encourage my colleagues to support Mr. HYDE's amendments on habeas corpus, Mr. GEKAS' amendment on the death penalty, Mr. VOLKMER's amendment to strike the assault weapons provisions, and my amendments on the Equal Justice Act and the exclusionary rule.

I will offer an amendment to replace title XVI, the Fairness in Sentencing Act, with the Equal Justice Act. Don't be misled by the title given to the Fairness in Sentencing Act; it would more appropriately be called the Death Penalty Repeal Act or the Death Sentence Quota Act.

This act creates an inference of racial bias if a defendant can show a statistical variation in the racial composition of those who have committed murders and willful homicides compared to those who are sentenced to death in a given jurisdiction, State or Federal. The inference would also be created by statistical evidence indicating that killers of victims of one racial group are less likely to receive the death penalty than killers of victims of another racial group.

There are several problems with this approach. First, 90 percent of murders are intraracial, so if the prosecutor tries to lower the percentage of minority capital defendants, the percentage of death penalty cases involving minority victims will automatically be lowered. But this is an impermissible result because it automatically will mean that killers of minority victims are less likely to receive a death sentence. A catch-22 situation is created, making it difficult if not impossible for a prosecutor to seek a death sentence regardless of the race of either the victim or murderer and no matter how heinous the crime.

Second, such a statistical approach inaccurately assumes that crime rates in various racial groups are substantially the same. For example, about one-half of all murder victims are black. The Fairness in Sentencing Act would ensure that the death penalty is not available to punish their murderers.

Third, the Fairness in Sentencing Act does not take into account the facts of the individual case at hand, nor does it go beyond the general statistics to determine why death sentences were given in various cases—it does not consider the atrocity of the crime, the weight of evidence, or, ironically, the actual presence or absence of racial bias.

This quota sentencing act ostensibly allows the prosecution to attempt to rebut such a falsely based statistical inference, but then proceeds to tie its hands. It expressly prohibits the Government from relying on assertions that there was no intent to discriminate or that the cases used to create the inference were cases that fit the statutory criteria—which include aggravating circumstances—for imposition of the death penalty.

The result is the creation of an inference based on unsound methods, the near impossibility of rebutting the inference, and, therefore, the abolition of the death penalty.

I want to make it very clear that this provision is retroactive. The more than 2,450 existing capital sentences would all be open to challenge under this unequal and unjust approach, regardless of the facts of the case or the guilt of the convicted killer.

Far from contributing to a colorblind justice system, the Fairness in Sentencing Act would require prosecutors to carefully consider the race of both the defendant and victim. This act is also a deeply disturbing departure from our tradition of individual justice. It is a move toward a system of group justice based on statistical quotes.

I will be offering an alternative. The Equal Justice Act would replace the Fairness in Sentencing Act with a system that ensures that each defendant receives a fair trail based on the facts of the case and without racial bias or prejudice. It codifies and preserves rules against racial bias at the front end of the litigation process, were defendants are charged and tried.

My alternative prohibits any rule that requires or authorizes the imposition of penalties to achieve specified racial proportions, or that requires or authorizes the invalidation of penalties if specified racial proportions are not achieved. It does not bar the defendant from offering any evidence in support of a claim that he has actually been discriminated against, including statistical evidence. It does reject the notion that statistical disparities in themselves are racial discrimination requiring the invalidation of capital sentences.

The Equal Justice Act also lays out evenhanded rules to guard against racial bias, regardless of whether it would operate to the advantage of the defense or the prosecution, In cases where there is a substantial likelihood that the jury may be influenced by racial bias or prejudice, the risk of bias will be examined through inquiry on voir dire; the venue may be changed on motion by either the prosecutor or the defense attorney if an impartial jury cannot be obtained because of racial bias; and the prosecutor and defense attorney are prohibited from appealing to racial bias in front of the jury.

I will also offer an amendment to replace the language in section 1720 on the exclusionary rule with the more effective language that this House adopt-

ed last year and in the two Congresses before that.

My amendment would provide for the admissibility of evidence obtained as the result of a search and seizure that was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. It would extend the "good faith" exception to the exclusionary rule stated by the Supreme Court in *United States* v. *Leon*, 468 U.S. 897, 918–20 (1984) to both warrant and nonwarrant cases.

As long as law enforcement officers are working under an objectively reasonable belief that they are conforming to the fourth amendment protection against unreasonable searches and seizures, there is no deterrent value in excluding evidence. This rational was cogently stated by the Supreme Court for cases involving search warrants. The Federal courts in the fifth and eleventh circuits have already applied a fully general good faith exception—in both warrant and nonwarrant cases. This proposal would make the benefits of this reform available on a national basis.

I also have an amendment on the drug kingpin death penalty. This amendment is part of the Gekas death penalty amendment, a vitally important amendment to the improvement of this bill. My language is the same language adopted by the House last year and that I introduced in this Congress. It would extend the *mens rea* requirement for imposition of the death penalty in drug cases to include reckless disregard for human life. Under this provision, the death penalty would be available for the drug dealer who burned down a rival crack house and killed a woman and her child whom he did not know were in the house.

My language would also allow the death penalty for a drug kingpin who attempts or orders an attempt to kill a public officer, juror, witness, or member of their family in order to obstruct justice.

These amendments represent a reasonable and effective approach to improving our judicial system by ensuring that racial bias plays no role in it and by making sure that criminals can be effectively prosecuted without jeopardizing the rights of defendants. I strongly encourage the support of the colleagues for each of them.

□ 1630

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from Colorado [Mrs. SCHROEDER], a member of the committee.

Mrs. SCHROEDER. Mr. Speaker, I thank my chairman for yielding time to me.

Mr. Chairman, I rise today in strong support of two provisions of the Omnibus Crime Control Act of 1991 that constitute "prevention" in anyone's lexicon. Americans know a bargain when they see one—they know that prevention saves lives and money. No wonder, then, that these initiatives had bipartisan support when they were introduced as H.R. 3101 and H.R. 3102. I want to thank Chairman BROOKS and my colleagues on the committee for including these important provisions in the omnibus bill.

Many of today's police officers first learned about law enforcement through television dramas such as "Dragnet," in which stiffly professional officers calmly asked witnesses for just the facts. These television images typified the police ideal of the officer who places duty ahead of caring for family and self. Echoing police dramas, real-life law enforcement communities in the 1960's rarely recognized the internal stresses that eat away at officers and their families, and almost never provided officer or family support.

Yet Sgt. Joe Friday would certainly be horrified to hear just the facts on police officer and family well-being. Each day, Federal, State, and local law enforcement officers risk their lives to protect our communities in an increasingly dangerous Nation. In 1989, almost 22,000 law enforcement officers were injured as a result of line-of-duty assaults. Fear of impending injury or death caused untold stress for countless officers and family members.

In a recent hearing on police officer and family stress, the Select Committee on Children, Youth, and Families heard testimony that the pressures can lead to serious family problems, including emotional numbness, officer burnout, alcoholism, marital tension, and high rates of family violence. According to one witness, 40 percent of officers surveyed reported that, in the previous 6-month period, they had behaved violently toward their spouse or children. Another study found that 41 percent of male officers and 34 percent of female officers reported violent assaults in their marital relationships, compared with 16 percent of civilians.

The select committee also heard that few police departments offer assistance to help police officers and families cope with stress. A recent national survey of large municipal and State police departments found that 53 percent provided counseling to officers for personal and family problems, and that 42 percent counseled officers' spouses and family members. Rural and suburban departments provide far fewer services.

Yet officers today, unlike those in "Dragnet" days, understand the need to reduce their serious stress levels. In a nationwide survey of State and local law enforcement officers, personal stress management was ranked as the No. 1 training need.

Furthermore, police administrators and psychologists testified at the hearing that stress reduction and family support programs are cost-effective—they reduce the incidence of disability compensation claims and legal costs associated with a range of problems.

The law enforcement family support provision authorizes grants to State and local police departments to fund family support services for law enforcement personnel. Services may include family counseling, 24-hour child care, marital and adolescent support groups, stress reduction and education, counseling for officers exposed to the AIDS virus, postshooting debriefing for officers and their spouses, and counseling for families of officers killed in the line of duty.

The Director of the Bureau of Justice Assistance will administer the program and will also oversee the implementation of family-friendly policies for law enforcement personnel within the Department of Justice. The provision also charges the Bureau to provide training to law enforcement agencies, and serve as a clearinghouse for information regarding police family stress.

We usually hear about police when a crime is committed on the street. In order to ensure a healthy and effective police force, the everyday needs of officers and their families warrant attention. This provision addresses the special needs of police officers and their families.

If you haven't been a Washington-based elected official too long to remember what late night life is like for an unemployed, high school dropout, you can understand the need for midnight basketball leagues. You can remember that energy is high, and nights are endless, but there is nowhere to go after the mall closes.

The accuracy of my perceptions of that bleak, risky reality has been confirmed by dozens of inquiries about midnight basketball from every region of this country. People who work with youth are so enthusiastic about a positive recreational alternative to late night crime that they want their communities to be first in line for these small but potent program grants.

I first learned of midnight basketball leagues when Mr. Gil Walker, commissioner of midnight basketball in the Chicago Housing Authority, gave striking testimony at a hearing held by the Select Committee on Children, Youth and Families. The hearing was entitled: "The Risky Business of Adolescence: How to Help Teens Stay Safe." Witnesses made the point that, regardless of what teen problems you are trying to prevent, programs need certain active ingredients to ignite motivation and to sustain safe behavior over time. The midnight basketball league incorporates all of these elements: 1-on-1 individual attention from concerned adults, the involvement of parents, a focus on acquisition of basic academic and social skills, and broad community involvement.

Juvenile crime is high between 10 p.m. and 2 a.m. but players in the mid-

night basketball league are shooting hoops, and then attending required job skills training, GED classes, AIDS prevention workshops, and other educational seminars. In addition to coaches and seminar leaders, players have team owners for role models—businessmen from the community who contribute financially and personally to make this program a successful public/private partnership.

Parents attend games, and some parents say that midnight basketball has allowed them to cheer for what their sons are doing for the very first time. Gang activity is reduced because rival gang members play on the same teams in the midnight basketball league. Official uniforms and high-tech sneakers and other paraphernalia provided by the team owners' contributions are a hook but, beginning to see a successful future maintains the interest of players.

An independent, university-based evaluation has shown that none of the players in the 3-year-old Chicago league has gotten into trouble with the law since joining, and almost 50 percent of the players are now either employed full time or have completed GED degrees. The model works in the suburbs as well as in the inner city. Mr. Van Standerfer from suburban Maryland, the president of the National Association of Midnight Basketball Leagues, has received a point of light award from President Bush because he knows that kids in the suburbs do drugs too, and he knows what to do about it.

This modest proposal authorizes $2.5 million to fund approximately 35 leagues at $100,000 each, and requires that local contributions from potential owners be pledged prior to grant approval. In addition, to ensure that maximum benefit is derived from the experience of current providers, one urban center and one suburban/rural technical assistance center will receive technical assistance grants of $50,000 per year. Finally, a formal, coordinated, multisite study of the effectiveness of this approach is commissioned and funded at the level of $250,000.

Our most recent statistics show that about 17 percent of all arrests in the United States are of people under the age of 18, and that 78 percent of juveniles arrested are males. Four out of five 11- to 17-year-olds report delinquent behavior at some time or other, but arrest rates show striking racial differences that self reports omit. While black youngsters make up 15 percent of the juvenile population, 15 percent of those under 18 arrested for juvenile crimes are black. While the absolute number of juvenile crimes has decreased over the last 10 years, the case rate increased about one-half of 1 percent. Over 1.7 million arrests of 10 to 17-year-olds were made in 1986, and incarceration of a single juvenile for a year is $30,000.

I am delighted to extend the opportunity to support something that is so cost-effective and makes so much sense.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the very distinguished gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. Mr. Chairman, as a member of the Judiciary Committee, it is with tremendous disappointment that I rise to speak on this bill.

The first right of any citizen is to feel safe in their home and neighborhoods. But the reality today is that violent crime has reached outrageous levels in this country. Things are so bad that the average citizen is now more likely to be the victim of violent crime than of an auto accident.

The American people want protection from violent crime. They need protection from violent crime. And they deserve protection from violent crime. The bill before the House, however, is not the anticrime legislation that the American people want, need, or deserve.

The American people deserve a law enforcement system that ensures swift and certain punishment of violent criminals and seeks to protect honest citizens, not the criminals. They deserve a system that prevents death row criminals from appealing their cases for years on end. They deserve a system that keeps violent criminals from going free on technicalities when law enforcement officers act in good faith.

Instead, Mr. Chairman, we got a billion dollar wish list of programs that will never be funded. We promised them money, when they wanted tougher drug laws and stiffer sentencing. We gave them an endless appeals process when they wanted a comprehensive death penalty for the most heinous criminals.

There are some bright points. For example, the Jacobs Wetterling Crimes Against Children Registration Act, which I offered during subcommittee markup, will prove to be an invaluable tool for local law enforcement to prevent child sex offenders from committing such crimes again.

Studies show that 74 percent of incarcerated child molesters had one or more prior convictions for a sex offense against a child and that a typical offender molests an average of 117 children, most of whom never report the offense. My amendment would help put an end to these statistics by requiring persons convicted of certain crimes against children to register their name and address with local law enforcement for 10 years after their release from prison.

There is also an important provision on the problem of sexual assaults on college campuses. The incidence of rape on campus has reached truly epidemic levels. Every 21 hours, a young woman is reported raped on college campuses. Estimates are as many as 1 in 4 women will be the victim of rape or attempted rape during their college career. This crisis deserves immediate attention. That's why I am pleased that this bill includes my call for the attorney general to study this issue and report on this national problem.

But even these provisions cannot outweigh the shortcomings of this bill. The habeas corpus reforms in this bill will only lengthen the appeals process for convicted criminals. We need to pass the Hyde amendment to give one opportunity for appeal within a reasonable timeframe and prevent the guilty from delaying their sentences while preserving their constitutional rights.

In addition, the committee provision on the exclusionary rule will allow criminals to get off on technicalities. We need the McCollum amendment to allow officers to obtain evidence in good faith with the fourth amendment and bring these outlaws to justice.

Finally, the bill's capital punishment provisions will allow those who show a reckless disregard for human life and drug kingpins to evade the death penalty. It will allow murderers to use statistics to avoid their just sentences. We need a real, workable death penalty to ensure that justice is guaranteed, not denied, to the victims of crime and their families.

In closing, Mr. Chairman, let us make the necessary changes to this bill and give the American people the crime bill they want and deserve.

Mr. BROOKS. Mr. Chairman, I yield 30 seconds to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Chairman, I think that we ought to make it clear that there seems to be a misunderstanding on the other side of the aisle. Both the amendment of the gentleman from Illinois [Mr. HYDE] and our bill provide for one appeal with a statute of limitations at 1 year. The Members on the other side of the aisle should not be standing up here and saying there are going to be multiple appeals, because there are not. There will not be multiple appeals under our bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, the gentleman from California [Mr. EDWARDS] unfortunately is in error. The statute of limitations in the Hyde habeas corpus amendment is 6 months and in the Democratic provision it is 1 year.

Second, the biggest difference is the full and fair standard which is designed to preserve Federal review. That will be discussed at greater length, but there are big differences between the Hyde approach and the approach that is coming from the other side of the aisle.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Arkansas [Mr. ALEXANDER].

Mr. ALEXANDER. Mr. Chairman, I thank the gentleman for yielding time to me and congratulate the chairman and the members of the Judiciary Committee on bringing to this floor a tough crime bill.

Crime is rampant in America. At no other time in our history has crime been as great a problem as it is today. Criminal gangs are terrorizing our streets. There is a daily body count of murders in the evening news. The people simply want something done about it.

Where there is room for debate on most subjects in Congress, there is no debate on the question of putting an end to the terrorizing of our streets by rampant crime in America today. If it takes tougher laws, we should pass them; more police, we should provide them; more prosecutors, we must have them; more courts if necessary in order to try the cases; more jails in order to provide a place to confine the criminals. And by all means, we must put an end to the endless and frivolous appeals that go on and on after a conviction occurs.

The committee has wisely set time limits on the appeals process. Everyone is guaranteed an appeal within a year but we must stop the costly multiple appeal practice that delays justice. I want to congratulate this committee for putting an end to this frivolous appeals practice that has cost the American taxpayers millions of dollars and permits these criminals to go unpunished.

Mr. Chairman, I congratulate you again for the leadership that you have provided.

□1640

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Chairman, I rise in strong opposition to H.R. 3371, the so-called anticrime bill reported to the floor by the Judiciary Committee.

According to FBI statistics, in 1989 a violent crime was committed in this country every 19 seconds, and every 24 minutes someone was murdered. In 1990, a violent crime was committed every 17 seconds and someone was murdered every 22 minutes. We are running out of time in our fight against crime!

I remain firmly convinced that the certainty of swift apprehension, just prosecution, and severe punishment would serve as a strong deterrent to violent criminals. However, while I believe that our current laws provide both convicted and suspected criminals with too many loopholes that allow them to beat the system, the committee-reported anticrime bill further weakens several laws regarding prisoner appeals, and criminal prosecutions.

As a member of the House Republican Task Force on Crime, I joined many of my colleagues in supporting H.R. 1400, the Comprehensive Violent Crime Control Act, which was introduced in the House at the request of President Bush. This legislation closed the loopholes, including endless habeas corpus appeals and technicalities involving evidence obtained in good faith. Unfortunately, instead of acting on the President's bill, the House is considering this legislation which makes the loopholes even bigger.

In all of my time as a public servant, I have consistently supported the death penalty as both a punishment for heinous crimes and an effective deterrent to future violence. The bill now being considered before the House further weakens the Federal laws surrounding the death penalty, making it even more unlikely in the minds of criminals that the sentence would ever be imposed.

I am also opposed to the provisions of this legislation that would effectively establish racial quotas in sentencing convicted murderers. Our Nation's criminal justice system is founded on the ability of judges and juries to render decisions based on the facts of a particular case rather than the race of a particular criminal.

I urge my colleagues to take note of the time. The crime clock is ticking away, and Congress must take a tough stand against crime. We must send this simple message to criminals: If you commit a crime, you will be caught. if you are guilty, you will be punished.

I strongly support the strengthening amendments concerning the death penalty, exclusionary rule, habeas corpus, and others.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the gentleman from Mississippi [Mr. ESPY].

Mr. ESPY. Mr. Chairman, there are many important provisions in this anticrime legislation. However, I want to take this time to address the issue of fairness, the issue of race, and the death penalty. I rise to state my support for the fairness in death sentencing provisions of the crime bill.

I support the death penalty. But I believe that we must make absolutely certain that race plays no part in determining who is sentenced to die.

Frankly, around here lately, especially in regard to recent hearings conducted in the other body, we've heard a lot about race. My opinion is that some people play the race card when their hand is otherwise bare.

But this issue is different. In 82 percent of the studies documented by the GAO, the race of the victim was found to influence the likelihood of being charged with capital murder, or receiving the death penalty. Three-fourths of the studies found that black defendants were more likely to receive the death penalty than whites. The race of the victim was found to influence death penalty decisions at all stages of the criminal justice system.

Mr. Chairman, when it comes to someone's life, we must be absolutely sure that race plays no part in determining who is sentenced to die.

The substitute which will be offered by Mr. MCCOLLUM outlaws racial bias in words, but provides no means of determining when it exists in practice. It claims to be an antidiscrimination provision, but outlaws the introduction of evidence that is vital to proving discrimination.

However, consistent with other areas of law, the committee bill would allow a defendant to prove a pattern of racially biased results. Contrary to its critics' assertions, that won't end the death penalty. But it will end the influence of race in decisions about who is to live and who is to die.

Mr. Chairman, we need to outlaw discrimination in words, but also provide the tools that will give defendants and their attorneys a chance to outlaw it in practice. Otherwise, the sentence of death in America will continue to be determined all too often by the color of a person's skin, and not by the severity of the crime.

I urge my colleagues to support the Fairness in Death Sentencing Act, and to oppose the McCollum amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from New Mexico [Mr. SCHIFF].

Mr. SCHIFF. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, first of all, I want to say that I am going to introduce an amendment that was referred to earlier dealing with Bureau of Justice grants to State and local agencies to help local law enforcement.

In a nutshell, that ratio is 75 percent Federal money. The crime bill would make that permanent 75 percent Federal money for all time. My amendment would make that temporary so Congress can review in the future if it can still afford to pay 75 percent of the grants. That is the only difference, Mr. Chairman.

Mr. Chairman, I would like to address the question of assault weapons as found in the bill. I think the major problem with the assault-weapons provision over and above anything else is the weapons identified in this bill that are going to be banned if passed under the name of assault weapons are not assault weapons. The only credible definition of assault weapons that we heard in the Crime Subcommittee of the Committee on the Judiciary is that an assault weapon is an actual military weapon made with a selector so that it can fire automatically, that is, with one pull of the trigger fire until the clip is empty.

None of the weapons on this list are, in fact, automatic weapons. Therefore, they are not assault weapons. In my judgment, the term "assault weapons" has been used solely to confuse the

issue, and it sure has worked. I have heard these weapons referred to as anything one could think of out here including, by one of my colleagues, submachine guns. They fire one shot with each pull of the trigger just like virtually any other firearm, certainly any other semiautomatic.

The sponsors of the bill or of this provision have now retreated. They now no longer always refer to these weapons as assault weapons. They refer to them as semiautomatic assault weapons. That is a contradiction of terms. Since an assault weapon means a fully automatic weapon, there is no such thing as a semiautomatic assault weapon.

Mr. Chairman, I think all of this is done to confuse the issue. It is not necessary. We can have a legitimate debate over whether there is, in fact, any benefit to law enforcement in trying to ban these weapons without misnaming them in the bill.

We should not be passing a bill or a portion of a bill that would violate our own truth-in-labeling laws.

Finally, on this point, Mr. Chairman, I would point out that this bill does not take a weapon away from anyone. We are told that these weapons are only used by criminals, and yet not one criminal will have to give up a weapon even if this bill passes, and even if criminals obey the law. That is because this bill grandfathers in present owners. Anyone who owns a so-called assault weapon gets to keep it under this bill.

Good, honest citizens do not own these weapons. Why does the bill let them keep them?

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 3 minutes, the remainder of my time.

Mr. Chairman, one of the most important amendments that we will be debating when we get to the amendment process is the Hyde habeas corpus reform amendment which embodies the proposals of the President which have been endorsed by most of the law enforcement community. The Hyde amendment is simply designed to prevent endless litigation through petitions on habeas corpus following the exhaustion of direct appeals from a criminal conviction.

It is designed to get on with finality of sentencing which is something that we do not have under the present system.

The major difference between the Hyde amendment and what has been proposed by the Committee on the Judiciary is the so-called full and fair standard which says that if there has been full and fair review in State courts, in a habeas corpus petition, then that issue cannot be relitigated in a subsequent Federal habeas corpus proceeding. That means that you have got one kick at the cat, one day in court. If you lose your day in court after a full and fair review, then you cannot go running to the courthouse on the other side of the street presided over by a Federal district judge and go through the same arguments before a different forum.

The only time when there would be a second review in Federal court was when three conditions were not met, and that is that the State court proceeding was conducted in a manner inconsistent with the procedural safeguards of Federal law applicable to the State proceeding; second, that the State proceeding was contrary to or involved an arbitrary or unreasonable interpretation of clearly established Federal law, or the State proceeding involved an arbitrary or unreasonable determination of the facts in light of the evidence that was presented.

Now, if one of those three exceptions is met, then the Federal judge can review the State court proceeding.

□ 1650

However, if none of the exceptions are met, then there is finality of decision in the habeas corpus proceeding and the criminal defendant cannot go into federal court, having lost his case in the state court. That is fair and that is reasonable.

To defeat the Hyde amendment through the convoluted parliamentary rules that have been adopted will allow a continuation of the endless petitions for habeas corpus and those that have been convicted will never face the music, particularly those who have been convicted of a capital offense and sentenced to die by the jury.

Passing the Hyde amendment is important. Defeating the other amendments under the King of the Hill procedure dictated by the Rules Committee is also important.

Mr. Speaker, I would hope that the Members would have that in mind when they come to vote on this subject.

Mr. BROOKS. Mr. Chairman, I would like at this time to yield myself a couple minutes to refer to a letter from the former attorney general of the State of Texas, Jim Mattox. He was the attorney general of Texas for 8 years and is known as a tough enforcement officer. He was a strong advocate of the death penalty.

He says, "I believe that the criminal justice system should function efficiently; nevertheless, I feel that the Hyde amendment is not an appropriate solution to the problems with the process. In a word, this legislation"—the Hyde proposal—"would not reform habeas corpus; it would end it."

Now, the letter goes on, but he points out:

> Because of these concerns, I have joined with more than 90 others, many of whom who are present or former prosecutors like myself, in forming the Emergency Committee to Save Habeas Corpus. I think I can safely say that all of us want to fight crime. We all agree that we, and our elective Representatives, must not squander our precious constitutional rights in our zeal to appear "tough on crime."

Mr. Chairman, I will submit that letter for the RECORD at this point. The letter is as follows:

OCTOBER 12, 1991.

Hon. JACK BROOKS,
Chairman, House Judiciary Committee, 2449 Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to express my opposition to the Hyde Amendment, which will be offered on the floor as an amendment to H.R. 3371, and which, I believe, will virtually eliminate the right to hadeas corpus review of state criminal convictions.

As you well know, I was the Attorney General of the State of Texas for eight years. I was known as a tough law enforcement officer. I was a strong advocate of the death penalty. I believe that the criminal justice system should function efficiently; nevertheless, I feel that the Hyde Amendment is not an appropriate solution to the problems, with the process. In a word, this legislation would not reform habeas corpus; it would end it.

There is clearly a need for reform, especially with respect to capital cases; but I believe that the Judiciary Committee's bill, not the Hyde Amendment, addresses the real problems with the present system: inadequate representation by trial counsel, no time limits on petitions, successive petitions, and retroactive applications of new rules of law. This reform can and must be accomplished without sacrificing the right to hadeas corpus review, which is one of our most basic protections against the imprisonment or execution of innocent persons.

Because of these concerns, I have joined with more than 90 others, many of whom are present or former prosecutors like myself, in forming the Emergency Committee to Save Habeas Corpus. I think I can safely say that all of us want to fight crime. We all agree that we, and our elected representatives, must not squander our precious constitutional rights in our zeal to appear "tough on crime."

Sincerely,

JIM MATTOX.

Mr. CONYERS. Mr. Chairman, we can all agree that no one should be executed under a death sentence imposed because of race. Unfortunately recent studies have confirmed, that is some jurisdictions the single most important factor in determining whether a person receives a death sentence is either the race of the victim or the race of defendant. We cannot allow this situation to continue.

The fairness in death sentencing provision of this crime bill is one of the most important civil rights issues that you will have an opportunity to support in this Congress. This provision would make it unlawful to execute someone whose death sentence is the product of racial discrimination. Contrary to what you will hear during debate on a substitute amendment, it will not end the death penalty.

The fairness in death sentencing provision would merely allow courts to consider statistics of a consistent pattern of racial discriminatory death sentencing in determining whether a defendant's death sentence is influenced by racial factors. This is based on the same premise we have worked on in virtually all civil

rights bills, that is that discrimination is now sophisticated. Rarely, will prosecutors, judges and jurors admit purposeful discrimination. Therefore we allow the use of comprehensive statistics to establish a prima facie case of racial discrimination, just as we have done in title VII of the Civil Rights Act of 1964 and in the Voting Rights Act.

If a defendant can meet the heavy burden of demonstrating that at the time the death sentence was imposed, race was statistically a significant factor in imposing the death sentence, than an inference that a sentence was based on race is established. The State then has the opportunity to show that the sentence was the product of nonracial aggravating factors, or that the statistics on pattern to apply to this particular case.

You will hear a number of specious arguments by opponents of this provision. The one used most often is that once an inference of racial discrimination has been established, it is virtually impossible for a prosecutor to rebut the inference of discrimination. This is wrong. A State merely has to rebut the evidence by a preponderance of the evidence—as opposed to clear and convincing. Second, the bill does not limit the grounds on which the State may rebut the statistical showing. There are several ways in which the State may rebut a statistical inference of race discrimination:

First, the State can show that the sentence does not fall within the statistical pattern because of the existence of nonracial factors aggravating factors or prior records of the offenders.

Second, the state could show that the evidence of statewide patterns is irrelevant and that the evidence in the local jurisdiction where the sentence was imposed shows no pattern of racial bias in that locality.

The other argument opponents like to use is that the real aim of this bill is to stop the implementation of all death sentences. In reality this provision does not affect the lawfulness of any sentence of death which does not show racial bias. It prohibits only the execution of those specific death sentences that are the product of racial bias. There are jurisdictions where there is no racial pattern to death sentencing. No death sentence in those jurisdictions would be subject to challenge under the act.

Finally, opponents use the same old race-baiting argument that we heard in the debate on the Civil Rights Act of 1991, that act would encourage death sentencing by quotas. This is simply wrong. This provision requires the comparison of similar cases. This means that an overall balance or imbalance in death sentencing is irrelevant. Achieving a certain number or percentage of white death sentences and a certain number of percentage of black death sentences will not bring a State in compliance with the act; instead, such a charging and sentencing process would violate the provision, since the decision would be based on race and not on legitimate factors.

The fairness in death sentencing provision is strongly supported by every major civil rights organization in this country, as well as the American Bar Association.

Mr. MCCOLLUM will offer amendment No. 14 to replace the fairness and death sentencing provision. This is a mischievous amendment that is misleadingly called the Equal Justice Act. It does not seriously address the problem of racial bias in death penalty sentencing that has been documented in numerous studies, several congressional hearings, and an independent evaluation by the General Accounting Office.

Frankly, because no hearings have been held on this proposal. I am not sure that anybody knows what this amendment does or how it would work. None of us on the Judiciary Committee have had an opportunity to hear from any witnesses or to ask questions about how this proposal would respond to the problem of racial bias in the criminal justice system.

We can only speculate about the prohibition in the bill on using statistical tests to achieve a specified racial proportion or racial quotas in executions. Noboby in the civil rights community has argued in favor of racial quotas, nor has there been any testimony that such a problem exists. I urge you to vote against this amendment.

The other important issue in the crime bill I would like to discuss in habeas corpus reform. This bill is a vast improvement over the administration-backed bill which passed the Senate in July. There are over 2,300 inmates on death row who have been prosecuted in State courts. Under our system of justice, the State's case should be based on three factors: First, weighed by a fair and impartial jury; second, before an unbiased judge and third, after a competent and vigorous defense.

Tragically, these basic constitutional guarantees are seldom met. In fact, an American Bar Association study found that 40 percent of death row inmates were sentenced to death in violation of their constitutional rights.

There are several reasons for such a large number of constitutional violations. First is because prosecutors exclude blacks from juries. For example: Jesse Morrison of Alabama was sentenced to death even though the prosecutor struck 20 of 21 blacks from the jury pool; Albert Jefferson, also of Alabama, was also sentenced to death even though all 26 blacks were excluded from jury service.

The record also indicates that unqualified counsel is a serious problem. In Kentucky, one-fourth of death row inmates were represented by counsel who have since been debarred or suspended. In Alabama, one witness told the Judiciary Committee that lawyers often file briefs that are less than 10 pages in length and do not cite constitutional authorities. In at least four capital cases in Georgia, defense counsel referred to his client in court as "nigger" and said the only cases with which he is familiar are Miranda and Dred Scott. All four defendants were sentenced to death.

There is also a problem of the lack of funding for counsel. In six States—Texas, Georgia, Alabama, Mississippi, Virginia, and Louisiana—which account for nearly 70 percent of the executions since 1972, there is no statewide public defender system. In Alabama, lawyers who represent death row inmates are paid only $20 per hour up to a maximum of $1,000. In South Carolina, the rate is $15 per hour.

The habeas provisions in H.R. 3371 would set minimum standards to ensure that those who commit capital offenses are represented by counsel who are knowledgeable about the complicated laws surrounding the death sentence. It is supported by the NAACP Legal Defense Fund, the American Bar Association and the ACLU.

Mr. HYDE's substitute bill would block habeas appeals if the State courts have fully and fairly adjudicated the issue, even if they wrongly decided the constitutional issues. In reality, this gives the State courts free rein to dismiss cases on technical and procedural grounds without ever deciding the merits of defendants claims.

It is understandable that Congress is frustrated by the epidemic of violent crime, but it is unfortunate and tragic that there are many in Congress who believe the solution is to limit habeas corpus rights which have been a cherished doctrine in American constitutional law for more than 200 years.

Even if everyone on death row were executed tomorrow, the streets of America would not be safer. Many people think of those on death row as the most despised, hated and rejected members of our society. What none of us can deny is that people who are hated and rejected often become the targets of an abuse of power by those in authority.

It does not seem unreasonable to demand that before any society takes a life, it first ensures that justice is served. The Federal judiciary is the best hope and the last bastion for protecting the rights of the least among us. We must not take that hope away from those who need it the most.

Mr. RICHARDSON. Mr. Chairman, I rise today to express my strong support for the Omnibus Crime Control Act of 1991. The Judiciary Committee is to be commended for their endeavors in designing a bill which targets crime on every front, while at the same time reflecting a sensitivity to the concerns of minorities and an even-handed approach to constitutional reform.

This bill seeks to stop crime at the source: In our schools and in our communities. Being a resident of both Washington, DC, and northern New Mexico, I recognize that different communities benefit from a variety of crime prevention programs. This bill authorizes grants to create neighborhood policing programs, to develop education and training programs for the prevention of crime in our schools, and to implement substance abuse treatment program. By allowing States to strike hard in their schools and communities, I believe we improve the chances of controlling the onslaught of violence in our communities.

This bill includes measures designed to put an end to the drug-related violence which is choking our Nation. The crime bill authorizes funds for States or localities which are designated as drug emergency areas. These provisions have been established to benefit not only urban centers with high rates of crime but also rural areas plagued by drug activity which is uncontrollable by local police.

As you may know, last year I pushed for an opt-in provision for Indian tribes which allows tribes who reside on Federal land to determine whether the death penalty shall apply for first-degree murder on their lands. I am pleased to see that the Judiciary Committee has included

this important protection in this year's crime bill. I also wish to commend the committee for including the racial justice provision which allows the use of statistical evidence to reveal racial discrimination in imposing the death penalty. Both of these provisions exhibit an admirable sensitivity to the rights of minorities.

By focusing on safety in our communities and in our schools, I feel that this legislation will be tremendously beneficial to the quality of life in our country as a whole. I am proud to lend my support to this important legislation and I urge my colleagues to do the same.

Mr. KOLBE. Mr. Chairman, here we go again. Hardly a year goes by that Congress does not pass an omnibus crime bill and pat itself on the back all the way to the ballot box. If we are so good at tackling crime, then why do we continually have these bills before us?

Obviously we are not getting it right, so we have to undertake this exercise over and over again.

But we can get it right today. We have several amendments that, if passed, would provide real teeth for our criminal justice system. If passed, these amendments would help provide relief from the relentless crimewave that has gripped our Nation and terrified its citizens.

Essentially, these amendments, taken together, the President's Comprehensive Crime Control Act of 1991. Why do I support the President's bill? The answer is simple.

President Bush took office with a mandate to do something about the scourge of drugs and drug addiction in our country. Illegal narcotics was the chief crime problem of the day. Tough enforcement action taken by the President and endorsed by this Congress makes it possible to cite real progress in the war on drugs today.

Between 1988 and 1990, overall drug use dropped by 11 percent, surpassing the 10-percent goal set by the President in his strategy. Student attitudes have changed and continue to do so. Their approval of drug use has dropped by 28 percent. Adolescent cocaine use plunged by 49 percent. The President's strategy, relying on both increased law enforcement and demand reduction efforts, appears to be working. In fact, the No. 1 goal of the President is to reduce the number of people using drugs and prevent others from trying drugs for the first time. We are making progress toward this goal, but we concede there is still a long way to go.

Today, the larger problem in the minds of the American public is violent crime. Americans are terrified of the bloodshed that plagues our Nation's inner cities, our suburbs, and our rural small towns. Of course, drugs play a major role in this wave of violent crime. But one fact remains clear. Even as we make progress in the war on drugs, violent crime is skyrocketing at an alarming pace—11 percent annually.

How can this be? The answer, I think, is that criminals are not deterred by our criminal justice system. That fact stands in sharp contrast to the casual drug user of the 1980's who, under the zero-tolerance standard, decided the risk of continued drug use was not worth the potential cost of being caught, convicted, and incarcerated, or fined steeply.

Mr. Chairman, we need a zero-tolerance standard for violent crime in this country. That means criminals must be made aware that the risks are too great, the costs too high, to continue to victimize law-abiding citizens. And, since the consequences of violent crimes are higher than for the casual drug user, so too must the risks and costs be higher for the perpetrator.

Violent criminals must understand that zero tolerance means longer prison sentences, restrictions on endless appeals based on technicalities and not the merits of a defense, and wider latitude for law enforcement officials to act in good faith while developing cases. And yes, Mr. Speaker, a violent criminal should know that if his actions take the life of another, especially the life of an innocent bystander—a schoolchild, a pregnant woman, a motorist going to work—then his life will be forfeited. Period.

These are tough words. But violent times demand tough action. And the American people have spoken on this subject, and their message is crystal clear. They want real action from this Congress. Not the milquetoast bill presented here today that is designed to expand even further the rights of the accused, at the expense of victims' rights.

Let me cite just one example; here's how these rights are working today in a case in Utah. Three criminals robbed a retail store and in the process forced five innocent people to drink Drano with the clear intention of killing them. But the Drano didn't work, so William Andrews, one of the criminals shot each of them in the head.

Three died.

Andrews was convicted of three counts of first-degree murder and two counts of aggravated robbery. He was sentenced to death by firing squad in 1974. However, since that time he has filed 11 State actions and 15 Federal actions. In addition, he has filed three State habeas petitions and six Federal habeas petitions. He has had four petitions before the Supreme Court. Sixty-five judges have been involved.

William Andrews remains alive even while three have been dead—murdered in the most heinous fashion—for almost 20 years. I cannot believe this is what anyone intended when they drafted the Bill of Rights.

Our Constitution embodies rights for the accused. But our Founding Fathers would never condone the travesty of their intentions that is perpetrated in the name of our criminal justice system today.

That is why we must take steps to change the criminal justice system. We need reform that simply brings into balance the rights of the accused and the rights of victims.

The President's crime bill offers that reform in five steps, each of which will be offered today on the House floor.

The President has called for reasonable limits on appeals in capital cases. Today, we will vote on an amendment offered by my colleague, Representative HENRY HYDE, that offers such limits.

The Hyde amendment mirrors the habeas corpus reforms passed by the Senate earlier this year. The amendment would allow an appeal to the Supreme Court—provided it occurs in a timely fashion. It would fulfill the accused's rights to competent counsel. Finally, it would give back to the States the ability to adjudicate capital cases without the additional complication of Federal review if the State adjudication was carried out fully and fairly.

In contrast, the Judiciary Committee bill would cause further unnecessary delays in carrying out capital sentences by allowing appeals on alleged technical defects of the sentence—without regard to the guilt or innocence of the prisoner. This is inconsistent with the recommendations of the Powell Commission which supported appeal of capital cases based on questions of guilt or innocence, and only supported second and successive habeas corpus petitions in extraordinary cases. In addition, the Judiciary Committee bill allows much longer time limits for filing habeas corpus appeals, and would not only mandate competent counsel, but dictates the qualifications and standards that the counsel must meet.

On March 4 of this year, Supreme Court Justice Sandra Day O'Connor gave a speech at the Attorney General's Crime Summit in which she gave her views on death penalty appeals. I believe they are worth noting. Justice O'Connor said:

> Surely it is not too much to ask that state petitioners ask for federal review (of state court adjudications) in a reasonable time and in a single petition. Consideration should also be given to altering the legal standard of review in all federal habeas corpus cases. I suggest the federal courts should ensure that the state proceedings in which the prisoner was convicted, and in which his federal claims were addressed, were fundamentally fair; they should not necessarily reexamine and decide anew every legal issue already addressed by the state courts. Under our federal system, the federal government owes this respect to the states.

The President's crime bill calls for color-blind sentencing. I agree. Race should not be an issue when determining whether or not a person deserves the death penalty. My colleague, Representative BILL MCCOLLUM will offer an amendment today to do just that in the form of the Equal Justice Act of 1991. This act would ensure that racial bias could not be used in sentencing proceedings and would prevent quota justice.

The Judiciary Committee bill seeks to prohibit the imposition of the death penalty based on race. I agree with this goal. However, I suspect the underlying purpose of the committee's provision is to abolish the death penalty by allowing the admission of statistical evidence to demonstrate a racial bias. The State would then be left with the nearly impossible task of refuting general statistical analysis on a case-by-case basis. To make matters worse, it would apply it retroactivly to all death-row cases, thus wiping out hundreds of convictions.

It is disingenuous for advocates of quota-based justice to claim they are protecting minorities in this country from race-based sentencing. Bureau of Justice statistics demonstrate that white homicide defendants are more likely to be sentenced to death than black homicide defendants. Simply stated, this bill is a cynical attempt to use the guise of racial fairness to abolish the death penalty.

The President's crime bill calls for increased sentences for firearm violence. The Judiciary Committee bill accomplishes this task in a

number of ways. But then it goes too far by restricting ownership on certain types of firearms.

The facts on firearms restrictions are clear: With few exceptions, gun restrictions affect law-abiding citizens, not criminals. Only one out of six felon purchases their firearm from a legal source. The rest, the five out of six, obtain their weapons illegally on black markets or through theft.

In addition, the weapons that would be banned in this bill are not the weapons of choice of criminals. My colleague, Representative STALLINGS, has circulated a letter that provides convincing evidence that these weapons are not the choice of felons. In Washington, DC, only one assault weapon was confiscated during 1988 and the first quarter of 1989. In Los Angeles, ground-zero for gang activity, only 3 percent of all weapons confiscated in 1988 were assault weapons. In New York City, there was no report of an assault weapon being used in a crime in 1990.

The bottom line is, if you want to prevent the criminal use of firearms, you must arrest, convict, incarcerate and—if necessary—sentence to death those who would use firearms on another.

An amendment will be offered today by Representative VOLKMER striking the gun ownership restriction provisions. I would urge my colleagues to support it.

The President's bill calls for a good-faith exception to the exclusionary rule. Where a police officer acts on good faith to either execute a warrant, or to conduct a search without a warrant in extraordinary circumstances, the evidence obtained should be allowed in court. It is that simple. In those cases where an officer did not act in a lawful manner, then that evidence should not be allowed. Representative MCCOLLUM will offer an amendment today to do just that, and it should be supported by all who recognize the difficult constraints and complicated rules our law enforcement officers operate under today.

The Supreme Court in United States versus Leon has already validated a good-faith exception. While the Judiciary Committee bill portrays itself as codifying Leon, it would really have the opposite effect by narrowing the exceptions to the exclusionary rule. The McCollum amendment does the opposite by codifying the natural extension of Leon to searches without a warrant if a court believes the officer submitting the evidence acted in good faith.

Finally, the President's bill calls for an expansion of the death penalty to cover more crimes including unintentional but indiscriminate killing. The committee bill only allows the death penalty for intentional killings.

This standard would effectively allow a criminal, who unintentionally kills an innocent bystander during a drive-by shooting, to avoid a potential death-penalty sentence. I can think of countless cases in which criminal action resulted in possibly unintentional death; I do not for a minute believe that these acts should be held to a lesser standard than acts of intentional killing.

Representative GEKAS will offer an amendment to the committee bill today to change the standard for giving the death penalty. In addition to intentional killing, the Gekas amendment would include criminal elements who show a reckless disregard for human life. In effect, if you unintentionally take an innocent life while committing a criminal act you will be held to the same standard as if you intentionally killed a person.

It is an affront to justice to think that the killing of an innocent bystander for some reason is not as heinous, not as shocking, as the intentional killing of another human being. Both are equally reprehensible and both must be held to the same strict standard.

Finally, Mr. Speaker, I would like to make some comments on the cost of this bill. There are a number of budget-busting programs in this bill. This bill would authorize $150 million for community policing programs. $100 million for a safe-schools program, $200 million more for States for youthful offenders, and up to $3 million for midnight basketball programs.

I am not in a position to debate the merits of these programs. In fact, I am more than willing to say that each of the programs authorized in the Judiciary Committee bill has merit and may reap benefits in our crime-plagued society.

What I am not willing to do, however, is allow the same majority in Congress who supported drastic cuts in the function 750 category during debate on the fiscal year 1992 budget resolution to now support new spending for the very same category.

In May of this year, this body registered its support for a budget resolution that recommended $13.7 billion in budget authority for the administration of justice, or function 750, category. In contrast, the President requested $14.8 billion for function 750 programs. The conference committee agreement on the fiscal year 1992 budget resolution passed this body by a vote of 239–181. Of the "yea" votes, 231 were cast by members of the majority party. The majority cannot have it both ways.

Today's bill advocates nearly $1.2 billion a year for each of the next 3 years in new spending on law enforcement programs.

Mr. Chairman, I am a member of both the Budget Committee and the Appropriations Committee, including the subcommittee that funds the Department of Justice accounts. For fiscal year 1992, for the Department of Justice, we approved $9.9 billion, more than $400 million less than requested by the President.

We had to reduce the President's request for the Nation's chief law enforcement agency; our allocation was too low to do otherwise.

If this Congress stays within last year's budget agreement, which I hope it will, our allocation for Department of Justice accounts will again be low for fiscal year 1993. We will be forced to cut increases for existing programs. There will be no room to fund $1.2 billion in new programs.

The supporters of this new spending know this to be the case.

It is disingenuous for this body to vote 5 months ago for drastic reductions in the justice accounts, and then today to vote to boost spending by $1.2 billion.

Mr. Chairman, 23,000 people were killed in criminal violence last year. Six million Americans were subjected to a violent crime. This is more than the number of people injured in automobile accidents.

It is unbelievable to me that this Nation was able to fight a war against the fourth largest army in the world and lose only 298 service personnel while at the same time losing more than 12,000 at home to murder and mindless violence.

The people in my State, Arizona, are sick of violence and of senseless killing. A recent poll in the Phoenix area put crime near the top of the list of concerns facing society. Earlier this year, nine members of a Buddhist Temple were murdered in cold blood in my State. This was a disgusting, senseless act that left my State shocked and outraged. Those who are responsible for this act should face the death penalty.

It is not enough to say the death penalty is not a deterrent so it should not be used. The American people want a sense of justice, and the bill reported by the committee is out of touch with that sense.

We have a choice today. We can choose to vote for the Judiciary Committee bill, which goes well beyond protecting the legitimate rights of the accused. Or we can vote for a slate of amendments that begins the process of true reform. These amendments put criminals on notice that their violent behavior will no longer be tolerated, but punished severely.

Finally, these amendments offer a sense of justice to the 6 million victims per year of violent crime in this country. Some may say we are being too tough on criminals. Ask the mother of a schoolchild who attends an inner-city school if we are being too tough on criminals. Ask the husband of a woman killed by an indiscriminate spray of bullets if we are being too tough.

Mr. Chairman, by voting for the Gekas amendment on the death penalty, the McCollum amendment on equal justice in death sentences, the Hyde amendment on habeas corpus reform, the McCollum amendment on the exclusionary rule, and the Volkmer amendment on firearm restrictions, we can send a real message to the American people that we agree with them that violent crime in this Nation deserves zero tolerance.

Mr. CUNNINGHAM. Mr. Chairman, I rise today to bring to the attention of the House a resolution I recently received from the California District Attorneys Association on the issue of the Equal Justice Act. As the House finally begins to take up the crime bill, I feel it is critical that we heed the advice of the men and women who are on the frontlines of the war on crime.

This resolution is significant, in that the organization representing all 58 California district attorneys, Republican and Democrat alike, has endorsed the Equal Justice Act, which will be offered as an amendment by Representative BILL MCCOLLUM. They specifically point out that the text of H.R. 3371, in its current form, would rely on statistical evidence to deny justice to convicted criminals.

Mr. Chairman, the issue is not one of guilt or innocence. Rather, the issue behind the so-called fairness in death sentencing provisions in H.R. 3371 is one of statistics. It would dangerously move our judicial system away from the basic precept that the trial and sentencing of a particular case should deal with the facts of that particular case.

I commend the efforts of the California District Attorneys Association, and in particular, its president, Edward R. Jagels, the Kern

County district attorney. We cannot afford to tie the hands of the prosecutors who are attempting to keep the criminals off the streets. I urge my colleagues to review the resolution and to support Representative MCCOLLUM's Equal Justice Act amendment.

RESOLUTION OF THE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION CONCERNING THE EQUAL JUSTICE ACT AND THE FAIRNESS IN DEATH SENTENCING ACT

Whereas, the California District Attorneys Association is an organization composed of the elected District Attorneys of California's fifty-eight counties and 3,000 deputy district attorneys and city prosecutors;

Whereas, the Congress is considering legislation, such as the Equal Justice Act, H.R. 1400, Title X, and the Fairness in Death Sentencing Act, H.R. 3371, Title XVI, or H.R. 2851, (formerly titled The Racial Justice Act), which involves protections against racial bias in capital cases;

Whereas, the Equal Justice Act would codify U.S. Supreme Court case law establishing protections against bias in criminal cases and adopt other safeguards to prohibit bias in criminal cases;

Whereas, the Fairness in Death Sentencing Act would, first, permit a capital case defendant to make a statistical showing that death sentences are being imposed or administered in a disproportionate manner upon (1) persons of one race or (2) as punishment for capital offenses against persons of one race, and second, require the prosecutor to rebut this statistical showing "by a preponderance of the evidence";

Whereas, on June 20, 1991, the U.S. Senate voted to strike a similar measure entitled the Racial Justice Act out of the omnibus crime measures, S. 1241, by a bipartisan vote of 55 to 41 (this is the third successive Congress in which the U.S. Senate has rejected the Racial Justice Act);

Whereas, the U.S. Supreme Court rejected a discrimination claim founded solely upon statistics, in *McCleskey v. Kemp*, 481 U.S. 279 (1987): Now therefore, be it

Resolved That the California District Attorneys Association by unanimous vote of the Board of Directors:

(1) Opposes *any version* of the Fairness in Death Sentencing Act (or any version of the Racial Justice Act), for the following reasons:

(a) the Fairness in Death Sentencing Act would result in the effective abolition of capital punishment because of the inherent evidentiary difficulties and inevitable vast expenditures of time and money in litigation in every post-conviction capital case, to prove by at least a preponderance of the evidence a negative, to wit, that race was not the basis for any of the prosecutor's, jury's, or judge's decisions;

(b) as to adjudicated cases, the retroactive application of the Fairness in Death Sentencing Act would permit convicted capital defendants to reopen their cases by presenting discrimination claims (regardless of whether such claims had previously been rejected);

(c) the statistical premise of any version of the Fairness in Death Sentencing Act (or the Racial Justice Act) is unsound, for several reasons, including:

(i) it disregards the fundamental precept of our criminal justice system that an individual is tried on the facts of his or her case, not on the facts or circumstances or statistics from unrelated cases;

(ii) it overturns the U.S. Supreme Court's rejection of such a statistical premise, where the Court noted with regard to the Baldus study: "Even Professor Baldus does not contend that his statistics *prove* that race enters into any capital sentencing decisions or that race was a factor in McCleskey's particular case. Statistics at most may show only a likelihood that a particular factor entered into some decisions." *McCleskey v. Kemp*, 481 U.S. 279, 308 (1987) (italic in original); and

(iii) its statistical showing fails to establish that the imposition of capital punishment in a particular case is predicated on any bias; and

(d) the Fairness in Death Sentencing Act would permit the "second-guessing" of capital case decisions by prosecutors, defense counsel, judges and juries based upon the information and statistics required to be maintained under the Act;

(e) the Fairness in Death Sentencing Act eliminates the traditional deference to state-court findings of fact, 28 U.S.C. §2254(d); *Sumner v. Mata*, 449 U.S. 539 (1981), if the state fails to satisfy the requirements under the Act, and causes the individual conviction, though lawfully and justifiably imposed, to be unduly placed in jeopardy;

(f) the potential cost of compliance on states and local entities would be exorbitant, as demonstrated by one California case which took three years to prepare for an evidentiary hearing and cost more than $1,000,000. The evidentiary hearing was never held, after the *McCleskey v. Kemp* ruling was rendered;

(g) The Fairness in Death Sentencing Act encourages a quota system for capital punishment cases by in effect introducing "race consciousness" into capital case decisions.

(2) Opposes any legislation which would undermine or otherwise modify the holding in *McCleskey v. Kemp*, 481 U.S. 279 (1987);

(3) Concludes that the Fairness in Death Sentencing Act is inconsistent with the objective of meaningful federal habeas corpus reform, and, therefore, calls upon the U.S. House of Representatives to follow the lead of the U.S. Senate on June 20, 1991 and reject any version of the Fairness in Death Sentencing Act (or any version of the Racial Justice Act) as part of any package of federal habeas corpus reform;

(4) Strongly supports the Equal Justice Act, which:

(a) expressly provides that capital punishment "shall be administered . . . without regard to the race or color of the defendant or victim" and explicitly prohibits "any racial quota or statistical test" for the imposition of capital punishment;

(b) codifies U.S. Supreme Court precedent which establishes safeguards against racial prejudice in criminal cases;

(c) establishes protections against any racial prejudice in the examination of possible jurors and the venue of the trial and prohibits appeals to racial bias by the prosecutor of defense counsel;

(d) specifies a federal funding objective to provide "adequate resources and expertise" for death penalty cases, which is consistent with other proposals calling for equal funding for state prosecutors for those states which have capital resource litigation centers devoted to the defense in capital punishment cases: Be it further

Resolved by the California District Attorneys Association that its Executive Director shall transmit a copy of this resolution to the U.S. Senators and Representatives in the California delegation and to members of the Senate and House Committees on the Judiciary.

Mr. HOYER. Mr. Chairman, today I rise in strong support of H.R. 3371, the Omnibus Crime Control Act of 1991. I would like to commend the chairman of the Judiciary Committee, JACK BROOKS and subcommittee chairmen, DON EDWARDS and CHUCK SCHUMER for their diligence and hard work in crafting a bill that takes a serious approach to fighting crime in our communities.

In the past few years crime has taken on new more violent demeanor. Just recently, the District of Columbia's Police Chief acknowledged that organized gangs are operating in the Washington Metropolitan area and are responsible for a number of homicides and robberies resulting in death. The bill before us today seeks to return an element of safety and security back to us by waging a fast and furious war against crime. This crime bill intends not only to prosecute criminals to the fullest extent of the law but will also work to prevent some crimes before they happen.

Mr. Chairman, I am particularly pleased about the provisions of the bill that attempts to thwart crime before it is able to take place. We are going back to the old way of community policing by increasing the number of cops who are foot patrols. It has been proven that serious crime decreases when police become visible members of the neighborhoods in which they work. We will be providing the necessary funds to develop community based crime prevention programs and streamline the technology that will release cops overburdened with paperwork to patrol the streets.

During the first few weeks of school this year in the District of Columbia, Virginia, and my own State of Maryland, shots were fired on or near the campuses of our schools. A recent Centers for Disease Control study revealed that 1 in 3 high school males sometimes carried a gun, knife or other weapon with the intention of using it if necessary. Twenty percent of the respondents indicated that they carried a weapon at least once in the preceding month. It has become increasingly clear that young people are becoming more inclined to using weapons than their fists. This bill addresses the increasing violence in our schools by funding safety measures such as metal detectors and video-surveillance. In addition, it provides the resources necessary to train teachers to prevent crime and violence in schools as well as to counsel students who have been victimized by crime in schools. Each year there are approximately 3 million crimes or attempted crimes in the vicinity of our Nation's schools. We owe our children the opportunity to study in an environment conducive to learning, free from the fear of violence. The safe schools provisions of this bill will address these concerns.

For some time now I have been in support of programs that are alternatives to incarceration and probation for some of our younger offenders. One program in particular is the military-styled boot camps. Although there is evidence that this program has been successful in reducing the recidivism rate among juvenile and youthful offenders, most States have had difficulties with implementation as a result of a lack of funds. H.R. 3371 provides $200 million in grants to the States to assist with this and other alternatives to the traditional methods of incarceration. I strongly believe that the boot camps offer a severe form of punishment while deterring younger offenders

from returning to the system after committing a more serious crime.

In an effort to compensate victims of crime who are sometimes lost in the process, the bill eliminates the limits on deposits to crime victims' fund, requires that State crime victim assistance focus on children who are victims or violent street crime and expands reimbursement to victims in court ordered restitution to include cost associated with child care and transportation. I attempted to have language inserted in the bill which would have made it possible for victims of crime to have an offenders tax refunds intercepted in court ordered restitution cases when restitution payments were in arrears. Unfortunately my amendment was ruled out of order in the committee of jurisdiction but I still contend that victims of crime are being neglected in our judicial system. I will continue to press this issue.

I am deeply saddened and outraged by the mass murder that occurred in the cafeteria in Texas. Unfortunately, this is a classic example of why assault weapons which have no other useful purpose in our society other than to create mass destruction should be banned. Although I too have gun enthusiasts in my district, I cannot justify or rationalize the need for these types of weapons. I have always believed that law-abiding citizens should have the right to protect themselves in their homes and that hunters should have the right to hunt. However, I do not feel that banning weapons capable of exacting such a high human toll in a matter of seconds or minutes is a violation of anyone's constitutional rights. It is my hope that the amendment striking the bill's prohibition on owning or transferring the 13 named assault weapons will be soundly defeated.

As pleased as I am with the committee-passed bill, I am just as displeased with some of the amendments that will be offered here today and tomorrow. While trying to improve the judicial system, some very basic and fundamental constitutional rights would be jeopardized if the amendments were to prevail. I am in strong opposition to the amendment that would strike the bill's provisions regarding habeas corpus reform. The "full and fairly" adjudicated language would prohibit a Federal court from hearing a claim in a habeas appeal that was "fully and fairly" adjudicated in State court. This amendment would make it virtually impossible for a State prisoner to have his case federally reviewed. It has been determined that after Federal review, judgments could be reversed in over 40 percent of the cases. Yes, indeed there will be some prisoners who will tie up the courts for years by using the Federal appeals process but in cases where grave mistakes have been made and justice not served, the great writ of habeas can be used to restore fairness and constitutionality.

Mr. Chairman, last year we had an opportunity to debate the Racial Justice Act as part of the crime bill. Once again the issue of race as it related to capital cases in being raised. Members on the other side of the aisle would like to be able to eliminate the bill's provisions that would prohibit a prisoner from being executed because of racial discrimination. There is no doubt that if one is black or if the victim is white, the chances of receiving the death penalty is substantially higher. In fact, a very small percentage of executions have been carried out in cases where the victims were African-Americans and in all of those cases the defendants were African-Americans. This issue is not about the death penalty, but it is about how the death penalty is applied, and the fact of the matter is that the death penalty if it is to be applied, should be applied impartially without regard to race.

Mr. Chairman, this bill is not going to eradicate crime in our society but it is a step in the right direction. The committee-passed bill seeks to fight drugs, beef up law enforcement, and mete out tough punishments for those who have little regard for the law. It also recognizes that urban crime is spreading to rural America and provides additional funds for rural drug enforcement. Amendments that seek to undermine the constitutional rights of prisoners, permit the use of evidence illegally obtained by the police and sentence others to death with total disregard for discrimination should be soundly defeated and I urge my colleagues to support the committee bill and amendments that further the cause of justice and fairness in our judicial process.

Mr. GRADISON. Mr. Chairman, H.R. 3371 sadly needs a reality check. Although much of the debate surrounds constitutional issues, the measure also includes $1.2 billion in new program authorizations for each of fiscal years 1992, 1993, and 1994 with no indication of how or whether funding for this program will materialize. No one who knows anything about the way Congress makes spending decisions could have even the slightest expectation that money for these programs will ever be spent.

Few of these authorizations were included in the President's budget request or in this crime bill; they are Democrat initiatives designed to portray the Democrats "getting tough on crime." As the debate unfolds, I invite my colleagues and the American public to note the following points:

If House Democrats are so tough on crime, why did they agree three separate times in the process of adopting the budget resolution to cut the President's request for budget function 750, administration of justice? First, the House Budget Committee reported a budget resolution cutting $500 million from his request. Next, on the House floor, Members adopted the Ford amendment, which cut function 750 another $100 million. Finally, the conference agreement took yet another $400 million from function 750. When it was all over, the Democratic Congress had adopted a budget for fighting crime that fell short of the President's request by more than $1 billion in budget authority.

Fiscal year 1992 discretionary appropriations are nearly complete and function 750 is $600 million in budget authority and almost $700 million in outlays below the President's request. If Democrats are really concerned about crime, why aren't they funding more of the President's request or even funding the proposals being authorized for fiscal year 1992 in this crime bill?

There is even less likelihood that $1.2 billion will be provided next fiscal year to pay for these initiatives than it will this year. Under the budget agreement, the domestic discretionary cap will be tighter. For fiscal year 1993 than for fiscal year 1992, yet no one is saying what domestic program cuts would make room to fund these initiatives. If Democrats are serious about funding these initiatives, why don't they identify discretionary program cuts to pay for them as they garner political credit for authorizing them?

Mr. Chairman, Budget Act points of order are not in order here because this is an authorization, but reality checks are. "Getting tough on crime" should be evaluated on policy grounds, actual spending versus budget requests, and program results. New Democratic anticrime initiatives with little hope of funding can only add to the lack of credibility the Democratic Party holds on this issue. Promises that the Federal Government will find $1.2 billion per year to pay for predominately State and local anticrime efforts are not reality: They are just political pretense.

Mr. GOSS. Mr. Chairman, when will we realize that the mounting crime statistics are not just numbers, numbers that can be corrected by mere words and empty legislation? The number of arrests rose by 14.2 percent over a 5-year period and from 10,440,569 in 1989 to 11,250,083 in 1990. As frightening as those statistics are, it's even more terrifying to remember that there is a very real victim behind each of those numbers. We must not forget the painful part these individuals and their families, past, present and future, play in the continuing war on crime.

It is for this reason, the people behind the numbers, that I must express my frustration and dismay with regard to H.R. 3371, the Omnibus Crime Control Act we are considering today. This legislation effectively aggravates the bureaucratic nightmare our criminal justice system has become, adding delay and red tape to everything from the death penalty to Federal/State cost sharing. This bill seems less an attempt at reform, and more a cover-up for our inadequate and overburdened penal system.

The partisan politics that prohibited extremely important amendments from even being considered on the floor of the House today, continue to hold real reform at bay. Will we continue to pass ineffective legislation under the guise of a yearly crime bill? There are effective options and we can pass a crime bill with teeth, if we have the courage to address the real issues and close the loopholes that will allow the release of criminals on legal technicalities.

More than 215 days ago, the President challenged Congress to provide real protection against crime for the American people and he outlined substantive methods to effectively accomplish this task. These much needed proposals include real habeas corpus reform that prevents repetitive filings and expedites petitions; allowing the facts of a case to be presented by establishing a good faith exemption to the exclusionary rule; and important extensions of the death penalty.

The American people have given Congress a mandate to stop the legal persecution of victims. Our constituents are not asking for racial quotas for the death penalty. They want to know that justice will be swift and sure for all violent criminals. They are demanding that we pay attention to the growing ranks of individuals violated by criminal activity and give law enforcement the tools they need to do their

jobs. Only then will we turn the frightening numbers of violent crime around.

Mr. FRANKS of Connecticut. Mr. Chairman, each day American families mourn the loss or injury of a victim of crime. The national statistics are troubling and very real, touching those who live the hard life of the inner city or the quiet of the suburbs.

Every 17 seconds an American falls victim to a violent crime, every 5 minutes a woman is raped, and every 22 minutes a person is murdered. In my State of Connecticut alone, crime has risen almost 4 percent in the last year.

One reads in newspapers and watches on television, images of senseless violence, spurned on by the savage effects of drugs.

We ask ourselves why those who kill or steal for cocaine are not arrested, prosecuted and imprisoned. When we see an arrest, often those found guilty are freed after serving a small portion of their sentence.

It seems the legal system now works for those who break the rules, rather than those who abide by the rule of law.

The American people are getting sick and tired of it.

It is time to stand up for the victim and send a strong message to the criminals in this country that we will not tolerate it anymore. It's time to declare war on the drug pushers and the criminals before we lose control of our streets and our neighborhoods.

Unfortunately H.R. 3371 does not go far enough in our common goals of turning the tide on waves of violence and despair.

This bill is a real crime in its present form. It does not go far enough in attempting to address the real issues and root causes of what is at stake for all Americans.

Several amendments will be introduced which will strengthen this legislation and allow this bill to become law. I urge my colleagues to vote for these amendments and vote to send a strong signal to the American people that we intend to set the rules in this crime game.

Once again this bill lacks teeth. It leaves out important provisions which would reform an already abused habeas corpus system. Currently, many death row inmates petition again and again for habeas corpus in the Federal court system without restriction as to number or time of appeals. Too often, convicted criminals take advantage of the appeals process in order to forestall their punishment. This impedes the judicial system and costs the honest taxpayer millions of dollars a year.

Another key provision which is inadequately addressed in this bill is the problem which arises when a known criminal is released because of a minor technicality. In the past many strong cases were thrown out because of a technicality and the criminal was right back on the street.

An amendment by Mr. MCCOLLUM would address this problem. The amendment establishes a good faith exception to the exclusionary rule so that evidence could be admitted if the conduct of the officers was objectively reasonable.

Finally Mr. Chairman, we must address the violent crime offender. The person who takes the life of another must face the ultimate consequences.

I support an amendment offered by Mr. GEKAS which will establish procedures required for the constitutional imposition of the death penalty and to extend it to specific Federal crimes.

We are at a crossroads. One path leads to surrendering the rule of law to those who have no sense of right and wrong, who think nothing of killing innocent people in search of blood money.

The other path is one where our society stands united in purpose and deed to say to the criminals, "Enough is enough."

There have been countless stories of neighborhoods coming together. They are forming block watches, civilian patrols, and school escorts. They are looking to us to stand with them in their fight to make their lives safer. Are we going to do that, or turn tail and run from our responsibilities?

Crime is no longer isolated in urban areas. It touches suburbs, small cities, and little towns—it touches every American.

Let's adopt a crime bill which will permit every citizen to walk our streets without fear, which will allow our children to look to the future with hope, and which will protect the rights of every victim of crime.

Mr. MCMILLAN of North Carolina. Mr. Chairman, today I rise in support of section 1303 of H.R. 3371, which makes it a Federal criminal offense to defraud, loot, or plunder an insurance company or to defraud insurance regulations.

It has been my good fortune to have served as a member of the Oversight and Investigations Subcommittee which conducted numerous case studies, including three of the largest property-casualty insurance insolvencies. As documented in our failed promises report, we learned that insurance industry is vulnerable to the same types of mismanagement and fraud that led to the savings and loan crisis. While serving on the Banking Committee, I became all too familiar with these sorts of problems.

As the ranking Republican on the Commerce, Consumer Protection, and Competitiveness Subcommittee, I see this Federal insurance fraud legislation as a necessary first step in addressing the growing problem of insurance insolvency and restoring public confidence in the overall health of our Nation's insurance industry. While our committee will be dealing with the insurance solvency issue in the coming months. Americans everywhere should rest assured that those who seek to pillage our Nation's insurance companies will not go unpunished.

I encourage my colleagues to support this provision of the crime bill.

Mrs. LOWEY of New York. Mr. Chairman, there is no question that what we are addressing today is one of the vital issues that will affect the future of this Nation. Successfully dealing with the crime that is threatening the law-abiding people of this Nation is central to our quest for a better life for all Americans. If we cannot guarantee our citizens the basic freedom to walk down the street without fear, we will never be able to build the kind of society that we all want to see. We must adopt tough-minded, commonsense solutions to the plague of violence.

For more than 20 years, as reported crimes have increased dramatically across this Nation, how to address the crime problem has been a focal point of debate and controversy across this country. Yet for all the bombast, all of the rhetoric, and all the political posturing, there has been regrettably little meaningful action. Very few steps have been taken to prevent crime or to protect its victims.

Every day, more lives are ruined and families are ripped apart because of the tragedy of violent crimes. Every month, we see statistics more sobering than those of the month before about how many people are being victimized. Every year, we lose more and more ground—more streets that are not safe to walk on, more neighborhoods where fear is a constant presence, and more young lives caught up in the tragic swirl of drugs and lawlessness.

Today, however, we can take the first step on the long road back to safety. Today we can finally begin an offensive that will turn the tide on crime. While I do not agree with every provision of it, the bill that we have before us puts the focus rights where it belongs—on preventing crime, punishing criminals, and protecting victims. I congratulate the Judiciary Committee for doing an outstanding job in facing this difficult challenge. They have not allowed themselves to be overtaken by hysteria, but instead they have created a bill that will enact meaningly policies to move forcefully and effectively to turn back the wave of crime.

This bill will toughen Federal sentences and make clear that we will not tolerate violent crime any longer. It will make funds available to communities to put tens of thousands of new police officers on the beat. That is, after all the front line against crime.

It will help States move toward the goal of punishing every youthful offender. It will provide funds to educational authorities to provide safe learning environments for our children. And it will put into place effective new programs for fighting car theft, keeping high-risk youths off the streets and out of gangs, and using the most up-to-date technology to catch and prosecute criminals.

That is not all that this crime bill does. It also gives much needed aid to the victims, who all too frequently have been lost in the shuffle. Too many times in the past, our Government has overlooked the needs and the rights of crime victims. I have worked hard to correct that oversight, and it is good news that this bill will increase the funds available for restitution and assistance to victims. We cannot allow those who have been victimized by the tryanny of crime to be victimized again by withering inattention.

The victims compensation title of this bill is a noteworthy achievement that finally recognizes those who suffer directly from crimes in our society.

A great deal will remain to be done, Mr. Chairman, after this legislation is enacted. There will be many obstacles in our path, and many times when our commitment and our fortitude will be tested. But it is a road that we must travel. For the sake of our children, we must reclaim the streets of America. H.R. 3371 is a good bill, a tough bill, that moves us in the right direction. I urge my colleagues to join me in passing this historic legislation, so that we can work together for an America where people can be secure in their homes, safe on our streets, and able to fulfill their

dreams for themselves and their families without living in fear.

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in support of H.R. 3371, the Omnibus Crime Control Act of 1991. It is imperative that this body act today to reclaim our cities from the control of drug pushers, rapists, thieves, and street gangs, and return it to law-abiding Americans.

H.R. 3371 is a comprehensive package of crime-fighting proposals designed to win back our streets and neighborhoods from the criminal filth which has so violently touched every American's life in some manner. For too long, Mr. Chairman, mothers have been afraid to let their children walk to school for fear of having them accosted by drug pushers or savaged by rapists. For too long, our police forces have been outgunned by criminals using weapons with names such as the "Street Sweeper" and "Striker." And for too long, we have seen criminals walk free on a technicality, even though the evidence is overwhelmingly incriminating. We must halt the further descent of our Nation into a constant state of fear. This bill will give law enforcement officials and community groups the tools necessary to assess, control, and begin to turn back, the rising tide of crime gripping our streets.

Among the most important provisions in the legislation is a ban on domestically made semiautomatic assault rifles. The role of semiautomatic and assault weapons in America's drug crisis and other crimes has been well documented. The front pages of our newspapers seem to regularly report the latest occurrences of drug-related drive-by shootings, disgruntled employees returning to the worksite to seek revenge, and madmen on meaningless rampages. We must rid our streets of these weapons which have no legitimate purpose except to kill other human beings.

This proposal has been met with widespread support by the Nation's police forces and law enforcement organizations. Furthermore, public opinion polls have shown an overwhelming support for initiatives designed to halt further proliferation of semiautomatic weapons. We cannot allow ourselves to be fooled by those who claim their second amendment rights will be violated by this ban. I have to question the intentions of any sportsman who would use such weapons of death to hunt animals. The fact is that only 13 very specific types of weapons will be banned by this provision, and no semiautomatic weapons already legally owned will be affected. No government stormtroopers will be knocking on the doors of law-abiding gun owners to confiscate weapons. Such a notion is pure and simple NRA generated poppycock. In addition to banning these destructive weapons, this bill lengthens the mandatory sentences for numerous crimes involving firearms, as well as establishes new firearms crimes.

H.R. 3371 also includes important provisions to codify an already existing good faith exception to the exclusionary rule. This rule, which prohibits the introduction of illegally obtained evidence into a trial, would be circumvented under H.R. 3371 if the evidence was obtained with the good faith knowledge of officials that their search and seizure was valid. All to often, Mr. Chairman, we have seen criminals walk free because incriminating evidence was disallowed due to technicalities in the issuing of a search warrant. These criminals are then free to commit other crimes and hurt other law-abiding citizens. This provision would insure that if those law enforcement officers who obtained evidence believed that they were indeed acting in "good faith," and believed that all legal guidelines for obtaining evidence had been followed, that evidence would then be admissible in a court of law.

This legislation also seeks to protect our society's most vulnerable members; namely our children, by requiring States to register the names and current addresses of all persons who have committed crimes against children. Furthermore, it will create a national system which will be administered by the FBI for identifying child abusers. We must do everything possible to prevent the horrible scourge of child abuse and molestation from ruining the lives of our Nation's young people, and these provisions will do much to help prevent this ugliness.

I do have concerns over one section of this bill, Mr. Chairman, specifically that which greatly expands the list of crimes punishable by the death penalty. How are we to become a "kinder and gentler" Nation, as the President has set out as his goal, if we continually attempt to reform America's criminals by killing them? Study upon study has shown that the death penalty does not deter criminal behavior, and simply increasing the number of crimes punishable by death will accomplish nothing, except perhaps increasing the chances that a wrongfully convicted individual will be put to death.

However, if we must have the death penalty, Mr. Chairman, I am pleased to see that this bill includes language to insure that the death penalty is instituted fairly to all, regardless of race. Past inequities in the frequency of sentencing the death penalty to African-Americans over whites are well documented. H.R. 3371 would allow those sentenced to death to appeal the decisions if they can cite evidence showing a pattern of racial discrimination in the sentencing of the death penalty.

Furthermore, this legislation provides a fair reform to current Federal habeas corpus procedures. The public has grown weary of convicted criminals continually logjamming the judicial system with appeal after appeal. These reforms will place reasonable limits on the number of appeals criminals convicted in State courts can file with Federal courts. Some of my colleagues would like to virtually eliminate this procedure altogether. However, even prisoners are protected under the Constitution and the Judiciary Committee's habeas corpus measure provides for thoughtful reform without restricting the right of the accused to due process under the law.

Finally, Mr. Chairman, and perhaps most importantly, this legislation provides funding for many crucial programs at both the Federal and local level. Among these are the expansion of DNA analysis labs, scholarships for future law enforcement officers, grants for community policing initiatives, school violence grants, block grants for local antidrug initiatives, and midnight basketball league funding, an idea with a proven track record of putting vulnerable youth in the gyms for healthy competition and getting them off the streets in the late hours of the night. Such local initiatives are often the most successful methods of fighting crime and drug abuse, Mr. Chairman, as only those who must live day to day with crime at their doorstep can truly assess their own unique local needs.

It is time to act and reaffirm to the American people that this body is indeed ready to tackle the true problems that are afflicting our Nation. The confidence of the public in our ability to direct the Nation is at a record low. We must not allow this important legislation to become mired in unproductive partisanship and bickering. The country is counting on us to act and I urge my colleagues to support H.R. 3371.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute recommended by the Committee on the Judiciary, as modified by the amendments printed in part 1 of House Report 102-253, is considered as an original bill for the purpose of amendment and is considered as read.

The text of the committee amendment in the nature of a substitute, as modified, is as follows:

H.R. 3371

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Omnibus Crime Control Act of 1991".

(b) TABLE OF CONTENTS.—The following is the table of contents for this Act:

TITLE I—COMMUNITY POLICING; COP ON THE BEAT

SEC. 101. SHORT TITLE.

This title may be cited as "The Community Policing; Cop on the Beat Act of 1991".

SEC. 102. COMMUNITY POLICING; COP ON THE BEAT.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) by redesignating part P as part Q;

(2) by redesignating section 1601 as section 1701; and

(3) by inserting after part O the following:

"PART P—COMMUNITY POLICING; COP ON THE BEAT GRANTS

"SEC. 1601. GRANT AUTHORIZATION.

"(a) GRANT PROJECTS.—The Director of the Bureau of Justice Assistance may make grants to units of general local government and to community groups to establish or expand cooperative efforts between police and a community for the purposes of increasing police presence in the community, including—

"(1) developing innovative neighborhood-oriented policing programs;

"(2) providing new technologies to reduce the amount of time officers spend processing cases instead of patrolling the community;

"(3) purchasing equipment to improve communications between officers and the community and to improve the collection, analysis, and use of information about crime-related community problems;

"(4) developing policies that reorient police emphasis from reacting to crime to preventing crime;

"(5) creating decentralized police substations throughout the community to encourage interaction and cooperation between the public and law enforcement personnel on a local level;

"(6) providing training and problem solving for community crime problems;

"(7) providing training in cultural differences for law enforcement officials;

"(8) developing community-based crime prevention programs, such as safety programs for senior citizens, community anticrime groups, and other anticrime awareness programs;

"(9) developing crime prevention programs in communities which have experienced a recent increase in gang-related violence; and

"(10) developing projects following the model under subsection (b).

"(b) MODEL PROJECT.—The Director shall develop a written model that informs community members regarding—

"(1) how to identify the existence of a drug or gang house;

"(2) what civil remedies, such as public nuisance violations and civil suits in small claims court, are available; and

"(3) what mediation techniques are available between community members and individuals who have established a drug or gang house in such community.

"SEC. 1602. APPLICATION.

"(a) IN GENERAL.—(1) To be eligible to receive a grant under this part, a chief executive of a unit of local government, a duly authorized representative of a combination of local governments within a geographic region, or a community group shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(2) In such application, one office, or agency (public, private, or nonprofit) shall be designated as responsible for the coordination, implementation, administration, accounting, and evaluation of services described in the application.

"(b) GENERAL CONTENTS.—Each application under subsection (a) shall include—

"(1) a request for funds available under this part for the purposes described in section 1601;

"(2) a description of the areas and populations to be served by the grant; and

"(3) assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

"(c) COMPREHENSIVE PLAN.—Each application shall include a comprehensive plan which contains—

"(1) a description of the crime problems within the areas targeted for assistance;

"(2) a description of the projects to be developed;

"(3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

"(4) an explanation of how the requested grant shall be used to fill those gaps;

"(5) a description of the system the applicant shall establish to prevent and reduce crime problems; and

"(6) an evaluation component, including performance standards and quantifiable goals the applicant shall use to determine project progress, and the data the applicant shall collect to measure progress toward meeting project goals.

"SEC. 1603. ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS.

"(a) ALLOCATION.—The Director shall allocate not less than 75 percent of the funds available under this part to units of local government or combinations of such units and not more than 20 percent of the funds available under this part to community groups.

"(b) ADMINISTRATIVE COST LIMITATION.—The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration, technical assistance, and evaluation.

"(c) RENEWAL OF GRANTS.—A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant, subject to the availability of funds, if the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application and if the recipient can demonstrate significant progress toward achieving the goals of the plan required under section 1602(c).

"(d) FEDERAL SHARE.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1602 for the fiscal year for which the projects receive assistance under this part.

"SEC. 1604. AWARD OF GRANTS.

"(a) SELECTION OF RECIPIENTS.—The Director shall consider the following factors in awarding grants to units of local government or combinations of such units under this part:

"(1) NEED AND ABILITY.—Demonstrated need and evidence of the ability to provide the services described in the plan required under section 1602(c).

"(2) COMMUNITY-WIDE RESPONSE.—Evidence of the ability to coordinate community-wide response to crime.

"(3) MAINTAIN PROGRAM.—The ability to maintain a program to control and prevent crime after funding under this part is no longer available.

"(b) GEOGRAPHIC DISTRIBUTION.—The Director shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

"SEC. 1605. REPORTS.

"(a) REPORT TO DIRECTOR.—Recipients who receive funds under this part shall submit to the Director not later than March 1 of each year a report that describes progress achieved in carrying out the plan required under section 1602(c).

"(b) REPORT TO CONGRESS.—The Director shall submit to the Congress a report by October 1 of each year that shall contain a detailed statement regarding grant awards, activities of grant recipients, and an evaluation of projects established under this part.

"SEC. 1606. DEFINITIONS.

"For the purposes of this part:

"(1) The term 'community group' means a community-based nonprofit organization that has a primary purpose of crime prevention.

"(2) The term 'Director' means the Director of the Bureau of Justice Assistance.".

(b) CONFORMING AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking the matter relating to part P and inserting the following:

"PART P—COMMUNITY POLICING; COP ON THE BEAT GRANTS

"Sec. 1601. Grant authorization.
"Sec. 1602. Application.
"Sec. 1603. Allocation of funds; limitation on grants.
"Sec. 1604. Award of grants.
"Sec. 1605. Reports.
"Sec. 1606. Definitions.

"PART Q—TRANSITION; EFFECTIVE DATE; REPEALER

"Sec. 1701. Continuation of rules, authorities, and proceedings.".

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) by redesignating the last 3 paragraphs as paragraphs (7), (8), and (9); and

(2) by adding after paragraph (9) the following:

"(10) There are authorized to be appropriated $150,000,000 to carry out this part for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part P.".

TITLE II—DRUG TREATMENT IN FEDERAL PRISONS

SEC. 201. SHORT TITLE.

This title may be cited as the "Drug Treatment in Federal Prisons Act of 1991".

SEC. 202. DEFINITIONS.

As used in this title—

(1) the term "residential substance abuse treatment" means a course of individual and group activities, lasting between 9 and 12 months, in residential treatment facilities set apart from the general prison population—

(A) directed at the substance abuse problems of the prisoner; and

(B) intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems; and

(2) the term "eligible prisoner" means a prisoner who is—

(A) determined by the Bureau of Prisons to have a substance abuse problem; and

(B) willing to participate in a residential substance abuse treatment program.

SEC. 203. IMPLEMENTATION OF SUBSTANCE ABUSE TREATMENT REQUIREMENT.

(a) IN GENERAL.—In order to carry out the requirement of the last sentence of section 3621(b) of title 18, United States Code, that every prisoner with a substance abuse problem have the opportunity to participate in appropriate substance abuse treatment, the Bureau of Prisons shall provide residential substance abuse treatment—

(1) for not less than 50 percent of eligible prisoners by the end of fiscal year 1993;

(2) for not less than 75 percent of eligible prisoners by the end of fiscal year 1994; and

(3) for all eligible prisoners by the end of fiscal year 1995 and thereafter.

(b) INCENTIVE FOR PRISONERS' SUCCESSFUL COMPLETION OF TREATMENT PROGRAM.—Section 3621 of title 18, United States Code, is amended by adding at the end the following:

"(e) INCENTIVE FOR PRISONERS' SUCCESSFUL COMPLETION OF TREATMENT PROGRAM.—

"(1) GENERALLY.—Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has successfully completed a program of residential substance abuse treatment provided under subsection (b) of this section, shall remain in the custody of the Bureau for such time (as limited by paragraph (2) of this subsection) and under such conditions, as the Bureau deems appropriate. If the conditions of confinement are different from those the prisoner would have experienced absent the successful completion of the treatment, the Bureau shall periodically test the prisoner for drug abuse and discontinue such conditions on determining that drug abuse has recurred.

"(2) PERIOD OF CUSTODY.—The period the prisoner remains in custody after successfully completing a treatment program shall not exceed the prison term the law would otherwise require such prisoner to serve, but may not be less than such term minus one year.".

SEC. 204. REPORT.

The Bureau of Prisons shall transmit to the Congress on January 1, 1993, and on January 1 of each year thereafter, a report. Such report shall contain—

(1) a detailed quantitative and qualitative description of each substance abuse treatment program, residential or not, operated by the Bureau;

(2) a full explanation of how eligibility for such programs is determined, with complete information on what proportion of prisoners with substance abuse problems are eligible; and

(3) a complete statement of to what extent the Bureau has achieved compliance with the requirements of this Act.

SEC. 205. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal year 1991 and each fiscal year thereafter such sums as may be necessary to carry out this title.

TITLE III—SUBSTANCE ABUSE TREATMENT IN STATE PRISONS

SEC. 301. SHORT TITLE.

This title may be cited as the "Substance Abuse Treatment in State Prisons Act of 1991".

SEC. 302. RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR PRISONERS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 102, is amended—

(1) by redesignating part Q as part R;

(2) by redesignating section 1701 as section 1801; and

(3) by inserting after part P the following:

"PART Q—RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR PRISONERS

"SEC. 1701. GRANT AUTHORIZATION.

"The Director of the Bureau of Justice Assistance (referred to in this part as the 'Director') may make grants under this part to States, for the use by States for the purpose of developing and implementing residential substance abuse treatment programs within State correctional facilities.

"SEC. 1702. STATE APPLICATIONS.

"(a) IN GENERAL.—(1) To request a grant under this part the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(2) Such application shall include assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

"(3) Such application shall coordinate the design and implementation of treatment programs between State correctional representatives and the State Alcohol and Drug Abuse agency.

"(b) DRUG TESTING REQUIREMENT.—To be eligible to receive funds under this part, a State must agree to implement or continue to require urinalysis or similar testing of individuals in correctional residential substance abuse treatment programs. Such testing shall include individuals released from residential substance abuse treatment programs who remain in the custody of the State.

"(c) ELIGIBILITY FOR PREFERENCE WITH AFTER CARE COMPONENT.—

"(1) To be eligible for a preference under this part, a State must ensure that individuals who participate in the drug treatment program established or implemented with assistance provided under this part will be provided with aftercare services.

"(2) State aftercare services must involve the coordination of the prison treatment program with other human service and rehabilitation programs, such as educational and job training programs, parole supervision programs, halfway house programs, and participation in self-help and peer group programs, that may aid in the rehabilitation of individuals in the drug treatment program.

"(3) To qualify as an aftercare program, the head of the drug treatment program, in conjunction with State and local authorities and organizations involved in drug treatment, shall assist in placement of drug treatment program participants with appropriate community drug treatment facilities when such individuals leave prison at the end of a sentence or on parole.

"(d) STATE OFFICE.—The office designated under section 507 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3757)—

"(1) shall prepare the application as required under subsection (a); and

"(2) shall administer grant funds received under this part, including, review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

"SEC. 1703. REVIEW OF STATE APPLICATIONS.

"(a) IN GENERAL.—The Bureau shall make a grant under section 1701 to carry out the projects described in the application submitted under section 1702(a) upon determining that—

"(1) the application is consistent with the requirements of this part; and

"(2) before the approval of the application the Bureau has made an affirmative finding in writing that the proposed project has been reviewed in accordance with this part.

"(b) APPROVAL.—Each application submitted under section 1702 shall be considered approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

"(c) RESTRICTION.—Grant funds received under this part shall not be used for land acquisition or construction projects.

"(d) DISAPPROVAL NOTICE AND RECONSIDERATION.—The Bureau shall not disapprove any application without first affording the applicant reasonable notice and an opportunity for reconsideration.

"SEC. 1704. ALLOCATION AND DISTRIBUTION OF FUNDS.

"(a) ALLOCATION.—Of the total amount appropriated under this part in any fiscal year—

"(1) 0.4 percent shall be allocated to each of the participating States; and

"(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each of the participating States an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the State prison population of such State bears to the total prison population of all the participating States.

"(b) FEDERAL SHARE.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1702 for the fiscal year for which the projects receive assistance under this part.

"SEC. 1705. EVALUATION.

"Each State that receives a grant under this part shall submit to the Director an evaluation not later than March 1 of each year in such form and containing such information as the Director may reasonably require.".

(b) CONFORMING AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 102 of this Act, is amended by striking the matter relating to part Q and inserting the following:

SEC. 303. DEFINITIONS.

Section 901(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791(a)) is amended by adding after paragraph (23) the following:

"(24) The term 'residential substance abuse treatment program' means a course of individual and group activities, lasting between 9 and 12 months, in residential treatment facilities set apart from the general prison population—

"(A) directed at the substance abuse problems of the prisoner; and

"(B) intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems.".

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended by adding after paragraph (10) the following:

"(11) There are authorized to be appropriated $100,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part Q.".

TITLE IV—SAFE SCHOOLS

SEC. 401. SHORT TITLE.

This title may be cited as the "Safe Schools Act of 1991".

SEC. 402. SAFE SCHOOLS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 302, is amended—

(1) by redesignating part R as part S;

(2) by redesignating section 1801 as section 1901; and

(3) by inserting after part Q the following:

"PART R—SAFE SCHOOLS ASSISTANCE

"SEC. 1801. GRANT AUTHORIZATION.

"(a) IN GENERAL.—The Director of the Bureau of Justice Assistance may make grants to local educational agencies for the purpose of providing assistance to such agencies most directly affected by crime and violence.

"(b) MODEL PROJECT.—The Director shall develop a written safe schools model in a timely fashion and make such model available to any local educational agency that requests such information.

"SEC. 1802. USE OF FUNDS.

"Grants made by the Director under this part shall be used—

"(1) to fund anticrime and safety measures and to develop education and training programs for the prevention of crime, violence, and illegal drugs and alcohol;

"(2) for counseling programs for victims of crime within schools;

"(3) for crime prevention equipment, including metal detectors and video-surveillance devices; and

"(4) for the prevention and reduction of the participation of young individuals in organized crime and drug and gang-related activities in schools.

"SEC. 1803. APPLICATIONS.

"(a) IN GENERAL.—In order to be eligible to receive a grant under this part for any fiscal year, a local educational agency shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(b) REQUIREMENTS.—Each application under subsection (a) shall include—

"(1) a request for funds for the purposes described in section 1802;

"(2) a description of the schools and communities to be served by the grant, including the nature of the crime and violence problems within such schools;

"(3) assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part; and

"(4) statistical information in such form and containing such information that the Director may require regarding crime within the schools served by such local educational agency.

"(c) COMPREHENSIVE PLAN.—Each application shall include a comprehensive plan that shall contain—

"(1) a description of the crime problems within the schools targeted for assistance;

"(2) a description of the projects to be developed;

"(3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

"(4) an explanation of how the requested grant will be used to fill gaps; and

"(5) a description of the system the applicant will establish to prevent and reduce crime problems.

"SEC. 1804. ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS.

"(a) ADMINISTRATIVE COST LIMITATION.—The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration and technical assistance.

"(b) RENEWAL OF GRANTS.—A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant under this part, subject to the availability of funds, if—

"(1) the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application; and

"(2) the Director determines that an additional grant is necessary to implement the crime prevention program described in the comprehensive plan as required by section 1803(c).

"SEC. 1805. AWARD OF GRANTS.

"(a) SELECTION OF RECIPIENTS.—The Director shall consider the following factors in awarding grants to local educational agencies:

"(1) CRIME PROBLEM.—The nature and scope of the crime problem in the targeted schools.

"(2) NEED AND ABILITY.—Demonstrated need and evidence of the ability to provide the services described in the plan required under section 1803(c).

"(3) POPULATION.—The number of students to be served by the plan required under section 1803(c).

"(b) GEOGRAPHIC DISTRIBUTION.—The Director shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

"SEC. 1806. REPORTS.

"(a) REPORT TO DIRECTOR.—Local educational agencies that receive funds under this part shall submit to the Director a report not later than March 1 of each year that describes progress achieved in carrying out the plan required under section 1803(c).

"(b) REPORT TO CONGRESS.—The Director shall submit to the Congress a report by October 1 of each year in which grants are made available under this part which shall contain a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants under 1803(b)(4), and an evaluation of programs established under this part.

"SEC. 1807. DEFINITIONS.

"For the purpose of this part:

"(1) The term 'Director' means the Director of the Bureau of Justice Assistance.

"(2) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary and secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary and secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.".

(b) CONFORMING AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 302 of this Act, is amended by striking the matter relating to part R and inserting the following:

SEC. 403. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793), as amended by section 304 of this Act, is amended by adding after paragraph (11) the following:

"(12) There are authorized to be appropriated $100,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part R.".

TITLE V—VICTIMS OF CRIME

Subtitle A—Crime Victims Fund

SEC. 501. CRIME VICTIMS FUND.

(a) ELIMINATION OF FUND CEILINGS AND SUNSET PROVISION.—Subsection (c) of section 1402 (42 U.S.C. 10601) of the Victims of Crime Act of 1984 is repealed.

(b) ALLOCATIONS.—

(1) GENERALLY.—Section 1402(d)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(2)) is amended to read as follows:

"(2) The Fund shall be available as follows:

"(A) Of the total deposited in the Fund during a particular fiscal year—

"(i) the first $10,000,000 shall be available for grants under section 1404A of this title;

"(ii) the next sums deposited, up to the reserved portion (as described in subparagraph (C)), shall be made available to the judicial branch for administrative costs to carry out the functions of that branch under sections 3611 and 3612 of title 18, United States Code;

"(iii) and of the sums remaining after the allocations under clauses (i) and (ii)—

"(I) 4 percent shall be available for grants under section 1404(c)(1); and

"(II) 96 percent shall be available in equal amounts for grants under section 1403 and 1404(a) of this title.

"(B) The Director may retain any portion of the Fund that was deposited during a fiscal

year that is in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as a reserve for use in a year in which the Fund falls below the amount available in the previous year. Such reserve may not exceed $20,000,000.

"(C) The reserved portion referred to in subparagraph (A) is $6,200,000 in each of fiscal years 1992 through 1995 and $3,000,000 in each fiscal year thereafter.".

(2) CONFORMING CROSS-REFERENCE.—Section 1402(g)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(g)(1)) is amended by striking "(iv)" and inserting "(i)" in lieu thereof.

(c) AMOUNTS AWARDED AND UNSPENT.—Section 1402(e) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(e)) is amended—

(1) in paragraph (1)—

(A) by striking "(1) Except as provided in paragraph (2), any" and inserting "Any";

(B) by striking "succeeding fiscal year" and inserting "two succeeding fiscal years";

(C) by striking "which year" and inserting "which period"; and

(D) by striking "the general fund of the Treasury" and inserting "the Fund"; and

(2) by striking paragraph (2).

SEC. 502. PERCENTAGE CHANGE IN CRIME VICTIM COMPENSATION FORMULA.

Section 1403(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)(1)) is amended by striking "40 percent" and inserting "45 percent".

SEC. 503. ADMINISTRATIVE COSTS FOR CRIME VICTIM COMPENSATION.

(a) CREATION OF EXCEPTION.—The final sentence of section 1403(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)(1)) is amended by striking "A grant" and inserting "Except as provided in paragraph (3), a grant".

(b) REQUIREMENTS OF EXCEPTION.—Section 1403(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)) is amended by adding at the end the following:

"(3) The Director may permit not more than 5 percent of a grant made under this section to be used for the administration of the crime victim compensation program receiving the grant.".

SEC. 504. RELATIONSHIP OF CRIME VICTIM COMPENSATION TO CERTAIN FEDERAL PROGRAMS.

Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by adding at the end the following:

"(e) Notwithstanding any other provision of law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay, then—

"(1) such crime victim compensation program shall not pay that compensation; and

"(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.".

SEC. 505. USE OF UNSPENT SECTION 1403 MONEY.

Section 1404(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)(1)) is amended—

(1) by striking "or for the purpose of grants under section 1403 but not used for that purpose,"; and

(2) by adding at the end the following:

"The Director, in the Director's discretion, may use amounts made available under section 1402(d)(2) for the purposes of grants under section 1403 but not used for that purpose, for grants under this subsection, either in the year such amounts are not so used, or the next year.".

SEC. 506. UNDERSERVED VICTIMS.

Section 1404(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)) is amended by adding at the end the following:

"(6) In making the certification required by paragraph (2)(B), the chief executive shall give particular attention to children who are victims of violent street crime.".

SEC. 507. GRANTS FOR DEMONSTRATION PROJECTS.

Section 1404(c)(1)(A) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(1)(A)) is amended by inserting "demonstration projects and" before "training".

SEC. 508. ADMINISTRATIVE COSTS FOR CRIME VICTIM ASSISTANCE.

(a) Section 1404(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(A)) is amended—

(1) in paragraph (1) by inserting ", except as provided in paragraph (7)" after "programs", and

(2) by adding after the paragraph added by section 506 of this Act the following:

"(7) The Director may permit not more than 5 percent of sums provided under this subsection to be used by the chief executive of each State for the administration of such sums.".

SEC. 509. CHANGE OF DUE DATE FOR REQUIRED REPORT.

Section 1407(g) of the Victims of Crime Act of 1984 (42 U.S.C. 10604(g)) is amended—

(1) by striking "December 31, 1990", and inserting "May 31, 1993"; and

(2) by striking "December 31" the second place it appears and inserting "May 31" in lieu thereof.

SEC. 510. MAINTENANCE OF EFFORT.

Section 1407 of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by adding at the end the following:

"(h) Each entity receiving sums made available under this Act for administrative purposes shall certify that such sums will not be used to supplant State or local funds, but will be used to increase the amount of such funds that would, in the absence of Federal funds, be made available for these purposes.".

SEC. 511. DELAYED EFFECTIVE DATE FOR CERTAIN PROVISIONS.

Sections 102(b), 103, 104, and 109, and the amendments made by those sections, shall take effect with respect to the first fiscal year that begins after the date of the enactment of this Act for which the Director certifies there are sufficient sums in the Victim Assistance Fund and the Victims Compensation Fund, as of the end of the previous fiscal year, to make the allocations required under such sections and amendments without reducing the then current funding levels of programs supported by such Funds.

Subtitle B—Restitution

SEC. 521. RESTITUTION AMENDMENTS.

(a) EXPANSION OF RESTITUTION.—Section 3663(b) of title 18, United States Code, is amended by striking "and" following the semicolon in paragraph (3), redesignating paragraph (4) as paragraph (5), and adding after paragraph (3) the following:

"(4) in any case, reimburse the victim for necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and".

(b) SUSPENSION OF FEDERAL BENEFITS.—Subsections (g) and (h) of section 3663 of title 18, United States Code, are redesignated as subsections (h) and (i), respectively, and a new subsection (g) is inserted as follows:

"(g)(1) If the defendant is delinquent in making restitution in accordance with any schedule of payments established under subsection (f)(1) of this section, or any requirement of immediate payment under subsection (f)(3) of this section, the court may, after a hearing, suspend the defendant's eligibility for all Federal benefits until such time as the defendant demonstrates to the court good-faith efforts to return to such schedule.

"(2) For purposes of this subsection—

"(A) the term 'Federal benefits'—

"(i) means any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

"(ii) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

"(B) the term 'veterans benefit' means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.".

(c) RESTITUTION FOR VICTIMS OF SEX OFFENSES.—Section 3663(b)(2) of title 18, United States Code, is amended by inserting "or an offense under chapter 109A or chapter 110 of this title" after "an offense resulting in bodily injury to a victim".

Subtitle C—HIV Testing

SEC. 531. HIV TESTING AND PENALTY ENHANCEMENT IN SEXUAL ABUSE CASES.

(a) Chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new section:

"§2247. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty

"(a) TESTING AT TIME OF PRETRIAL RELEASE DETERMINATION.—In a case in which a person is charged with an offense under this chapter, a judicial officer issuing an order pursuant to section 3142(a) of this title shall include in the order a requirement that a test for the human immunodeficiency virus be performed upon the person, and that followup tests for the virus be performed 6 months and 12 months following the date of the initial test, unless the judicial officer determines that the conduct of the person created no risk of transmission of the virus to the victim, and so states in the order. The order shall direct that the initial test be performed within 24 hours, or as soon thereafter as feasible. The person shall not be released from custody until the test is performed.

"(b) TESTING AT LATER TIME.—If a person charged with an offense under this chapter was not tested for the human immunodeficiency virus pursuant to subsection (a), the court may at a later time direct that such a test be performed upon the person, and that follow-up tests be performed 6 months and 12 months following the date of the initial test, if it appears to the court that the conduct of the person may have risked transmission of the virus to the victim. A testing requirement under this subsection may be imposed at any time while the charge is pending, or following conviction at any time prior to the person's completion of service of the sentence.

"(c) TERMINATION OF TESTING REQUIREMENT.—A requirement of follow-up testing imposed under this section shall be canceled if any test is positive for the virus or the person obtains an acquittal on, or dismissal of, all charges under this chapter.

"(d) DISCLOSURE OF TEST RESULTS.—The results of any test for the human immunodeficiency virus performed pursuant to an order under this section shall be provided to the judicial officer or court. The judicial officer or court shall ensure that the results are disclosed to the victim (or to the victim's parent or legal guardian, as appropriate), the attorney for the Government, and the person tested.

"(e) EFFECT ON PENALTY.—The United States Sentencing Commission shall amend existing guidelines for sentences for offenses under this chapter to enhance the sentence if the offender

knew or had reason to know that he was infected with the human immunodeficiency virus, except where the offender did not engage or attempt to engage in conduct creating a risk of transmission of the virus to the victim.".

(b) CLERICAL AMENDMENT.—The section analysis for chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new item:

"2247. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty.".

SEC. 532. PAYMENT OF COST OF HIV TESTING FOR VICTIM.

Section 503(c)(7) of the Victims' Rights and Restitution Act of 1990 is amended by inserting before the period at the end thereof the following: ", and the cost of up to two tests of the victim for the human immunodeficiency virus during the 12 months following the assault".

TITLE VI—CERTAINTY OF PUNISHMENT FOR YOUNG OFFENDERS

SEC. 601. SHORT TITLE.

This title may be cited as the "Certainty of Punishment for Young Offenders Act of 1991".

SEC. 602. CERTAINTY OF PUNISHMENT FOR YOUNG OFFENDERS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 402 of this Act, is amended—

(1) by redesignating part S as part T;

(2) by redesignating section 1901 as section 2001; and

(3) by inserting after part R the following:

"PART S—ALTERNATIVE PUNISHMENTS FOR YOUNG OFFENDERS

"SEC. 1901. GRANT AUTHORIZATION.

"(a) IN GENERAL.—The Director of the Bureau of Justice Assistance (referred to in this part as the 'Director') may make grants under this part to States, for the use by States and units of local government in the States, for the purpose of developing alternative methods of punishment for young offenders to traditional forms of incarceration and probation.

"(b) ALTERNATIVE METHODS.—The alternative methods of punishment referred to in subsection (a) should ensure certainty of punishment for young offenders and promote reduced recidivism, crime prevention, and assistance to victims, particularly for young offenders who can be punished more effectively in an environment other than a traditional correctional facility, including—

"(1) alternative sanctions that create accountability and certainty of punishment for young offenders;

"(2) boot camp prison programs;

"(3) technical training and support for the implementation and maintenance of State and local restitution programs for young offenders;

"(4) innovative projects;

"(5) correctional options, such as community-based incarceration, weekend incarceration, and electric monitoring of offenders;

"(6) community service programs that provide work service placement for young offenders at nonprofit, private organizations and community organizations;

"(7) demonstration restitution projects that are evaluated for effectiveness; and

"(8) innovative methods that address the problems of young offenders convicted of serious substance abuse and gang-related offenses, including technical assistance and training to counsel and treat such offenders.

"SEC. 1902. STATE APPLICATIONS.

"(a) IN GENERAL.—(1) To request a grant under this part, the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(2) Such application shall include assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

"(b) STATE OFFICE.—The office designated under section 507 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3757)—

"(1) shall prepare the application as required under subsection (a); and

"(2) shall administer grant funds received under this part, including, review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

"SEC. 1903. REVIEW OF STATE APPLICATIONS.

"(a) IN GENERAL.—The Bureau shall make a grant under section 1901(a) to carry out the projects described in the application submitted by such applicant under section 1902(a) upon determining that—

"(1) the application is consistent with the requirements of this part; and

"(2) before the approval of the application, the Bureau has made an affirmative finding in writing that the proposed project has been reviewed in accordance with this part.

"(b) APPROVAL.—Each application submitted under section 1902 shall be considered approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

"(c) RESTRICTION.—Grant funds received under this part shall not be used for land acquisition or construction projects, other than alternative facilities described in section 1901(b) for young offenders.

"(d) DISAPPROVAL NOTICE AND RECONSIDERATION.—The Bureau shall not disapprove any application without first affording the applicant reasonable notice and an opportunity for reconsideration.

"SEC. 1904. LOCAL APPLICATIONS.

"(a) IN GENERAL.—(1) To request funds under this part from a State, the chief executive of a unit of local government shall submit an application to the office designated under section 1902(b).

"(2) Such application shall be considered approved, in whole or in part, by the State not later than 45 days after such application is first received unless the State informs the applicant in writing of specific reasons for disapproval.

"(3) The State shall not disapprove any application submitted to the State without first affording the applicant reasonable notice and an opportunity for reconsideration.

"(4) If such application is approved, the unit of local government is eligible to receive such funds.

"(b) DISTRIBUTION TO UNITS OF LOCAL GOVERNMENT.—A State that receives funds under section 1901 in a fiscal year shall make such funds available to units of local government with an application that has been submitted and approved by the State within 45 days after the Bureau has approved the application submitted by the State and has made funds available to the State. The Director shall have the authority to waive the 45-day requirement in this section upon a finding that the State is unable to satisfy such requirement under State statutes.

"SEC. 1905. ALLOCATION AND DISTRIBUTION OF FUNDS.

"(a) STATE DISTRIBUTION.—Of the total amount appropriated under this part in any fiscal year—

"(1) 0.4 percent shall be allocated to each of the participating States; and

"(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each of the participating States an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the number of young offenders of such State bears to the number of young offenders in all the participating States.

"(b) LOCAL DISTRIBUTION.—(1) A State that receives funds under this part in a fiscal year shall distribute to units of local government in such State for the purposes specified under section 1901 that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

"(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by such State for purposes specified under section 1901.

"(3) If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for such fiscal year will not be used by such State or that a State is not eligible to receive funds under section 1901, the Director shall award such funds to units of local government in such State giving priority to the units of local government that the Director considers to have the greatest need.

"(c) FEDERAL SHARE.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1902(a) for the fiscal year for which the projects receive assistance under this part.

"SEC. 1906. EVALUATION.

"(a) IN GENERAL.—(1) Each State and local unit of government that receives a grant under this part shall submit to the Director an evaluation not later than March 1 of each year in accordance with guidelines issued by the Director and in consultation with the National Institute of Justice.

"(2) The Director may waive the requirement specified in subsection (a) if the Director determines that such evaluation is not warranted in the case of the State or unit of local government involved.

"(b) DISTRIBUTION.—The Director shall make available to the public on a timely basis evaluations received under subsection (a).

"(c) ADMINISTRATIVE COSTS.—A State and local unit of government may use not more than 5 percent of funds it receives under this part to develop an evaluation program under this section.".

(b) CONFORMING AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 402 of this Act, is amended by striking the matter relating to part S and inserting the following:

"PART S—ALTERNATIVE PUNISHMENTS FOR YOUNG OFFENDERS

"Sec. 1901. Grant authorization.
"Sec. 1902. State applications.
"Sec. 1903. Review of State applications.
"Sec. 1904. Local applications.
"Sec. 1905. Allocation and distribution of funds.
"Sec. 1906. Evaluation.

"PART T—TRANSITION; EFFECTIVE DATE; REPEALER

"Sec. 2001. Continuation of rules, authorities, and proceedings.".

SEC. 603. DEFINITION.

Section 901(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791(a)),

as amended by section 303 of this Act, is amended by adding after paragraph (24) the following:

"(25) The term 'young offender' means an individual 28 years of age or younger.".

SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended by adding after paragraph (12) the following:

"(13) There are authorized to be appropriated $200,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the projects under part S.".

TITLE VII—DRUG TESTING OF ARRESTED INDIVIDUALS

SEC. 701. DRUG TESTING UPON ARREST.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 602 of this Act, is amended—

(1) by redesignating part T as part U;

(2) by redesignating section 2001 as section 2101; and

(3) by inserting after part S the following:

"PART T—GRANTS FOR DRUG TESTING UPON ARREST

"SEC. 2001. GRANT AUTHORIZATION.

The Director of the Bureau of Justice Assistance is authorized to make grants under this part to States, for the use by States and units of local government in the States, for the purpose of developing, implementing, or continuing a drug testing project when individuals are arrested and during the pretrial period.

"SEC. 2002. STATE APPLICATIONS.

"(a) GENERAL REQUIREMENTS.—To request a grant under this part the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(b) MANDATORY ASSURANCES.—To be eligible to receive funds under this part, a State must agree to develop or maintain programs of urinalysis or similar drug testing of individuals upon arrest and on a regular basis pending trial for the purpose of making pretrial detention decisions.

"(c) CENTRAL OFFICE.—The office designated under section 507 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.)—

"(1) shall prepare the application as required under subsection (a); and

"(2) shall administer grant funds received under this part, including, review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

"SEC. 2003. LOCAL APPLICATIONS.

"(a) IN GENERAL.—(1) To request funds under this part from a State, the chief executive of a unit of local government shall submit an application to the office designated under section 2002(c).

"(2) Such application shall be considered approved, in whole or in part, by the State not later than 90 days after such application is first received unless the State informs the applicant in writing of specific reasons for disapproval.

"(3) The State shall not disapprove any application submitted to the State without first affording the applicant reasonable notice and an opportunity for reconsideration.

"(4) If such application is approved, the unit of local government is eligible to receive such funds.

"(b) DISTRIBUTION TO UNITS OF LOCAL GOVERNMENT.—A State that receives funds under section 2001 in a fiscal year shall make such funds available to units of local government with an application that has been submitted and approved by the State within 90 days after the Bureau has approved the application submitted by the State and has made funds available to the State. The Director shall have the authority to waive the 90-day requirement in this section upon a finding that the State is unable to satisfy such requirement under State statutes.

"SEC. 2004. ALLOCATION AND DISTRIBUTION OF FUNDS.

"(a) STATE DISTRIBUTION.—Of the total amount appropriated under this part in any fiscal year—

"(1) 0.4 percent shall be allocated to each of the participating States; and

"(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each of the participating States an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the number of individuals arrested in such State bears to the number of individuals arrested in all the participating States.

"(b) LOCAL DISTRIBUTION.—(1) A State that receives funds under this part in a fiscal year shall distribute to units of local government in such State that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

"(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by such State for purposes specified in such State's application.

"(3) If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for such fiscal year will not be used by such State or that a State is not eligible to receive funds under section 2001, the Director shall award such funds to units of local government in such State giving priority to the units of local government that the Director considers to have the greatest need.

"(c) FEDERAL SHARE.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 2002 for the fiscal year for which the projects receive assistance under this part.

"(d) GEOGRAPHIC DISTRIBUTION.—The Director shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

"SEC. 2005. REPORT.

"A State or unit of local government that receives funds under this part shall submit to the Director a report in March of each fiscal year that funds are received under this part regarding the effectiveness of the drug testing project.".

(b) CONFORMING AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 602 of this Act, is amended by striking the matter relating to part T and inserting the following:

"Part T—Drug Testing for Individuals Arrested
"Sec. 2001. Grant authorization.
"Sec. 2002. State applications.
"Sec. 2003. Local applications.
"Sec. 2004. Allocation and distribution of funds.
"Sec. 2005. Report.
"Part U—Transition; Effective Date; Repealer
"Sec. 2101. Continuation of rules, authorities, and proceedings.".

SEC. 702. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793), as amended by section 604 of this Act, is amended by adding after paragraph (13) the following:

"(14) There are authorized to be appropriated $100,000,000 for the fiscal years 1992, 1993, and 1994 to carry out the projects under part T.".

TITLE VIII—DRUG EMERGENCY AREAS ACT OF 1991

SEC. 801. SHORT TITLE.

This title may be cited as the "Drug Emergency Areas Act of 1991".

SEC. 802. DRUG EMERGENCY AREAS.

Subsection (c) of section 1005 of the National Narcotics Leadership Act of 1988 is amended to read as follows:

"(c) DECLARATION OF DRUG EMERGENCY AREAS.—

"(1) PRESIDENTIAL DECLARATION.—(A) In the event that a major drug-related emergency exists throughout a State or a part of a State, the President may, in consultation with the Director and other appropriate officials, declare such State or part of a State to be a drug emergency area and may take any and all necessary actions authorized by this subsection or otherwise authorized by law.

"(B) For the purposes of this subsection, the term 'major drug-related emergency' means any occasion or instance in which drug trafficking, drug abuse, or drug-related violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

"(2) PROCEDURE FOR DECLARATION.—(A) All requests for a declaration by the President designating an area to be a drug emergency area shall be made, in writing, by the Governor or chief executive officer of any affected State or local government, respectively, and shall be forwarded to the President through the Director in such form as the Director may by regulation require. One or more cities, counties, or States may submit a joint request for designation as a drug emergency area under this subsection.

"(B) Any request made under subparagraph (A) of this paragraph shall be based on a written finding that the major drug-related emergency is of such severity and magnitude, that Federal assistance is necessary to assure an effective response to save lives, and to protect property and public health and safety.

"(C) The President shall not limit declarations made under this subsection to highly-populated centers of drug trafficking, drug use or drug-related violence, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

"(D) As part of a request for a declaration by the President under this subsection, and as a prerequisite to Federal drug emergency assistance under this subsection, the Governor(s) or chief executive officer(s) shall—

"(i) take appropriate action under State or local law and furnish such information on the nature and amount of State and local resources which have been or will be committed to alleviating the major drug-related emergency;

"(ii) certify that State and local government obligations and expenditures will comply with all applicable cost-sharing requirements of this subsection; and

"(iii) submit a detailed plan outlining that government's short- and long-term plans to respond to the major drug-related emergency, specifying the types and levels of Federal assistance requested, and including explicit goals (where possible quantitative goals) and timetables and shall specify how Federal assistance provided under this subsection is intended to achieve such goals.

"(E) The Director shall review any request submitted pursuant to this subsection and for-

ward the application, along with a recommendation to the President on whether to approve or disapprove the application, within 30 days after receiving such application. Based on the application and the recommendation of the Director, the President may declare an area to be a drug emergency area under this subsection.

"(3) FEDERAL MONETARY ASSISTANCE.—(A) The President is authorized to make grants to State or local governments of up to, in the aggregate for any single major drug-related emergency, $50,000,000.

"(B) The Federal share of assistance under this section shall not be greater than 75 percent of the costs necessary to implement the short- and long-term plan outlined in paragraph (2)(D)(iii).

"(C) Federal assistance under this subsection shall not be provided to a drug disaster area for more than 1 year. In any case where Federal assistance is provided under this Act, the Governor(s) or chief executive officer(s) may apply to the President, through the Director, for an extension of assistance beyond 1 year. The President, based on the recommendation of the Director, may extend the provision of Federal assistance for not more than an additional 180 days.

"(D) Any State or local government receiving Federal assistance under this subsection shall balance the allocation of such assistance evenly between drug supply reduction and drug demand reduction efforts, unless State or local conditions dictate otherwise.

"(4) NONMONETARY ASSISTANCE.—In addition to the assistance provided under paragraph (3), the President may—

"(A) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

"(B) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

"(5) ISSUANCE OF IMPLEMENTING REGULATIONS.—Not later than 90 days after the date of the enactment of this subsection, the Director shall issue regulations to implement this subsection, including such regulations as may be necessary relating to applications for Federal assistance and the provision of Federal monetary and nonmonetary assistance.

"(6) AUDIT BY COMPTROLLER GENERAL.—Assistance under this subsection shall be subject to annual audit by the Comptroller General.

"(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 1992, 1993, and 1994, $300,000,000 to carry out this subsection.".

TITLE IX—COERCED CONFESSIONS

SEC. 901. COERCED CONFESSIONS.

The admission into evidence of a coerced confession shall not be considered harmless error. For the purposes of this section, a confession is coerced if it is elicited in violation of the fifth or fourteenth articles of amendment to the Constitution of the United States.

TITLE X—DNA IDENTIFICATION

SEC. 1001. SHORT TITLE.

This title may be cited as the "DNA Identification Act of 1991".

SEC. 1002. FUNDING TO IMPROVE THE QUALITY AND AVAILABILITY OF DNA ANALYSES FOR LAW ENFORCEMENT IDENTIFICATION PURPOSES.

(a) Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended—

(1) in paragraph (20) by striking "and" at the end,

(2) in paragraph (21) by striking the period at the end and inserting "; and", and

(3) by adding at the end the following:

"(22) developing or improving in a forensic laboratory a capability to analyze deoxyribonucleic acid (hereinafter in this title referred to as 'DNA') for identification purposes.".

(b) Section 503(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)) is amended by adding at the end thereof the following new paragraph:

"(12) If any part of a grant made under this part is to be used to develop or improve a DNA analysis capability in a forensic laboratory, a certification that—

"(A) DNA analyses performed at such laboratory will satisfy or exceed then current standards for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 1003 of the DNA Identification Act of 1991;

"(B) DNA samples obtained by, and DNA analyses performed at, such laboratory will be accessible only—

"(i) to criminal justice agencies for law enforcement identification purposes;

"(ii) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

"(iii) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes; and

"(C) such laboratory, and each analyst performing DNA analyses at such laboratory, will undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 1003 of the DNA Identification Act of 1991.".

(c) For each of the fiscal years 1992 through 1996, there are authorized to be appropriated $10 million for grants to the states for DNA analysis.

SEC. 1003. QUALITY ASSURANCE AND PROFICIENCY TESTING STANDARDS.

(a) PUBLICATION OF QUALITY ASSURANCE AND PROFICIENCY TESTING STANDARDS.—(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall appoint an advisory board on DNA quality assurance methods. The Director shall appoint members of the board from among nominations proposed by the head of the National Academy of Sciences and professional societies of crime laboratory directors. The advisory board shall include as members scientists from state and local forensic laboratories, molecular geneticists and population geneticists not affiliated with a forensic laboratory, and a representative from the National Institute of Standards and Technology. The advisory board shall develop, and if appropriate, periodically revise, recommended standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(2) The Director of the Federal Bureau of Investigation, after taking into consideration such recommended standards, shall issue (and revise from time to time) standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(3) The standards described in paragraphs (1) and (2) shall specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

(4) Until such time as the advisory board has made recommendations to the Director of the Federal Bureau of Investigation and the Director has acted upon those recommendations, the quality assurance guidelines adopted by the technical working group on DNA analysis methods shall be deemed the Director's standards for purposes of this section.

(b) ADMINISTRATION OF THE ADVISORY BOARD.—For administrative purposes, the advisory board appointed under subsection (a) shall be considered an advisory board to the Director of the Federal Bureau of Investigation. Section 14 of the Federal Advisory Committee Act (5. U.S.C. App.) shall not apply with respect to the advisory board appointed under subsection (a). The board shall cease to exist on the date 5 years after the initial appointments are made to the board, unless the existence of the board is extended by the Director of the Federal Bureau of Investigation.

SEC. 1004. INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION

(a) The Director of the Federal Bureau of Investigation may establish an index of—

(1) DNA identification records of persons convicted of crimes;

(2) analyses of DNA samples recovered from crime scenes; and

(3) analyses of DNA samples recovered from unidentified human remains.

(b) Such index may include only information on DNA identification records and DNA analyses that are—

(1) based on analyses performed in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 1003 of the DNA Identification Act of 1991;

(2) prepared by laboratories, and DNA analysts, that undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 1003 of the DNA Identification Act of 1991; and

(3) maintained by Federal, State, and local criminal justice agencies pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(C) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) The exchange of records authorized by this section is subject to cancellation if the quality control and privacy requirements described in subsection (b) of this section are not met.

SEC. 1005. FEDERAL BUREAU OF INVESTIGATION

(a) PROFICIENCY TESTING REQUIREMENTS.—

(1) GENERALLY.—Personnel at the Federal Bureau of Investigation who perform DNA analyses shall undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 1003(b). Within one year of the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall arrange for periodic blind external tests to determine the proficiency of DNA analysis performed at the Federal Bureau of Investigation laboratory. As used in this paragraph, the term "blind external test" means a test that is presented to the laboratory through a second agency and appears to the analysts to involve routine evidence.

(2) REPORT.—For five years after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committees on the Judiciary of the House and Senate an annual report on the results of each of the tests referred to in paragraph (1).

(b) PRIVACY PROTECTION STANDARDS.—

(1) GENERALLY.—Except as provided in paragraph (2), the results of DNA tests performed for a Federal law enforcement agency for law enforcement purposes may be disclosed only—

(A) to criminal justice agencies for law enforcement identification purposes; or

(B) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged.

(2) EXCEPTION.—If personally identifiable information is removed, test results may be disclosed for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) CRIMINAL PENALTY.—(1) Whoever—

(A) by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency; and

(B) willfully discloses such information in any manner to any person or agency not entitled to receive it;

shall be fined not more than $100,000.

(2) Whoever, without authorization, willfully obtains DNA samples or individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency shall be fined not more than $100,000.

SEC. 1006. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Federal Bureau of Investigation $2,000,000 for each of fiscal years 1992 through 1996 to carry out sections 1003, 1004, and 1005 of this Act.

TITLE XI—HABEAS CORPUS

SEC. 1101. SHORT TITLE.

This title may be cited as the "Habeas Corpus Reform Act of 1991".

SEC. 1102. STATUTE OF LIMITATIONS.

Section 2254 of title 28, United States Code, is amended by adding at the end the following:

"(g)(1) In the case of an applicant under sentence of death, any application for habeas corpus relief under this section must be filed in the appropriate district court not later than one year after—

"(A) the date of denial of a writ of certiorari, if a petition for a writ of certiorari to the highest court of the State on direct appeal or unitary review of the conviction and sentence is filed, within the time limits established by law, in the Supreme Court;

"(B) the date of issuance of the mandate of the highest court of the State on direct appeal or unitary review of the conviction and sentence, if a petition for a writ of certiorari is not filed, within the time limits established by law, in the Supreme Court; or

"(C) the date of issuance of the mandate of the Supreme Court, if on a petition for a writ of certiorari the Supreme Court grants the writ, and disposes of the case in a manner that leaves the capital sentence undisturbed.

"(2) The time requirements established by this section shall be tolled—

"(A) during any period in which the State has failed to provide counsel as required in section 2257 of this chapter;

"(B) during the period from the date the applicant files an application for State postconviction relief until final disposition of the application by the State appellate courts, if all filing deadlines are met; and

"(C) during an additional period not to exceed 90 days, if counsel moves for an extension in the district court that would have jurisdiction of a habeas corpus application and makes a showing of good cause.".

SEC. 1103. STAYS OF EXECUTION IN CAPITAL CASES.

Section 2251 of title 28, United States Code, is amended—

(1) by inserting "(a)(1)" before the first paragraph;

(2) by inserting "(2)" before the second paragraph; and

(3) by adding at the end the following:

"(b) In the case of an individual under sentence of death, a warrant or order setting an execution shall be stayed upon application to any court that would have jurisdiction over an application for habeas corpus under this chapter. The stay shall be contingent upon reasonable diligence by the individual in pursuing relief with respect to such sentence and shall expire if—

"(1) the individual fails to apply for relief under this chapter within the time requirements established by section 2254(g) of this chapter;

"(2) upon completion of district court and court of appeals review under section 2254 of this chapter, the application is denied and—

"(A) the time for filing a petition for a writ of certiorari expires before a petition is filed;

"(B) a timely petition for a writ of certiorari is filed and the Supreme Court denies the petition; or

"(C) a timely petition for certiorari is filed and, upon consideration of the case, the Supreme Court disposes of it in a manner that leaves the capital sentence undisturbed; or

"(3) before a court of competent jurisdiction, in the presence of counsel qualified under section 2257 of this chapter and after being advised of the consequences of the decision, an individual waives the right to pursue relief under this chapter.".

SEC. 1104. LAW APPLICABLE.

(a) IN GENERAL.—Chapter 153 of title 28, United States Code, is amended by adding at the end the following:

"§2256. Law applicable

"In an action filed under this chapter, the court shall not apply a new rule. For purposes of this section, the term 'new rule' means a clear break from precedent, announced by the Supreme Court of the United States, that could not reasonably have been anticipated at the time the claimant's sentence became final in State court.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 153 of title 28, United States Code, is amended by adding at the end the following:

"2256. Law applicable.".

SEC. 1105. COUNSEL IN CAPITAL CASES; STATE COURT.

(a) IN GENERAL.—Chapter 153 of title 28, United States Code, is amended by adding at the end the following:

"§2257. Counsel in capital cases; State court

"(a) A State in which capital punishment may be imposed shall provide legal services to—

"(1) indigents charged with offenses for which capital punishment is sought;

"(2) indigents who have been sentenced to death and who seek appellate, collateral, or unitary review in State court; and

"(3) indigents who have been sentenced to death and who seek certiorari review of State court judgments in the United States Supreme Court.

"(b) The State shall establish an appointing authority, which shall be—

"(1) a statewide defender organization;

"(2) a resource center; or

"(3) a committee appointed by the highest State court, comprised of members of the bar with substantial experience in, or commitment to, criminal justice.

"(c) The appointing authority shall—

"(1) publish a roster of attorneys qualified to be appointed in capital cases, procedures by which attorneys are appointed, and standards governing qualifications and performance of counsel, which shall include—

"(A) knowledge and understanding of pertinent legal authorities regarding issues in capital cases;

"(B) skills in the conduct of negotiations and litigation in capital cases, the investigation of capital cases and the psychiatric history and current condition of capital clients, and the preparation and writing of legal papers in capital cases;

"(C) in the case of counsel appointed for the trial or sentencing stages, 5 years of experience in the representation of criminal clients in felony cases and experience in at least one case in which the death penalty was sought; and

"(D) in the case of counsel appointed for the appellate, postconviction, or unitary review stages, 5 years of experience in the representation of criminal clients in felony cases at the appellate, postconviction, unitary review, or certiorari stages and experience in at least one case in which the client had been sentenced to death;

"(2) monitor the performance of attorneys appointed and delete from the roster any attorney who fails to meet qualification and performance standards; and

"(3) appoint a defense team, which shall include at least 2 attorneys, to represent a client at the relevant stage of proceedings, promptly upon receiving notice of the need for the appointment from the relevant State court.

"(d) An attorney who is not listed on the roster shall be appointed only on the request of the client concerned and in circumstances in which the attorney requested is able to provide the client with quality legal representation.

"(e) No counsel appointed pursuant to this section to represent a prisoner in State postconviction proceedings shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made, unless the prisoner and counsel expressly request continued representation.

"(f) The ineffectiveness or incompetence of counsel appointed pursuant to this section during State or Federal postconviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 of this title. This limitation shall not preclude the appointment of different counsel at any phase of State or Federal postconviction proceedings.

"(g) Upon receipt of notice from the appointing authority that an individual entitled to the appointment of counsel under this section has declined to accept such an appointment, the court requesting the appointment shall conduct, or cause to be conducted, a hearing, at which the individual and counsel proposed to be appointed under this section shall be present, to determine the individual's competency to decline the appointment, and whether the individual has knowingly and intelligently declined it.

"(h) Attorneys appointed from the private bar shall be compensated on an hourly basis and at a reasonable rate in light of the attorney's qualifications and experience and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases and shall be reimbursed for expenses reasonably incurred in representing the client, including the costs of law clerks, paralegals, investigators, experts, or other support services.

"(i) Support services for staff attorneys of a defender organization or resource center shall be equal to the services listed in subsection (h).

"(j) If a State fails to provide counsel in a proceeding specified in subsection (a), or counsel appointed for such a proceeding fails substantially to meet the qualification standards specified in subsections (c)(1) or (d), or the performance standards established by the appointing authority, the court, in an action under this chapter, shall neither presume findings of fact made in such proceeding to be correct nor decline to consider a claim on the ground that it was not raised in such proceeding at the time or in the manner prescribed by State law.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 153 of title 28, United States Code, is amended by adding at the end the following:

"2257. Counsel in capital cases; State court.".

SEC. 1106. SUCCESSIVE FEDERAL PETITIONS.

Section 2244(b) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(b)";

(2) by inserting ", in the case of an applicant not under sentence of death," after "When"; and

(3) by adding at the end the following:

"(2) In the case of an applicant under sentence of death, a claim presented in a second or successive application, that was not presented in a prior application under this chapter, shall be dismissed unless—

"(A) the applicant shows that—

"(i) the basis of the claim could not have been discovered by the exercise of reasonable diligence before the applicant filed the prior application; or

"(ii) the failure to raise the claim in the prior application was due to action by State officials in violation of the Constitution of the United States; and

"(B) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the applicant's guilt of the offense or offenses for which the capital sentence was imposed, or in the validity of that sentence under Federal law.".

SEC. 1107. CERTIFICATES OF PROBABLE CAUSE.

The third paragraph of section 2253, title 28, United States Code, is amended to read as follows:

"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause. However, an applicant under sentence of death shall have a right of appeal without a certification of probable cause, except after denial of a second or successive application.".

TITLE XII—PROVISIONS RELATING TO POLICE OFFICERS

Subtitle A—Police Accountability

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the "Police Accountability Act of 1991".

SEC. 1202. PATTERN OR PRACTICE CASES.

(a) CAUSE OF ACTION.—

(1) UNLAWFUL CONDUCT.—It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers that deprives persons of rights, privileges, or immunities, secured or protected by the Constitution or laws of the United States.

(2) CIVIL ACTION BY ATTORNEY GENERAL.—Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

(3) CIVIL ACTION BY INJURED PERSON.—Any person injured by a violation of paragraph (1) may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice. In any civil action under this paragraph, the court may allow the prevailing plaintiff reasonable attorneys' fees and other litigation fees and costs (including expert's fees). A governmental body shall be liable for such fees and costs to the same extent as a private individual.

(b) DEFINITION.—As used in this section, the term "law enforcement officer" means an official empowered by law to conduct investigations of, to make arrests for, or to detain individuals suspected or convicted of, criminal offenses.

SEC. 1203. DATA ON USE OF EXCESSIVE FORCE.

(a) ATTORNEY GENERAL TO COLLECT.—The Attorney General shall, through the victimization surveys conducted by the Bureau of Justice Statistics, acquire data about the use of excessive force by law enforcement officers.

(b) LIMITATION ON USE OF DATA.—Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of the victim or any law enforcement officer.

(c) ANNUAL SUMMARY.—The Attorney General shall publish an annual summary of the data acquired under this section.

Subtitle B—Retired Public Safety Officer Death Benefit

SEC. 1211. RETIRED PUBLIC SAFETY OFFICER DEATH BENEFIT.

(a) PAYMENTS.—Section 1201 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(1) in subsection (a) by inserting after "line of duty" the following "or a retired public safety officer has died as the direct and proximate result of a personal injury sustained while responding to a fire, rescue, or police emergency";

(2) in subsection (b) by inserting after "line of duty" the following "or a retired public safety officer has become permanently and totally disabled as the direct result of a catastrophic injury sustained while responding to a fire, rescue, or police emergency"; and

(3) in subsections (c), (i), and (j) by inserting after "public safety officer" every place it occurs the following "or a retired public safety officer".

(b) LIMITATIONS.—Section 1202 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(1) in paragraph (1) by striking "the public safety officer or by such officer's intention" and inserting "the public safety officer or the retired public safety officer who had the intention";

(2) in paragraph (2) by striking "the public safety officer" and inserting "the public safety officer or the retired public safety officer"; and

(3) in paragraph (3) by striking "the public safety officer" and inserting "the public safety officer or the retired public safety officer".

(c) NATIONAL PROGRAM.—Section 1203 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting before the period "or retired public safety officers who have died while responding to a fire, rescue, or police emergency".

(d) DEFINITIONS.—Section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(1) by striking "and" after paragraph (6);

(2) by inserting "; and" at the end of paragraph (7); and

(3) by adding at the end the following:

"(8) 'retired public safety officer' means a former public safety officer, as defined in paragraph (7), who has served a sufficient period of time in such capacity to become vested in the retirement system of a public agency with which the officer was employed and who retired from such agency in good standing.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to death or injuries occurring after the date of the enactment of this section.

Subtitle C—Study on Police Officers' Rights

SEC. 1221. STUDY ON POLICE OFFICERS' RIGHTS.

The Attorney General, through the National Institute of Justice, shall conduct a study of the procedures followed in internal, noncriminal investigations of State and local law enforcement officers to determine if such investigations are conducted fairly and effectively. The study shall examine the adequacy of the rights available to law enforcement officers and members of the public in cases involving the performance of a law enforcement officer, including—

(1) notice;
(2) conduct of questioning;
(3) counsel;
(4) hearings;
(5) appeal; and
(6) sanctions.

Not later than one year after the date of enactment of this Act, the Attorney General shall submit to the Congress a report on the results of the study, along with findings and recommendations on strategies to guarantee fair and effective internal affairs investigations.

Subtitle D—Law Enforcement Scholarships

SECTION 1231. SHORT TITLE.

This subtitle may be cited as the "Law Enforcement Scholarship Act of 1991".

SEC. 1232. STATEMENT OF PURPOSE.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 791 of this Act, is amended—

(1) by redesignating part U as part V;

(2) by redesignating section 2101 as 2201; and

(3) by inserting after part T the following:

"PART U—LAW ENFORCEMENT SCHOLARSHIPS

"SEC. 2101. PURPOSES.

"It is the purpose of this part to assist States to establish scholarship programs which—

"(1) enhance the recruitment of young individuals to careers in law enforcement;

"(2) assist State and local law enforcement efforts to enhance the educational status of law enforcement personnel; and

"(3) provide educational assistance to law enforcement personnel seeking further education.

"SEC. 2102. DEFINITIONS.

"For purposes of this part—

"(1) the term 'Director' means the Director of the Bureau of Justice Assistance;

"(2) the term 'educational expenses' means expenses that are directly attributable to—

"(A) a course of education leading to the award of an associate degree;

"(B) a course of education leading to the award of a baccalaureate degree; or

"(C) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies and related expenses;

"(3) the term 'institution of higher education' has the same meaning given such term in section 1401(a) of the Higher Education Act of 1965;

"(4) the term 'law enforcement position' means employment as an officer in a State or local police force, or correctional institution; and

"(5) the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

"SEC. 2103. ALLOTMENT.

"From amounts appropriated under section 2111, the Director shall allocate—

"(1) 80 percent of such funds to States on the basis of the number of law enforcement officers in each State; and

"(2) 20 percent of such funds to States on the basis of the State's shortage of law enforcement personnel and the need for assistance under this part.

"SEC. 2104. PROGRAM ESTABLISHED.

"(a) IN GENERAL.—From amounts available pursuant to section 2103 each State shall pay the Federal share of the cost of awarding scholarships to in-service law enforcement personnel to enable such personnel to seek further education.

"(b) FEDERAL SHARE.—(1) The Federal share of the cost of scholarships under this part shall not exceed 60 percent.

"(2) The non-Federal share of the cost of scholarships under this part shall be supplied from sources other than the Federal Government.

"(c) LEAD AGENCY.—Each State receiving an allotment under section 2103 to conduct a scholarship program in the State in accordance with the provisions of this part shall designate an appropriate State agency to serve as the lead agency in carrying out the provisions of this part.

"(d) RESPONSIBILITIES OF DIRECTOR.—The Director shall be responsible for the administration of the program conducted pursuant to this part and shall, in consultation with the Assistant Secretary for Postsecondary Education, promulgate regulations to implement this part.

"(e) ADMINISTRATIVE EXPENSES.—Each State receiving an allotment under section 2103 may reserve not more than 8 percent of such allotment for administrative expenses.

"(f) SPECIAL RULE.—Each State receiving an allotment under section 2103 shall ensure that each scholarship recipient under this part be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other law enforcement personnel of the same rank and tenure in the office of which the scholarship recipient is a member.

"(g) SUPPLEMENTATION OF FUNDING.—Funds received under this part shall only be used to supplement, and not to supplant, Federal, State, or local efforts for recruitment and education of law enforcement personnel.

"SEC. 2105. SCHOLARSHIPS.

"(a) PERIOD OF AWARD.—Scholarships awarded under this part shall be for a period of one academic year.

"(b) USE OF SCHOLARSHIPS.—Each individual awarded a scholarship under this may use such scholarship for educational expenses at any accredited institution of higher education.

"SEC. 2106. ELIGIBILITY.

"An individual shall be eligible to receive a scholarship under this part if such individual has been employed in law enforcement for the 2-year period immediately preceding the date on which assistance is sought.

"SEC. 2107. STATE APPLICATION.

"Each State desiring an allotment under section 2103 shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require. Each such application shall—

"(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out the provisions of this part;

"(2) contain assurances that the State shall advertise the scholarship assistance provided under this part;

"(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the scholarship program under this part;

"(4) contain assurances that the State shall make scholarship payments to institutions of higher education on behalf of individuals receiving financial assistance under this part;

"(5) identify model curriculum and existing programs designed to meet the educational and professional needs of law enforcement personnel; and

"(6) contain assurances that the State shall promote cooperative agreements with educational and law enforcement agencies to enhance law enforcement personnel recruitment efforts in high schools and community colleges.

"SEC. 2108. LOCAL APPLICATION.

"(a) IN GENERAL.—Each individual desiring a scholarship under this part shall submit an application to the State at such time, in such manner, and accompanied by such information as the State may reasonably require. Each such application shall describe the academic courses for which financial assistance is sought.

"(b) PRIORITY.—In awarding scholarships under this part, each State shall give priority to applications from individuals who are—

"(1) members of racial, ethnic, or gender groups whose representation in the law enforcement agencies within the State is substantially less than in the population eligible for employment in law enforcement in the State; and

"(2) pursuing an undergraduate degree.

"SEC. 2109. SCHOLARSHIP AGREEMENT.

"(a) IN GENERAL.—Each individual receiving a scholarship under this part shall enter into an agreement with the Director.

"(b) CONTENTS.—Each agreement described in subsection (a) shall—

"(1) provide assurances that the individual shall work in a law enforcement position in the State which awarded such individual the scholarship in accordance with the service obligation described in subsection (c) after completion of such individual's academic courses leading to an associate, bachelor, or graduate degree;

"(2) provide assurances that the individual will repay all of the scholarship assistance awarded under this title in accordance with such terms and conditions as the Director shall prescribe, in the event that the requirements of the agreement under paragraph (1) are not complied with except where the individual—

"(A) dies;

"(B) becomes physically or emotionally disabled, as established by the sworn affidavit of a qualified physician; or

"(C) has been discharged in bankruptcy; and

"(3) set forth the terms and conditions under which an individual receiving a scholarship under this part may seek employment in the field of law enforcement in a State other than the State which awarded such individual the scholarship under this part.

"(c) SERVICE OBLIGATION.—(1) Except as provided in paragraph (2), each individual awarded a scholarship under this part shall work in a law enforcement position in the State which awarded such individual the scholarship for a period of one month for each credit hour for which financial assistance is received under this part.

"(2) For purposes of satisfying the requirement specified in paragraph (1), each individual awarded a scholarship under this part shall work in a law enforcement position in the State which awarded such individual the scholarship for not less than 6 months nor more than 2 years.

"SEC. 2110. REPORTS TO CONGRESS.

"Not later than April 1 of each fiscal year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President of the Senate. Such report shall—

"(1) state the number of present and past scholarship recipients under this part, categorized according to the levels of educational study in which such recipients are engaged and the years of service such recipients have serve law enforcement;

"(2) describe the geographic, racial, and gender dispersion of scholarship recipients; and

"(3) describe the progress of the program and make recommendations for changes in the program.".

(b) CONFORMING AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 701 of this Act, is amended by striking the matter relating to part U and inserting the following:

"Part U—Law Enforcement Scholarships

"Sec. 2101. Purposes.
"Sec. 2102. Definitions.
"Sec. 2103. Allotment.
"Sec. 2104. Program Established.
"Sec. 2105. Scholarships.
"Sec. 2106. Eligibility.
"Sec. 2107. State Application.
"Sec. 2108. Local Application.
"Sec. 2109. Scholarship Agreement.
"Sec. 2110. Reports to Congress.

"Part V—Transition; Effective Date; Repealer

"Sec. 2201. Continuation of rules, authorities, and proceedings.".

SEC. 1233. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 702 of this Act, is amended by adding after paragraph (14) the following:

"(15) There are authorized to be appropriated $30,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 to carry out the provisions of part U.".

Subtitle E—Law Enforcement Family Support

SEC. 1241. LAW ENFORCEMENT FAMILY SUPPORT.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 1232 of this Act is amended—

(1) by redesignating part V as part W;
(2) by redesignating section 2201 as 2301; and
(3) by inserting after part V the following:

"PART V—FAMILY SUPPORT

"SEC. 2201. DUTIES OF DIRECTOR.

"The Director shall—

"(1) establish guidelines and oversee the implementation of family-friendly policies within law enforcement-related offices and divisions in the Department of Justice;

"(2) study the effects of stress on law enforcement personnel and family well-being and disseminate the findings of such studies to Federal, State, and local law enforcement agencies, related organizations, and other interested parties;

"(3) identify and evaluate model programs that provide support services to law enforcement personnel and families;

"(4) provide technical assistance and training programs to develop stress reduction and family support to State and local law enforcement agencies;

"(5) collect and disseminate information regarding family support, stress reduction, and psychological services to Federal, State, and local law enforcement agencies, law enforcement-related organizations, and other interested entities; and

"(6) determine issues to be researched by the Bureau and by grant recipients.

"SEC. 2202. GENERAL AUTHORIZATION.

"The Director is authorized to make grants to States and local law enforcement agencies to

provide family support services to law enforcement personnel.

"SEC. 2203. USES OF FUNDS.

"(a) IN GENERAL.—A State or local law enforcement agency that receives a grant under this Act shall use amounts provided under the grant to establish or improve training and support programs for law enforcement personnel.

"(b) REQUIRED ACTIVITIES.—A law enforcement agency that receives funds under this Act shall provide at least one of the following services:

"(1) Counseling for law enforcement family members.

"(2) Child care on a 24-hour basis.

"(3) Marital and adolescent support groups.

"(4) Stress reduction programs.

"(5) Stress education for law enforcement recruits and families.

"(c) OPTIONAL ACTIVITIES.—A law enforcement agency that receives funds under this Act may provide the following services:

"(1) Post-shooting debriefing for officers and their spouses.

"(2) Group therapy.

"(3) Hypertension clinics.

"(4) Critical incident response on a 24-hour basis.

"(5) Law enforcement family crisis telephone services on a 24-hour basis.

"(6) Counseling for law enforcement personnel exposed to the human immunodeficiency virus.

"(7) Counseling for peers.

"(8) Counseling for families of personnel killed in the line of duty.

"(9) Seminars regarding alcohol, drug use, gambling, and overeating.

"SEC. 2204. APPLICATIONS.

"A law enforcement agency desiring to receive a grant under this part shall submit to the Director an application at such time, in such manner, and containing or accompanied by such information as the Director may reasonably require. Such application shall—

"(1) certify that the law enforcement agency shall match all Federal funds with an equal amount of cash or in-kind goods or services from other non-Federal sources;

"(2) include a statement from the highest ranking law enforcement official from the State or locality applying for the grant that attests to the need and intended use of services to be provided with grant funds; and

"(3) assure that the Director or the Comptroller General of the United States shall have access to all records related to the receipt and use of grant funds received under this Act.

"SEC. 2205. AWARD OF GRANTS; LIMITATION.

"(a) GRANT DISTRIBUTION.—In approving grants under this part, the Director shall assure an equitable distribution of assistance among the States, among urban and rural areas of the United States, and among urban and rural areas of a State.

"(b) DURATION.—The Director may award a grant each fiscal year, not to exceed $100,000 to a State or local law enforcement agency for a period not to exceed 5 years. In any application from a State or local law enforcement agency for a grant to continue a program for the second, third, fourth, or fifth fiscal year following the first fiscal year in which a grant was awarded to such agency, the Director shall review the progress made toward meeting the objectives of the program. The Director may refuse to award a grant if the Director finds sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for reconsideration.

"(c) LIMITATION.—Not more than 10 percent of grant funds received by a State or a local law enforcement agency may be used for administrative purposes.

"SEC. 2206. DISCRETIONARY RESEARCH GRANTS.

"The Director may reserve 10 percent of funds to award research grants to a State or local law enforcement agency to study issues of importance in the law enforcement field as determined by the Director.

"SEC. 2207. REPORTS.

"(a) REPORT FROM GRANT RECIPIENTS.—A State or local law enforcement agency that receives a grant under this Act shall submit to the Director an annual report that includes—

"(1) program descriptions;

"(2) the number of staff employed to administer programs;

"(3) the number of individuals who participated in programs; and

"(4) an evaluation of the effectiveness of grant programs.

"(b) REPORT FROM DIRECTOR.—(1) The Director shall submit to the Congress a report not later than March 31 of each fiscal year.

"(2) Such report shall contain—

"(A) a description of the types of projects developed or improved through funds received under this Act;

"(B) a description of exemplary projects and activities developed;

"(C) a designation of the family relationship to the law enforcement personnel of individuals served; and

"(D) the number of individuals served in each location and throughout the country.

"SEC. 2208. DEFINITIONS.

"For purposes of this part—

"(1) the term 'family-friendly policy' means a policy to promote or improve the morale and well being of law enforcement personnel and their families; and

"(2) the term 'law enforcement personnel' means individuals employed by Federal, State, and local law enforcement agencies.".

(b) CONFORMING AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 1232 of this Act, is amended by striking the matter relating to part V and inserting the following:

"PART V—FAMILY SUPPORT

"Sec. 2201. Duties of director.
"Sec. 2202. General authorization.
"Sec. 2203. Uses of funds.
"Sec. 2204. Applications.
"Sec. 2205. Award of grants; limitation.
"Sec. 2206. Discretionary research grants.
"Sec. 2207. Reports.
"Sec. 2208. Definitions.

"PART W—TRANSITION; EFFECTIVE DATE; REPEALS

"Sec. 2301. Continuation of rules, authorities, and privileges.".

SEC. 1242. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 1233 of this Act, is amended by adding after paragraph (15) the following:

"(16) There are authorized to be appropriated $5,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996. Not more than 20 percent of such funds may be used to accomplish the duties of the Director under section 2201 in part V of this Act, including administrative costs, research, and training programs.".

TITLE XIII—FRAUD

SEC. 1301. MAIL FRAUD.

Section 1341 of title 18, United States Code, is amended—

(1) by inserting "or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier," after "Postal Service,"; and

(2) by inserting "or such carrier" after "causes to be delivered by mail".

SEC. 1302. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH ACCESS DEVICES.

(a) IN GENERAL.—Section 1029 of title 18, United States Code, is amended—

(1) in subsection (a) by inserting after paragraph (4) the following new paragraphs:

"(5) knowingly, and with intent to defraud, effects transactions, with one or more access devices issued to another person, to receive anything of value aggregating $1,000 or more during any one-year period;

"(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of—

"(A) offering an access device; or

"(B) selling information regarding or an application to obtain an access device; or

"(7) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, one or more evidences or records of transactions made by an access device;".

(b) TECHNICAL AMENDMENTS FOR SECTION 1029.—Section 1029 of title 18, United States Code, as amended by subsection (a), is amended—

(1) in subsection (a) by striking "or" at the end of paragraph (3);

(2) in subsection (c)(1) by striking "(a)(2) or (a)(3)" and inserting "(a) (2), (3), (5), (6), or (7)"; and

(3) in subsection (e)—

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(7) the term 'credit card system member' means a financial institution or other entity that is a member of a credit card system, including an entity whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system.".

SEC. 1303. CRIMES BY OR AFFECTING PERSONS ENGAGED IN THE BUSINESS OF INSURANCE WHOSE ACTIVITIES AFFECT INTERSTATE COMMERCE.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce

"(a)(1) Whoever is engaged in the business of insurance whose activities affect interstate commerce and, with the intent to deceive, knowingly makes any false material statement or report or willfully overvalues any land, property or security—

"(A) in connection with reports or documents presented to any insurance regulatory official or agency or an agent or examiner appointed by such official or agency to examine the affairs of such person, and

"(B) for the purpose of influencing the actions of such official or agency or such an appointed agent or examiner,

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as established under this title or imprisonment for not more than 10 years, or both, except that the term of imprisonment shall be not more than 15 years if the statement or report or overvaluing of land, property, or security jeopardizes the safety and soundness of an insurer.

"(b)(1) Whoever—

"(A) acting as, or being an officer, director, agent, or employee of, any person engaged in the business of insurance whose activities affect interstate commerce, or

"(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a trans-

action relating to the conduct of affairs of such a business,

willfully embezzles, abstracts, purloins, or misappropriates any of the moneys, funds, premiums, credits, or other property of such person so engaged shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the embezzlement, abstraction, purloining, or willful misappropriation described in paragraph (1) jeopardizes the safety and soundness of an insurer, such imprisonment shall be not more than 15 years. If the amount or value embezzled, abstracted, purloined, or willfully misappropriated does not exceed $5,000, whoever violates paragraph (1) shall be fined as provided in this title or imprisoned not more than one year, or both.

"(c)(1) Whoever is engaged in the business of insurance and whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, knowingly makes any false entry of material fact in any book, report, or statement of such person engaged in the business of insurance with intent to—

"(A) deceive any person about the financial condition or solvency of such business, or

"(B) to deceive any officer, employee, or agent of such person engaged in the business of insurance, any insurance regulatory official or agency, or any agent or examiner appointed by such official or agency to examine the affairs of such person,

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the false entry in any book, report, or statement of such person jeopardizes the safety and soundness of an insurer, such imprisonment shall be not more than 15 years.

"(d) Whoever, by threats or force or by any threatening letter or communication, corruptly influences, obstructs, or impedes or endeavors corruptly to influence, obstruct, or impede the due and proper administration of the law under which any proceeding involving the business of insurance whose activities affect interstate commerce is pending before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of a person engaged in the business of insurance whose activities affect interstate commerce, shall be fined as provided in this title or imprisoned not more than 10 years, or both.

"(e)(1)(A) Whoever has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

"(B) Whoever is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

"(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

"(f) As used in this section—

"(1) the term 'business of insurance' means—

"(A) the writing of insurance, or

"(B) the reinsuring of risks underwritten by insurance companies,

by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons;

"(2) the term 'insurer' means a business which is organized as an insurance company under the laws of any State, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his or her capacity as such, and includes any person who acts as, or is, an officer, director, agent, or employee of that business;

"(3) the term 'interstate commerce' means—

"(A) commerce within the District of Columbia, or any territory or possession of the United States;

"(B) all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;

"(C) all commerce between points within the same State through any place outside such State; or

"(D) all other commerce over which the United States has jurisdiction; and

"(4) the term 'State' includes any State, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"§ 1034. Civil penalties and injunctions for violations of section 1033

"(a) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 1033 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense has contributed to the insolvency of an insurer which has been placed under the control of a State insurance regulatory agency or official, such penalty shall be remitted to the regulatory official of the insurer's State of domicile for the benefit of the policyholders, claimants, and creditors of such insurer. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

"(b) If the Attorney General has reason to believe that a person is engaged in conduct constituting an offense under section 1033, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 47 of such title is amended by adding at the end the following new item:

"1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce.

"1034. Civil penalties and injunctions for violations of section 1033.".

(c) MISCELLANEOUS AMENDMENTS TO TITLE 18, UNITED STATES CODE.—(1) TAMPERING WITH INSURANCE REGULATORY PROCEEDINGS.—Section 1515(a)(1) of title 18, United States Code, is amended—

(A) by striking "or" at the end of subparagraph (B);

(B) by inserting "or" at the end of subparagraph (C); and

(C) by adding at the end thereof the following new subparagraph:

"(D) a proceeding involving the business of insurance whose activities affect interstate commerce before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of any person engaged in the business of insurance whose activities affect interstate commerce;".

(2) LIMITATIONS.—Section 3293 of such title is amended by inserting "1033," after "1014,".

(3) OBSTRUCTION OF CRIMINAL INVESTIGATIONS.—Section 1510 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(d)(1) Whoever—

"(A) acting as, or being, an officer, director, agent or employee of a person engaged in the business of insurance whose activities affect interstate commerce, or

"(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

with intent to obstruct a judicial proceeding directly or indirectly, notifies any other person about the existence or contents of a subpoena for records of that person engaged in such business or information that has been furnished to a Federal grand jury in response to that subpoena, shall be fined as provided by this title or imprisoned not more than 5 years, or both.

"(2) As used in paragraph (1), the term 'subpoena for records' means a Federal grand jury subpoena for records that has been served relating to a violation of, or a conspiracy to violate, section 1033 of this title.".

TITLE XIV—PROTECTION OF YOUTH

Subtitle A—Crimes Against Children

SEC. 1401. SHORT TITLE.

This subtitle may be cited as the "Jacob Wetterling Crimes Against Children Registration Act".

SEC. 1402. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—

(1) STATE GUIDELINES.—The Attorney General shall establish guidelines for State programs requiring any person who is convicted of a criminal offense against a victim who is a minor to register a current address with a designated State law enforcement agency for 10 years after release from prison, being placed on parole, or being placed on supervised release.

(2) DEFINITION.—For purposes of this subsection, the term "criminal offense against a victim who is a minor" includes—

(A) kidnapping of a minor, except by a noncustodial parent;

(B) false imprisonment of a minor, except by a noncustodial parent;

(C) criminal sexual conduct toward a minor;

(D) solicitation of minors to engage in sexual conduct;

(E) use of minors in a sexual performance; or

(F) solicitation of minors to practice prostitution.

(b) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—An approved State registration program established by this section shall contain the following requirements:

(1) NOTIFICATION.—If a person who is required to register under this section is released from

prison, paroled, or placed on supervised release, a State prison officer shall—

(A) inform the person of the duty to register;

(B) inform the person that if the person changes residence address, the person shall give the new address to a designated State law enforcement agency in writing within 10 days;

(C) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(D) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(2) TRANSFER OF INFORMATION TO STATE AND THE F.B.I.—The officer shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Identification Division of the Federal Bureau of Investigation.

(3) ANNUAL VERIFICATION.—On each anniversary of a person's initial registration date during the period in which the person is required to register under this section, the designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person. The person shall mail the verification form to the officer within 10 days after receipt of the form. The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency. If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed his or her residence address.

(4) NOTIFICATION OF LOCAL LAW ENFORCEMENT AGENCIES OF CHANGES IN ADDRESS.—Any change of address by a person required to register under this section reported to the designated State law enforcement agency shall immediately be reported to the appropriate law enforcement agency having jurisdiction where the person is residing.

(c) REGISTRATION FOR 10 YEARS.—A person required to register under this section shall continue to comply with this section until 10 years have elapsed since the person was released from imprisonment, or placed on parole or supervised release.

(d) PENALTY.—A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in such State. It is the sense of Congress that such penalties should include at least 6 months imprisonment.

(e) PRIVATE DATA.—The information provided under this section is private data on individuals and may be used for law enforcement purposes and confidential background checks conducted with fingerprints for child care services providers.

SEC. 1403. STATE COMPLIANCE.

(a) COMPLIANCE DATE.—Each State shall have 3 years from the date of the enactment of this Act in which to implement the provisions of this subtitle.

(b) INELIGIBILITY FOR FUNDS.—The allocation of funds under section 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756) received by a State not complying with this subtitle 3 years after the date of enactment of this Act shall be reduced by 25 percent and the unallocated funds shall be reallocated to the States in compliance with this section.

Subtitle B—Parental Kidnapping

SEC. 1421. SHORT TITLE.

This title may be cited as the "International Parental Kidnapping Crime Act of 1991".

SEC. 1422. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Chapter 55 (relating to kidnapping) of title 18, United States Code, is amended by adding at the end the following:

"§ 1204. International parental kidnapping

"(a) Whoever removes a child from the United States or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

"(b) As used in this section—

"(1) the term 'child' means a person who has not attained the age of 16 years; and

"(2) the term 'parental rights', with respect to a child, means the right to physical custody of the child—

"(A) whether joint or sole (and includes visiting rights); and

"(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

"(c) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 18, United States Code, is amended by adding at the end the following:

"1204. International parental kidnapping.".

SEC. 1423. STATE COURT PROGRAMS REGARDING INTERSTATE AND INTERNATIONAL PARENTAL CHILD ABDUCTION.

There is authorized to be appropriated $250,000 to carry out under the State Justice Institute Act of 1984 (42 U.S.C. 10701–10713) national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction.

Subtitle C—Sexual Abuse Amendments

SEC. 1431. SEXUAL ABUSE AMENDMENTS.

(a) DEFINITIONS OF SEXUAL ACT AND SEXUAL CONTACT FOR VICTIMS UNDER THE AGE OF 16.—Paragraph (2) of section 2245 of title 18, United States Code, is amended—

(1) in subparagraph (B), by striking "or" after the semicolon;

(2) in subparagraph (C) by striking "; and" and inserting in lieu thereof "; or"; and

(3) by inserting a new subparagraph (D) as follows:

"(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;".

Subtitle D—Reporting of Crimes Against Children

SEC. 1441. SHORT TITLE.

This subtitle may be cited as the "National Child Abuser Identification Act of 1991".

SEC. 1442. DEFINITIONS.

For the purposes of this subtitle—

(1) the term "child" means a person who is a child for the purposes of the criminal child abuse law of a State;

(2) the term "child abuse" means the physical, psychological, or emotional injuring, sexual abuse or exploitation, neglectful treatment, or maltreatment of a child by any person in violation of the criminal child abuse law of a State;

(3) the term "child abuser information" means the following facts concerning a person who has violated the criminal child abuse laws of a State—

(A) name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, and a brief description of the crime or crimes committed by the offender; and

(B) any other information that the Federal Bureau of Investigation determines may be useful in identifying child abusers;

(4) the term "criminal child abuse law of a State" means the law of a State that establishes criminal penalties for the commission of child abuse by a parent or other family member of a child or by any other person;

(5) the term "State" means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific; and

(6) the term "State criminal history information repository" means a division or office of a State that acts as a central repository for criminal child abuse information.

SEC. 1443. PURPOSES.

The purposes of this subtitle are—

(1) to establish a national system through which current, accurate information concerning persons who have committed crimes of child abuse can be obtained from a centralized source;

(2) to assist in the prevention of second incidents of child abuse by providing information about persons who have been convicted of a crime of child abuse to governmental agencies authorized to receive criminal history information; and

(3) to understand the problem of child abuse in the United States by providing statistical data to the Department of Justice, the National Center on Child Abuse and Neglect, the Congress, and other interested parties.

SEC. 1444. REPORTING BY THE STATES.

(a) IN GENERAL.—A State criminal history information repository shall report child abuser information to the Federal Bureau of Investigation.

(b) GUIDELINES.—(1) The Attorney General shall establish guidelines for the reporting of child abuser information, including procedures for carrying out the purposes of this subtitle.

(2) The guidelines established under paragraph (1) shall require that the State shall ensure that reports of all convictions under the criminal child abuse law of the State are maintained by a State criminal history information repository and reported to the Federal Bureau of Investigation.

(c) ANNUAL SUMMARY.—The Attorney General shall publish an annual statistical summary of the child abuser information reported under this subtitle.

SEC. 1445. CONDITION ON GRANTS.

Compliance with section 1444 shall be a condition to the receipt by a State of any grant, cooperative agreement, or other assistance under—

(1) section 1404 of the Victims of Crime Act (42 U.S.C. 10603); and

(2) the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.).

TITLE XV—MISCELLANEOUS DRUG CONTROL

SEC. 1501. ANABOLIC STEROIDS PENALTIES.

Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended by inserting after subsection (a) the following:

"(b)(1) Whoever, being a physical trainer or adviser to an individual, endeavors to persuade or induce that individual to possess or use anabolic steroids in violation of subsection (a), shall be fined under title 18, United States Code, or imprisoned not more than 2 years, or both. If such individual has not attained the age of 18

years, the maximum imprisonment shall be 5 years.

"(2) As used in this subsection, the term 'physical trainer or adviser' means any professional or amateur coach, manager, trainer, instructor, or other such person, who provides any athletic or physical instruction, training, advice, assistance, or other such service to any person.".

SEC. 1502. DRUG-FREE PUBLIC HOUSING.

(a) PUBLIC HOUSING.—

(1) IN GENERAL.—Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended—

(A) so that the heading reads as follows "DISTRIBUTION OR MANUFACTURING IN OR NEAR SCHOOLS AND COLLEGES, OR PUBLIC HOUSING"; and

(B) by striking "or a playground" each place it appears and inserting "a playground, or a public housing project".

(2) The item relating to section 419 in the table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting ", or public housing" after "colleges".

(b) DETERMINATION OF BOUNDARIES AND POSTING OF SIGNS.—Section 5124 of the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11903) is amended—

(1) in paragraph (6), by striking "and" at the end;

(2) in paragraph (7), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(8) with respect only to public housing, the determination by the public housing agency (in consultation with appropriate officials of the applicable local government and law enforcement agencies) of the geographical boundaries of the real property comprising public housing projects of the agency and the posting of signs identifying the property of the projects as drug-free zones.".

(c) NOTIFICATION.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development shall require each public housing agency to post notices regarding the penalty imposed by the amendment made by subsection (a)(1) in common areas and at other appropriate locations in public housing projects of the agency. The notices shall contain statements—

(A) of the offenses to which the treble penalty (under the amendment made by subsection (a)(1)) applies;

(B) of the date on which the treble penalty takes effect; and

(C) that the treble penalty applies to offenses committed on the property comprising the public housing projects of the agency.

(2) DEFINITIONS.—For purposes of this subsection, the terms "project", "public housing", and "public housing agency" have the meaning given the terms in section 3(b) of the United States Housing Act of 1937.

SEC. 1503. ENHANCEMENT OF PENALTIES FOR DRUG TRAFFICKING IN PRISONS.

Section 1791 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting before "Any" the following new sentence: "Any punishment imposed under subsection (b) for a violation of this section involving a controlled substance shall be consecutive to any other sentence imposed by any court for an offense involving such controlled substance.";

(2) in subsection (d)(1)(A), by inserting after "a firearm or destructive device" the words "or a controlled substance in schedule I or II, other than marijuana or a controlled substance referred to in subparagraph (C) of this subsection";

(3) in subsection (d)(1)(B), by inserting before "ammunition," the following: "marijuana or a controlled substance in schedule III, other than a controlled substance referred to in subparagraph (C) of this subsection,";

(4) in subsection (d)(1)(C), by inserting "methamphetamine, its salts, isomers, and salts of its isomers," after "a narcotic drug,"; and

(5) in subsection (d)(1)(D), by inserting "(A), (B), or" before "(C)".

SEC. 1504. DRUG TESTING OF FEDERAL OFFENDERS ON POST-CONVICTION RELEASE.

(a) DRUG TESTING PROGRAM.—(1) Chapter 229 of title 18, United States Code, is amended by adding at the end the following:

"§3608. Drug testing of Federal offenders on post-conviction release

"The Director of the Administrative Office of the United States Courts, in consultation with the Attorney General and the Secretary of Health and Human Services, shall, as soon as is practicable after the effective date of this section, establish a program of drug testing of Federal offenders on post-conviction release. The program shall include such standards and guidelines as the Director may determine necessary to ensure the reliability and accuracy of the drug testing programs. In each district where it is feasible to do so, the chief probation officer shall arrange for the drug testing of defendants on post-conviction release pursuant to a conviction for a felony or other offense described in section 3563(a)(4) of this title.".

(2) The table of sections at the beginning of chapter 229 of title 18, United States Code, is amended by adding at the end the following:

"3608. Drug testing of Federal offenders on post-conviction release.".

(b) DRUG TESTING CONDITION FOR PROBATION.—

(1) Section 3563(a) of title 18, United States Code, is amended—

(A) in paragraph (2), by striking out "and";

(B) in paragraph (3), by striking out the period and inserting "; and"; and

(C) by adding after paragraph (3) the following:

"(4) for a felony, an offense involving a firearm as defined in section 921 of this title, a drug or narcotic offense as defined in section 404(c) of the Controlled Substances Act (21 U.S.C. 844(c)), or a crime of violence as defined in section 16 of this title, that the defendant refrain from any unlawful use of the controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated upon request of the Director of the Administrative Office of the United States Courts, or the Director's designee. In addition, the Court may decline to impose this condition for any individual defendant, if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant. A defendant who tests positive may be detained pending verification of a drug test result.".

(2) DRUG TESTING FOR SUPERVISED RELEASE.—Section 3583(d) of title 18, United States Code, is amended by inserting after the first sentence the following: "For a defendant convicted of a felony or other offense described in section 3563(a)(4) of this title, the court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court), for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title.".

(3) DRUG TESTING IN CONNECTION WITH PAROLE.—Section 4209(a) of title 18, United States Code, is amended by inserting after the first sentence the following: "If the parolee has been convicted of a felony or other offense described in section 3563(a)(4) of this title, the Commission shall also impose as a condition of parole that the parolee refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the Commission) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title.".

(c) REVOCATION OF PAROLE.—Section 4214(f) of title 18, United States Code, is amended by inserting after "substance" the following: ", or who unlawfully uses a controlled substance or refuses to cooperate in drug testing imposed as a condition of parole,".

SEC. 1505. DRUG DISTRIBUTION TO PREGNANT WOMEN.

Section 418 of the Controlled Substances Act is amended by inserting ", or to a woman while she is pregnant," after "to a person under twenty-one years of age" in subsection (a) and subsection (b).

TITLE XVI—FAIRNESS IN DEATH SENTENCING ACT OF 1991

SEC. 1601. SHORT TITLE.

This Act may be cited as the "Fairness in Death Sentencing Act of 1991".

SEC. 1602. AMENDMENT TO TITLE 28.

(a) PROCEDURE.—Part VI of title 28, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 177—RACIALLY DISCRIMINATORY CAPITAL SENTENCING

"§3501. Prohibition against the execution of a sentence of death imposed on the basis of race

"(a) IN GENERAL.—No person shall be put to death under color of State or Federal law in the execution of a sentence that was imposed based on race.

"(b) INFERENCE OF RACE AS THE BASIS OF DEATH SENTENCE.—An inference that race was the basis of a death sentence is established if valid evidence is presented demonstrating that, at the time the death sentence was imposed, race was a statistically significant factor in decisions to seek or to impose the sentence of death in the jurisdiction in question.

"(c) RELEVANT EVIDENCE.—Evidence relevant to establish an inference that race was the basis of a death sentence may include evidence that death sentences were, at the time pertinent under subsection (b), being imposed significantly more frequently in the jurisdiction in question—

"(1) upon persons of one race than upon persons of another race; or

"(2) as punishment for capital offenses against persons of one race than as punishment for capital offenses against persons of another race.

"(d) VALIDITY OF EVIDENCE PRESENTED TO ESTABLISH AN INFERENCE.—If statistical evidence is presented to establish an inference that race was the basis of a sentence of death, the court shall determine the validity of the evidence and if it provides a basis for the inference. Such evidence must take into account, to the extent it is compiled and publicly made available, evidence of the statutory aggravating factors of the crimes involved, and shall include comparisons of similar cases involving persons of different races.

"(e) REBUTTAL.—If an inference that race was the basis of a death sentence is established under subsection (b), the death sentence may not be carried out unless the government rebuts

the inference by a preponderance of the evidence. The government cannot rely on mere assertions that it did not intend to discriminate or that the cases fit the statutory criteria for imposition of the death penalty.

"§3502. Access to data on death eligible cases

"Data collected by public officials concerning factors relevant to the imposition of the death sentence shall be made publicly available.

"§3503. Enforcement of the chapter

"In any proceeding brought under section 2254, the evidence of a prima facie case supporting a claim under this chapter may be presented in an evidentiary hearing and need not be set forth in the petition. Notwithstanding section 2254, no determination on the merits of a factual issue made by a State court pertinent to any claim under section 2921 shall be presumed to be correct unless—

"(1) the State is in compliance with section 2922;

"(2) the determination was made in a proceeding in a State court in which the person asserting the claim was afforded rights to the appointment of counsel and to the furnishing of investigative, expert and other services necessary for the adequate development of the claim; and

"(3) the determination is one which is otherwise entitled to be presumed to be correct under the criteria specified in section 2254.

"§3504. Construction of chapter

"Nothing contained in this chapter shall be construed to affect in one way or the other the lawfulness of any sentence of death that does not violate section 3501 of this title.".

(b) AMENDMENT TO TABLE OF CHAPTERS.—The table of chapters of part VI of title 28, United States Code, is amended by adding at the end thereof the following new item:

"177. Racially Discriminatory Capital Sentencing ..... 3501.".

SEC. 1603. ACTIONS BEFORE ENACTMENT.

No person shall be barred from raising any claim under section 3501 of title 28, United States Code, as added by this Act, on the ground of having failed to raise or to prosecute the same or a similar claim before the enactment of the Act, nor by reason of any adjudication rendered before that enactment.

TITLE XVII—MISCELLANEOUS CRIME CONTROL

Subtitle A—General

SEC. 1701. RECEIVING THE PROCEEDS OF EXTORTION OR KIDNAPPING.

(a) CHAPTER 41 AMENDMENT.—Chapter 41 of title 18, United States Code, is amended—

(1) by adding at the end the following:

"§880. Receiving the proceeds of extortion

"Whoever receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense under this chapter that is punishable by imprisonment for more than one year, knowing the same to have been unlawfully obtained, shall be fined under this title or imprisoned not more than three years, or both."; and

(2) in the table of sections, by adding at the end the following item:

"880. Receiving the proceeds of extortion.".

(b) SECTION 1202 AMENDMENT.—Section 1202 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection "(a)"; and

(2) by adding at the end the following:

"(b) Whoever transports, transmits, or transfers in interstate or foreign commerce any proceeds of a kidnapping punishable under State law by imprisonment for more than one year, or receives, possesses, conceals, or disposes of any such proceeds after they have crossed a State or United States boundary, knowing the proceeds to have been unlawfully obtained, shall be fined under this title or imprisoned not more than ten years, or both.

"(c) For purposes of this section, the term 'State' has the meaning set forth in section 245(d) of this title.".

SEC. 1702. RECEIVING THE PROCEEDS OF A POSTAL ROBBERY.

Section 2114 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection (a); and

(2) by adding at the end the following:

"(b) Whoever receives, possesses, conceals, or disposes of any money or other property which has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be fined under this title or imprisoned not more than ten years, or both.".

SEC. 1703. CRIMINAL STREET GANGS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 25 the following:

"CHAPTER 26—CRIMINAL STREET GANGS

"Sec.

"521. Criminal street gangs.

"§521. Criminal street gangs

"(a) Whoever, under the circumstances described in subsection (c) of this section, commits an offense described in subsection (b) of this section, shall, in addition to any other sentence authorized by law, be sentenced to a term of imprisonment of not more than 10 years and may also be fined under this title. Such sentence of imprisonment shall run consecutively to any other sentence imposed.

"(b) The offenses referred to in subsection (a) of this section are—

"(1) any Federal felony involving a controlled substance (as defined in section 102 of the Controlled Substances Act);

"(2) any Federal felony crime of violence;

"(3) any felony violation of the Controlled Substances Act, the Controlled Substances Import and Export Act or the Maritime Drug Law Enforcement Act; or

"(4) a conspiracy to commit any of the offenses described in paragraphs (1) through (3) of this subsection.

"(c) The circumstances referred to in subsection (a) of this section are that the offense described in subsection (b) was committed as a member of, on behalf of, or in association with a criminal street gang and that person has been convicted, within the past 5 years for—

"(1) any offense listed in subsection (b) of this section;

"(2) any State offense—

"(A) involving a controlled substance (as defined in section 102 of the Controlled Substances Act); or

"(B) that is a crime of violence;

for which the maximum penalty is more than 1 year's imprisonment; or

"(3) any Federal or State offense that involves the theft or destruction of property for which the maximum penalty is more than 1 year's imprisonment; or

"(4) a conspiracy to commit any of the offenses described in paragraphs (1) through (3) of this subsection.

"(d) For purposes of this section—

"(1) the term 'criminal street gang' means any group, club, organization, or association of 5 or more persons—

"(A) whose members engage or have engaged within the past 5 years, in a continuing series of violations of any offense treated in subsection (b); and

"(B) whose activities affect interstate or foreign commerce; and

"(2) the term 'conviction' includes a finding, under State or Federal law, that a person has committed an act of juvenile delinquency involving a violent or controlled substances felony.".

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 25 the following:

"26. Criminal street gangs ..... 521".

SEC. 1704. UNDERCOVER OPERATIONS.

(a) IN GENERAL.—Chapter 1 of title 18, United States Code, is amended by adding at the end the following:

"§21. Stolen or counterfeit nature of property for certain crimes defined

"(a) Wherever in this title it is an element of an offense that—

"(1) any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated; and

"(2) the defendant knew that the property was of such character;

such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated.

"(b) For purposes of this section, the term 'official representation' means any representation made by a Federal law enforcement officer (as defined in section 115) or by another person at the direction or with the approval of such an officer.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 18, United States Code, is amended by adding at the end the following:

"21. Stolen or counterfeit nature of property for certain crimes defined.".

SEC. 1705. INCREASED PENALTIES FOR DRUG-DEALING IN "DRUG-FREE" ZONES.

Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended—

(1) in subsection (a), by striking "one year" and inserting "3 years"; and

(2) in subsection (b), by striking "three years" each place it appears and inserting "5 years".

SEC. 1706. F.B.I. ACCESS TO TELEPHONE SUBSCRIBER INFORMATION.

(a) REQUIRED CERTIFICATION.—Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may—

"(1) request the name, address, length of service, and toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.".

(b) REPORT TO JUDICIARY COMMITTEES.—Section 2709(e) of title 18, United States Code, is amended by adding after "Senate" the following: ", and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

SEC. 1707. EXTENSION OF PROTECTION OF CIVIL RIGHTS STATUTES.

(a) SECTION 241.—Section 241 of title 18, United States Code, is amended by striking "inhabitant of" and inserting "person in".

(b) SECTION 242.—Section 242 of title 18, United States Code, is amended—

(1) by striking "inhabitant of" and inserting "person in"; and

(2) by striking "such inhabitant" and inserting "such person".

SEC. 1708. INCREASED PENALTY FOR TRAVEL ACT CRIMES INVOLVING VIOLENCE.

Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both" and inserting in lieu thereof "and thereafter performs or attempts to perform (1) any of the acts specified in paragraphs (1) and (3) shall be fined under this title or imprisoned for not more than five years, or both, or (2) any of the acts specified in paragraph (2) shall be fined under this title or imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life".

SEC. 1709. MISUSE OF INITIALS "DEA".

Section 709 of title 18, United States Code, is amended by inserting the following before the paragraph beginning "Shall be punished": "Whoever, except with the written permission of the Administrator of the Drug Enforcement Administration, knowingly uses the words 'Drug Enforcement Administration' or the initials 'DEA' or any colorable imitation of such words or initials, in connection with any advertisement, circular, book, pamphlet, software or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet, software or other publication, play, motion picture, broadcast, telecast, or other production is approved, endorsed, or authorized by the Drug Enforcement Administration;".

SEC. 1710. DEFINITION OF SAVINGS AND LOAN ASSOCIATION IN BANK ROBBERY STATUTE.

Section 2113 of title 18, United States Code, is amended by adding at the end the following:

"(h) As used in this section, the term 'savings and loan association' means (1) any Federal savings association or State savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)), having accounts insured by the Federal Deposit Insurance Corporation, and (2) any corporation described in section 3(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)(C)) which is operating under the laws of the United States.".

SEC. 1711. CONFORMING DEFINITION OF "1-YEAR PERIOD" IN 18 U.S.C. 1516.

Section 1516(b) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "the term"; and

(2) by inserting before the period the following: " and (2) the term 'in any 1 year period' has the meaning given to the term 'in any one-year period' in section 666 of this title.".

SEC. 1712. DEFINITION OF LIVESTOCK.

Section 2311 of title 18, United States Code, is amended by inserting after the second paragraph relating to the definition of "cattle" the following:

"'Livestock' means any domestic animals raised for home use, consumption, or profit, such as horses, pigs, goats, fowl, sheep, and cattle, or the carcasses thereof;".

SEC. 1713. FOREIGN MURDER OF UNITED STATES NATIONALS.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§1118. Foreign murder of United States nationals

"(a) Whoever, being a national of the United States, kills or attempts to kill a national of the United States while such national is outside the United States but within the jurisdiction of another country shall be punished as provided under sections 1111, 1112, and 1113 of this title.

"(b) No prosecution may be instituted against any person under this section except upon the written approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, which function of approving prosecutions may not be delegated. No prosecution shall be approved if prosecution has been previously undertaken by a foreign country for the same act or omission.

"(c) No prosecution shall be approved under this section unless the Attorney General, in consultation with the Secretary of State, determines that the act or omission took place in a country in which the person is no longer present, and the country lacks the ability to lawfully secure the person's return. A determination by the Attorney General under this subsection is not subject to judicial review.

"(d) In the course of the enforcement of this section and notwithstanding any other provision of law, the Attorney General may request assistance from any Federal, State, local, or foreign agency, including the Army, Navy, and Air Force.

"(e) As used in this section, the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(b) CONFORMING AMENDMENT.—Section 1117 of title 18, United States Code, is amended by striking "or 1116" and inserting "1116, or 1118".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1118. Foreign Murder of United States Nationals.".

SEC. 1714. NATIONAL BASELINE STUDY ON CAMPUS SEXUAL ASSAULT.

(a) IN GENERAL.—The Attorney General shall, by contract with an appropriate entity, provide for a national base study to research the incidence of campus sexual assault and explore the adequacy of college and university policies and practices in protecting victims' legal rights, as well as the public interest in prosecuting criminals and preventing future crimes.

(b) COMPONENTS OF THE REPORT.—The report described in subsection (a) shall include an analysis of—

(1) the number of reported (and estimated number of unreported) allegations of sexual assault occurring on college and university campuses, and to whom the allegations are reported—campus authorities, sexual assault victim service entities, or local criminal authorities;

(2) the number of campus sexual assault allegations reported to campus authorities which are reported to criminal authorities;

(3) the percentage of campus sexual assault allegations compared to noncampus sexual assault allegations which result in eventual criminal prosecution;

(4) State laws or regulations pertaining specifically to campus sexual assaults;

(5) the adequacy of campus policies and practices in protecting the legal rights and interests of sexual assault victims and the accused, including consideration of—

(A) practices which might discourage the reporting of sexual assaults to local criminal authorities, or result in any form of obstruction of justice, and thus undermine the public interest in prosecuting perpetrators of sexual assault; and

(B) the ability of campus disciplinary hearings to properly address allegations of sexual assault;

(6) whether colleges and universities take adequate measures to ensure victims are free of unwanted contact with alleged assailants;

(7) why colleges and universities are sued in civil court regarding sexual assaults, the resolution of these cases, and measures that can be taken to prevent future lawsuits;

(8) the different ways in which colleges and universities respond to allegations of sexual assault, including an assessment of which programs work the best;

(9) recommendations to redress concerns raised in this report; and

(10) any other issues or questions the Attorney General deems appropriate to this study.

(c) AUTHORIZATION.—There shall be authorized $200,000 to fund the competitive grant or grants to conduct this study, which shall be awarded to persons or organizations with expertise in the legal aspects of campus violence.

SEC. 1715. GANG INVESTIGATION COORDINATION AND INFORMATION COLLECTION.

(a) COORDINATION.—The Attorney General (or his designee), in consultation with the Secretary of the Treasury (or his designee), shall develop a national strategy to coordinate gang-related investigations by Federal law enforcement agencies.

(b) DATA COLLECTION.—The Director of the Federal Bureau of Investigation shall acquire and collect information on incidents of gang violence for inclusion in an annual uniform crime report.

(c) REPORT.—The Attorney General shall prepare a report on national gang violence outlining the strategy developed under subsection (a) to be submitted to the President and Congress by July 1, 1992.

(d) AUTHORIZATION OF FUNDS.—There are authorized to be appropriated for fiscal year 1992 such sums as may be necessary to carry out this section.

SEC. 1716. TERRITORIAL SEA EXTENDING TO TWELVE MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.

The Congress hereby declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, is part of the United States, subject to its sovereignty, and, for purposes of Federal criminal jurisdiction, is within the special maritime and territorial jurisdiction of the United States

wherever that term is used in title 18, United States Code.

SEC. 1717. ASSIMILATED CRIMES IN EXTENDED TERRITORIAL SEA.

Section 13 of title 18, United States Code (relating to the adoption of State laws for areas within Federal jurisdiction), is amended by inserting after "title" in subsection (a) the phrase "or on, above, or below any portion of the territorial sea of the United States not within the territory of any State, Territory, Possession, or District", and by inserting the following new subsection (c) at the end thereof:

"(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Territory, Possession, or District, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed for purposes of subsection (a) to lie within the area of that State, Territory, Possession, or District it would lie within if the boundaries of such State, Territory, Possession, or District were extended seaward to the outer limit of the territorial sea of the United States.".

SEC. 1718. JURISDICTION OVER CRIMES AGAINST UNITED STATES NATIONALS ON CERTAIN FOREIGN SHIPS.

Section 7 of title 18, United States Code (relating to the special maritime and territorial jurisdiction of the United States), is amended by inserting at the end thereof the following new paragraph:

"(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.".

SEC. 1719. CRIMINAL PENALTY FOR FAILURE TO OBEY ORDER TO LAND.

(a) IN GENERAL.—Chapter 109 of title 18, United States Code, is amended by adding at the end the following new section:

"§2237. Order to land

"(a)(1) A pilot or operator of an aircraft that has crossed the border of the United States, or an aircraft subject to the jurisdiction of the United States operating outside the United States, who intentionally fails to obey an order to land by an authorized Federal law enforcement officer who is enforcing the laws of the United States relating to controlled substances, as that term is defined in section 102(6) of the Controlled Substances Act, or section 1956 or 1957 of this title (relating to money laundering), shall be fined under this title, or imprisoned not more than three years, or both.

"(2) The Secretary of the Treasury and the Secretary of Transportation, in consultation with the Attorney General, shall make rules governing the means by which a Federal law enforcement officer may communicate an order to land to a pilot or operator of an aircraft.

"(3) This section does not limit the authority of a customs officer under section 581 of the Tariff Act of 1930 or another law the Customs Service enforces or administers, or the authority of a Federal law enforcement officer under a law of the United States to order an aircraft to land.

"(b) A foreign nation may consent or waive objection to the United States enforcing the laws of the United States by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.

"(c) For purposes of this section—

"(1) the term 'aircraft subject to the jurisdiction of the United States' includes—

"(A) an aircraft located over the United States or the customs waters of the United States;

"(B) an aircraft located in the airspace of a foreign nation, when that nation consents to United States enforcement of United States law; and

"(C) over the high seas, an aircraft without nationality, an aircraft of the United States registry, or an aircraft registered in a foreign nation that has consented or waived objection to the United States enforcement of United States law; and

"(2) the term 'Federal law enforcement officer' has the same meaning that term has in section 115 of this title.

"(d) An aircraft that is used in violation of this section is liable in rem for a fine imposed under this section.

"(e) An aircraft that is used in violation of this section may be seized and forfeited. The laws relating to seizure and forfeiture for violation of the customs laws, including available defenses such as innocent owner provisions, apply to aircraft seized or forfeited under this section.

"(f) The Secretary of the Treasury and the Secretary of Transportation may delegate Federal law enforcement officer seizure and forfeiture responsibilities under this section to other law enforcement officers.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 109 of title 18, United States Code, is amended by adding at the end the following new item:

"2237. Order to land.".

SEC. 1720. CODIFICATION OF EXCEPTION TO EXCLUSIONARY RULE.

Evidence which is obtained as a result of search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States if the evidence was obtained in reasonable reliance on a search warrant issued by a detached and neutral magistrate even though the warrant is ultimately determined to be invalid, unless—

(1) the judicial officer in issuing the warrant was materially misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth;

(2) the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or

(3) the warrant is so facially deficient that the executing officers could not reasonably presume it to be valid.

SEC. 1721. ADDITION OF ATTEMPTED ROBBERY, KIDNAPPING, SMUGGLING, AND PROPERTY DAMAGE OFFENSES TO ELIMINATE INCONSISTENCIES AND GAPS IN COVERAGE.

(a)(1) Section 2111 of title 18, United States Code, is amended by inserting "or attempts to take" after "takes".

(2) Section 2112 of title 18, United States Code, is amended by inserting "or attempts to rob" after "robs".

(3) Section 2114 of title 18, United States Code, is amended by inserting "or attempts to rob" after "robs".

(b) Section 1201(d) of title 18, United States Code, is amended by striking "Whoever attempts to violate subsection (a)(4) or (a)(5)" and inserting "Whoever attempts to violate subsection (a)".

(c) Section 545 of title 18, United States Code, is amended by inserting "or attempts to smuggle or clandestinely introduce" after "smuggles, or clandestinely introduces".

(d)(1) Section 1361 of title 18, United States Code, is amended—

(A) by inserting "or attempts to commit any of the foregoing offenses" before "shall be punished", and

(B) by inserting "or attempted damage" after "damage" each place it appears.

(2) Section 1362 of title 18, United States Code, is amended by inserting "or attempts willfully or maliciously to injure or destroy" after "willfully or maliciously injures or destroys".

(3) Section 1366 of title 18, United States Code, is amended—

(A) by inserting "or attempts to damage" after "damages" each place it appears;

(B) by inserting "or attempts to cause" after "causes"; and

(C) by inserting "or would if the attempted offense had been completed have exceeded" after "exceeds" each place it appears.

SEC. 1722. CLARIFYING AMENDMENT REGARDING SCOPE OF PROHIBITION AGAINST GAMBLING ON SHIPS IN INTERNATIONAL WATERS.

The first paragraph of section 1081 of title 18, United States Code, is amended by adding at the end the following: "Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986).".

SEC. 1723. BINDOVER SYSTEM FOR CERTAIN VIOLENT JUVENILES.

Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751), as amended by section 1002, is amended—

(1) in paragraph (21) by striking "and" at the end;

(2) in paragraph (22) by striking the period at the end and inserting "; and"; and

(3) inserting after paragraph (22) the following:

"(23) programs which address the need for effective bindover systems for the prosecution of violent 16- and 17-year olds in courts with jurisdiction over adults for the crimes of—

"(A) murder in the first degree;

"(B) murder in the second degree;

"(C) attempted murder;

"(D) armed robbery when armed with a firearm;

"(E) aggravated battery or assault when armed with a firearm;

"(F) criminal sexual penetration when armed with a firearm; and

"(G) drive-by shootings as described in section 922(u) of title 18, United States Code.".

SEC. 1724. INCREASED PENALTIES FOR RECIDIVIST SEX OFFENDERS.

(a) Section 2245 of title 18, United States Code, is redesignated section 2246.

(b) Chapter 109A of title 18, United States Code, is amended by inserting the following new section after section 2244:

"§2245. Penalties for subsequent offenses

"Any person who violates a provision of this chapter after a prior conviction under a provision of this chapter or the law of a State (as defined in section 513 of this title) for conduct proscribed by this chapter has become final is punishable by a term of imprisonment up to twice that otherwise authorized.".

(c) The table of sections for chapter 109A of title 18, United States Code, is amended by—

(1) striking "2245" and inserting in lieu thereof "2246"; and

(2) inserting the following after the item relating to section 2244:

"2245. Penalties for subsequent offenses.".

Subtitle B—Motor Vehicle Theft Prevention

SEC. 1731. SHORT TITLE.

This title may be cited as the "Motor Vehicle Theft Prevention Act".

SEC. 1732. MOTOR VEHICLE THEFT PREVENTION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 160. Motor vehicle theft prevention program

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Attorney General shall develop, in cooperation with the States, a national voluntary motor vehicle theft prevention program (in this section referred to as the 'program') under which—

"(1) the owner of a motor vehicle may voluntarily sign a consent form with a participating State or locality in which the motor vehicle owner—

"(A) states that the vehicle is not normally operated under certain specified conditions; and

"(B) agrees to—

"(i) display program decals or devices on the owner's vehicle; and

"(ii) permit law enforcement officials in any State to stop the motor vehicle and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner, if the vehicle is being operated under the specified conditions; and

"(2) participating States and localities authorize law enforcement officials in the State or locality to stop motor vehicles displaying program decals or devices under specified conditions and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner.

"(b) UNIFORM DECAL OR DEVICE DESIGNS.—

"(1) IN GENERAL.—The motor vehicle theft prevention program developed pursuant to this section shall include a uniform design or designs for decals or other devices to be displayed by motor vehicles participating in the program.

"(2) TYPE OF DESIGN.—The uniform design shall—

"(A) be highly visible; and

"(B) explicitly state that the motor vehicle to which it is affixed may be stopped under the specified conditions without additional grounds for establishing a reasonable suspicion that the vehicle is being operated unlawfully.

"(c) VOLUNTARY CONSENT FORM.—The voluntary consent form used to enroll in the program shall—

"(1) clearly state that participation in the program is voluntary;

"(2) clearly explain that participation in the program means that, if the participating vehicle is being operated under the specified conditions, law enforcement officials may stop the vehicle and take reasonable steps to determine whether it is being operated by or with the consent of the owner, even if the law enforcement officials have no other basis for believing that the vehicle is being operated unlawfully;

"(3) include an express statement that the vehicle is not normally operated under the specified conditions and that the operation of the vehicle under those conditions would provide sufficient grounds for a prudent law enforcement officer to reasonably believe that the vehicle was not being operated by or with the consent of the owner; and

"(4) include any additional information that the Attorney General may reasonably require.

"(d) SPECIFIED CONDITIONS UNDER WHICH STOPS MAY BE AUTHORIZED.—

"(1) IN GENERAL.—The Attorney General shall promulgate rules establishing the conditions under which participating motor vehicles may be authorized to be stopped under this section. These conditions may include—

"(A) the operation of the vehicle during certain hours of the day; or

"(B) the operation of the vehicle under other circumstances that would provide a sufficient basis for establishing a reasonable suspicion that the vehicle was not being operated by the owner, or with the consent of the owner.

"(2) MORE THAN ONE SET OF CONDITIONS.—The Attorney General may establish more than one set of conditions under which participating motor vehicles may be stopped. If more than one set of conditions is established, a separate consent form and a separate design for program decals or devices shall be established for each set of conditions. The Attorney General may choose to satisfy the requirement of a separate design for program decals or devices under this paragraph by the use of a design color that is clearly distinguishable from other design colors.

"(3) NO NEW CONDITIONS WITHOUT CONSENT.—After the program has begun, the conditions under which a vehicle may be stopped if affixed with a certain decal or device design may not be expanded without the consent of the owner.

"(4) LIMITED PARTICIPATION BY STATES AND LOCALITIES.—A State or locality need not authorize the stopping of motor vehicles under all sets of conditions specified under the program in order to participate in the program.

"(e) MOTOR VEHICLES FOR HIRE.—

"(1) NOTIFICATION TO LESSEES.—Any person who is in the business of renting or leasing motor vehicles and who rents or leases a motor vehicle on which a program decal or device is affixed shall, prior to transferring possession of the vehicle, notify the person to whom the motor vehicle is rented or leased about the program.

"(2) TYPE OF NOTICE.—The notice required by this subsection shall—

"(A) be in writing;

"(B) be in a prominent format to be determined by the Attorney General; and

"(C) explain the possibility that if the motor vehicle is operated under the specified conditions, the vehicle may be stopped by law enforcement officials even if the officials have no other basis for believing that the vehicle is being operated unlawfully.

"(3) FINE FOR FAILURE TO PROVIDE NOTICE.—Failure to provide proper notice under this subsection shall be punishable by a fine not to exceed $5,000.

"(f) PARTICIPATING STATE OR LOCALITY.—A State or locality may participate in the program by filing an agreement to comply with the terms and conditions of the program with the Attorney General.

"(g) NOTIFICATION OF POLICE.—As a condition of participating in the program, a State or locality must agree to take reasonable steps to ensure that law enforcement officials throughout the State or locality are familiar with the program, and with the conditions under which motor vehicles may be stopped under the program.

"(h) REGULATIONS.—The Attorney General shall promulgate regulations to implement this section.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized such sums as are necessary to carry out this section.".

(b) AMENDMENT TO CHAPTER ANALYSIS.—The analysis for chapter 1 of title 23, United States Code, is amended by adding after the item for section 159 the following:

"160. Motor vehicle theft prevention program.".

SEC. 1733. ALTERING OR REMOVING MOTOR VEHICLE IDENTIFICATION NUMBERS.

(a) BASIC OFFENSE.—Subsection (a) of section 511 of title 18, United States Code, is amended to read as follows:

"(a) Whoever, with intent to further the theft of a vehicle, knowingly removes, obliterates, tampers with, or alters an identification number for a motor vehicle, or motor vehicle part, or a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act, shall be fined under this title or imprisoned not more than five years, or both.".

(b) EXCEPTED PERSONS.—Paragraph (2) of section 511(b) of title 18, United States Code, is amended by—

(1) striking "and" after the semicolon in subparagraph (B);

(2) striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) adding at the end thereof the following:

"(D) a person who removes, obliterates, tampers with, or alters a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act, if that person is the owner of the motor vehicle, or is authorized to remove, obliterate, tamper with or alter the decal or device by—

"(i) the owner or his authorized agent;

"(ii) applicable State or local law; or

"(iii) regulations promulgated by the Attorney General to implement the Motor Vehicle Theft Prevention Act.".

(c) DEFINITION.—Section 511 of title 18, United States Code, is amended by adding at the end thereof the following:

"(d) For purposes of subsection (a) of this section, the term 'tampers with' includes covering a program decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act for the purpose of obstructing its visibility.".

(d) UNAUTHORIZED APPLICATION OF A DECAL OR DEVICE.—

(1) IN GENERAL.—Chapter 25 of title 18, United States Code, is amended by adding after section 511 the following new section:

"§ 511A. Unauthorized application of theft prevention decal or device

"(a) Whoever affixes to a motor vehicle a theft prevention decal or other device, or a replica thereof, unless authorized to do so pursuant to the Motor Vehicle Theft Prevention Act, shall be punished by a fine not to exceed $1,000.

"(b) For purposes of this section, the term 'theft prevention decal or device' means a decal or other device designed in accordance with a uniform design for such devices developed pursuant to the Motor Vehicle Theft Prevention Act.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 25 of title 18, United States Code, is amended by adding immediately after the item for section 511 the following:

"511A. Unauthorized application of theft prevention decal or device.".

Subtitle C—Terrorism: Civil Remedy

SEC. 1734. SHORT TITLE.

This subtitle may be cited as the "Antiterrorism Act of 1991".

SEC. 1735. TERRORISM.

(a) TERRORISM.—Chapter 113A of title 18, United States Code, as amended by subsection (d) of this section, is amended—

(1) in section 2331 by striking subsection (d) and redesignating subsection (e) as subsection (d);

(2) by redesignating section 2331 as 2332, and striking the heading for section 2332 as so redesignated and inserting the following:

"§ 2332. Criminal penalties";

(3) by inserting before section 2332 as so redesignated the following:

"§ 2331. Definitions

"As used in this chapter—

"(1) the term 'international terrorism' means activities that—

"(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

"(B) appear to be intended—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government by assassination or kidnapping; and

"(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

"(2) the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

"(3) the term 'person' means any individual or entity capable of holding a legal or beneficial interest in property; and

"(4) the term 'act of war' means any act occurring in the course of—

"(A) declared war;

"(B) armed conflict, whether or not war has been declared, between two or more nations; or

"(C) armed conflict between military forces of any origin.";

(4) by adding immediately after section 2332 as redesignated the following new sections:

"§2333. Civil remedies

"(a) ACTION AND JURISDICTION.—Any national of the United States injured in his person, property, or business by reason of an act of international terrorism, or his estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he sustains and the cost of the suit, including attorney's fees.

"(b) ESTOPPED UNDER UNITED STATES LAW.—A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 1116, 1201, 1203, or 2332 of this title or section 1472 (i), (k), (l), (n), or (r) of title 49 App. shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"(c) ESTOPPED UNDER FOREIGN LAW.—A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"§2334. Jurisdiction and venue

"(a) GENERAL VENUE.—Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

"(b) SPECIAL MARITIME OR TERRITORIAL JURISDICTION.—If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

"(c) SERVICE ON WITNESSES.—A witness in a civil action brought under section 2333 of this title may be served in any other district where the defendant resides, is found, or has an agent.

"(d) CONVENIENCE OF THE FORUM.—The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless—

"(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

"(2) that foreign court is significantly more convenient and appropriate; and

"(3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

"§2335. Limitation of actions

"(a) IN GENERAL.—Subject to subsection (b), a suit for recovery of damages under section 2333 of this title shall not be maintained unless commenced within 4 years from the date the cause of action accrued.

"(b) CALCULATION OF PERIOD.—The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, or any concealment of his whereabouts, shall not be reckoned within this period of limitation.

"§2336. Other limitations

"No action shall be maintained under section 2333 of this title for injury or loss by reason of an act of war.

"§2337. Suits against Government officials

"No action shall be maintained under section 2333 of this title against—

"(1) the United States, an agency of the United States, or an officer or employee of the United States or any agency thereof acting within his official capacity or under color of legal authority; or

"(2) a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his official capacity or under color of legal authority.

"§2338. Exclusive Federal jurisdiction

"The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter."; and

(5) by amending the table of sections at the beginning of the chapter to read as follows:

"CHAPTER 113A—TERRORISM

"Sec.
"2331. Definitions.
"2332. Criminal penalties.
"2333. Civil remedies.
"2334. Jurisdiction and venue.
"2335. Limitation of actions.
"2336. Other limitations.
"2337. Suits against government officials.
"2338. Exclusive Federal jurisdiction.".

(b) TABLE OF CONTENTS.—The table of chapters at the beginning of part 1, title 18, United States Code, is amended by striking:

"113A. Extraterritorial jurisdiction over terrorist acts abroad against United States nationals ..... 2331"

and inserting in lieu thereof:

"113A. Terrorism ..... 2331".

(c) EFFECTIVE DATE.—This title and the amendments made by this title shall apply to any pending case or any cause of action arising on or after 4 years before the date of enactment of this Act.

(d) CONFORMING REPEAL OF PRIOR CHAPTER 113A.—The amendments made by section 132 of Public Law 101-519, the Military Construction Appropriations Act, 1991, are repealed, effective April 10, 1991.

Subtitle D—Commission on Crime and Violence

SEC. 1741. ESTABLISHMENT OF COMMISSION ON CRIME AND VIOLENCE.

There is established a commission to be known as the "National Commission on Crime and Violence in America". The Commission shall be composed of 22 members, appointed as follows:

(1) 6 persons by the President;

(2) 8 persons by the Speaker of the House of Representatives, two of whom shall be appointed on the recommendation of the minority leader; and

(3) 8 persons by the President pro tempore of the Senate, six of whom shall be appointed on the recommendation of the majority leader of the Senate and two of whom shall be appointed on the recommendation of the minority leader of the Senate.

SEC. 1742. PURPOSE.

The purposes of the Commission are as follows:

(1) To develop a comprehensive and effective crime control plan which will serve as a "blueprint" for action in the 1990's. The report shall include an estimated cost for implementing any recommendations made by the Commission.

(2) To bring attention to successful models and programs in crime prevention and crime control.

(3) To reach out beyond the traditional criminal justice community for ideas when developing the comprehensive crime control plan.

(4) To recommend improvements in the coordination of local, State, Federal, and international border crime control efforts.

(5) To make a comprehensive study of the economic and social factors lending to or contributing to crime and specific proposals for legislative and administrative actions to reduce crime and the elements that contribute to it.

(6) To recommend means of targeting finite correctional facility space and resources to the most serious and violent offenders, with the goal of achieving the most cost-effective possible crime control and protection of the community and public safety, with particular emphasis on examining the issue of possible disproportionate incarceration rates among black males and any other minority group disproportionately represented in State and Federal correctional populations, and to consider increased use of alternatives to incarceration which offer a reasonable prospect of equal or better crime control at equal or less cost.

SEC. 1743. COMMISSION MEMBERS.

(a) CHAIRPERSON.—The President shall designate a chairperson from among the members of the Commission.

(b) COMPOSITION OF MEMBERSHIP.—The Commission members will represent a cross section of professions that include law enforcement, prosecution, criminal defense, judges, corrections, education, medicine, welfare and social services, victims of crime, elected officials from State, local and Federal Government that equally represent both political parties, and representatives of any other discipline with professional expertise in drug or crime reduction.

SEC. 1744. ADMINISTRATIVE PROVISIONS.

(a) FEDERAL AGENCY SUPPORT.—All Federal agencies shall provide such support and assistance as may be necessary for the Commission to carry out its functions.

(b) EXECUTIVE DIRECTOR AND STAFF.—The President is authorized to appoint and compensate an executive director. Subject to such regulations as the Commission may prescribe, staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive services and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(c) DETAILED FEDERAL EMPLOYEES.—Upon the request of the chairperson, the heads of executive and military departments are authorized to detail employees to work with the executive director without regard to the provisions of section 3341 of title 5, United States Code.

(d) TEMPORARY AND INTERMITTENT EMPLOYEES.—Subject to rules prescribed by the Commission, the chairperson may procure temporary and intermittent services under section 3108(b)

of title 5, United States Code, but at a rate of base pay not to exceed the annual rate of base pay for GS-18 of the General Schedule.

SEC. 1745. REPORT.

The Commission shall submit a final report to the President and the Congress not later than one year after the appointment of the Chairperson. The report shall include the findings and recommendations of the Commission as well as proposals for any legislative action necessary to implement such recommendations.

SEC. 1746. TERMINATION.

The Commission shall terminate 30 days after submitting the report required under section 1745.

TITLE XVIII—MISCELLANEOUS FUNDING PROVISIONS

Subtitle A—General

SEC. 1801. AUTHORIZATION FOR DRUG ENFORCEMENT AGENCY.

There is authorized to be appropriated for fiscal year 1992, for the Drug Enforcement Administration, $100,500,000, which shall include—

(1) not to exceed $45,000,000 to hire, equip and train not less than 350 agents and necessary support personnel to expand DEA investigations and operations against drug trafficking organizations in rural areas; and

(2) not to exceed $25,000,000 to expand DEA State and Local Task Forces, including payment of state and local overtime, equipment and personnel costs; and

(3) not to exceed $5,000,000 to hire, equip and train not less than 50 special agents and necessary support personnel to investigate violations of the Controlled Substances Act relating to anabolic steroids.

SEC. 1802. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by striking paragraph (7) as redesignated by section 103 of this Act and inserting the following:

"(7) There are authorized to be appropriated such sums as may be necessary for fiscal year 1991 and $200,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out chapter B of subpart 2 of part E of this title.".

SEC. 1803. AVAILABILITY OF THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND FOR CERTAIN BLOCK GRANTS.

Section 524(c) of title 28, United States Code is amended by adding at the end the following:

"(12)(A) In addition to the purposes otherwise provided for in this subsection, the Fund shall be available for the purpose of providing additional amounts for block grants under subpart I of part B of title XIX of the Public Health Service Act.

"(B) Amounts made available under subparagraph (A)—

"(i) may be transferred only from excess unobligated amounts in the Fund and only to the extent that, as determined by the Attorney General, such transfers will not impair the future availability of amounts for the purposes under paragraph (1); and

"(ii) shall, with respect to each fiscal year, equal 25 percent of the total of such excess amounts for that fiscal year.

"(C) Amounts made available under this paragraph for block grants referred to subparagraph (A) shall be used to supplement, rather than replace, amounts that would be otherwise available for such block grants.".

SEC. 1804. LIMITATION ON GRANT DISTRIBUTION.

(a) AMENDMENT.—Section 510(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3760(b)) is amended by inserting "non-Federal" after "with".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1991.

SEC. 1805. AUTHORIZATION FOR BORDER PATROL PERSONNEL.

There are authorized to be appropriated for fiscal year 1992 for the Immigration and Naturalization Service, $45,000,000, to be further allocated as follows:

(1) $25,000,000 to hire, train, and equip no fewer than 500 full-time equivalent border patrol officer positions.

(2) $20,000,000 to hire, train, and equip no fewer than 400 full-time equivalent Immigration and Naturalization Service criminal investigators dedicated to drug trafficking by illegal aliens and to deportations of criminal aliens.

SEC. 1806. FEDERAL SHARE.

Section 504(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3754(a)) is amended by striking "not---" and all that follows through "per centum;" the last place it appears, and inserting the following: "not for any fiscal year be expended for more than 75 percent".

SEC. 1807. DRUG ABUSE RESISTANCE EDUCATION PROGRAMS.

Subsection (c) of section 5122 of the Drug-Free Schools and Communities Act of 1986, as amended by section 1504(3) of Public Law 101-647, is amended by inserting "or local governments that work cooperatively with local educational agencies" after "for grants to local educational agencies".

SEC. 1821. DOMESTIC VIOLENCE GRANTS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 1241, is amended—

(1) by redesignating part W as part X;

(2) by redesignating section 2301 as section 2401; and

(3) by inserting after part Y the following:

"PART W—DOMESTIC VIOLENCE INTERVENTION

"SEC. 2301. GRANT AUTHORIZATION.

"The Director of the Bureau of Justice Assistance may make grants to 10 States for the purpose of assisting States in implementing a civil and criminal response to domestic violence.

"SEC. 2302. USE OF FUNDS.

"Grants made by the Director under this part shall be used—

"(1) to encourage increased prosecutions for domestic violence crimes;

"(2) to report more accurately the incidences of domestic violence;

"(3) to facilitate arrests and aggressive prosecution policies; and

"(4) to provide legal advocacy services for victims of domestic violence.

"SEC. 2303. APPLICATIONS.

"(a) IN GENERAL.—In order to be eligible to receive a grant under this part for any fiscal year, a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(b) REQUIREMENTS.—Each application under subsection (a) shall include—

"(1) a request for funds for the purposes described in section 2302;

"(2) a description of the programs already in place to combat domestic violence;

"(3) assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part; and

"(4) statistical information, if available, in such form and containing such information that the Director may require regarding domestic violence within that State.

"(c) COMPREHENSIVE PLAN.—Each application shall include a comprehensive plan that shall contain—

"(1) a description of the domestic violence problem within the State targeted for assistance;

"(2) a description of the projects to be developed;

"(3) a description of the resources available in the State to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

"(4) an explanation of how the requested grant will be used to fill gaps; and

"(5) a description of the system the applicant will establish to prevent and reduce domestic violence.

"SEC. 2304. ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS.

"(a) STATE MAXIMUM.—No State shall receive more than $2,500,000 under this part for any fiscal year.

"(b) ADMINISTRATIVE COST LIMITATION.—The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration and technical assistance.

"(c) RENEWAL OF GRANTS.—A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant under this part, subject to the availability of funds, if—

"(1) the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application; and

"(2) the Director determines that an additional grant is necessary to implement the crime prevention program described in the comprehensive plan as required by section 2303(c).

"SEC. 2305. AWARD OF GRANTS.

"The Director shall consider the following factors in awarding grants to States and shall give preference to those State which have—

"(1) a law or policy that requires the arrest of a person who police have probable cause to believe has committed an act of domestic violence or probable cause to believe has violated a civil protection order;

"(2) a law or policy that discourages dual arrests;

"(3) laws or statewide prosecution policies that authorize and encourage prosecutors to pursue domestic violence cases in which a criminal case can be proved, including proceeding without the active involvement of the victim if necessary;

"(4) statewide guidelines for judges that—

"(A) reduce the automatic issuance of mutual restraining or protective orders in cases where only one spouse has sought a restraining or protective order;

"(B) require any history of abuse against a child or against a parent to be considered when making child custody determinations; and

"(C) require judicial training on domestic violence and related civil and criminal court issues;

"(5) policies that provide for the coordination of court and legal victim advocacy services; and

"(6) policies that make existing remedies to domestic violence easily available to victims of domestic violence, including elimination of court fees, and the provision for simple court forms.

"SEC. 2306. REPORTS.

"(a) REPORT TO DIRECTOR.—Each State that receives funds under this part shall submit to the Director a report not later than March 1 of each year that describes progress achieved in carrying out the plan required under section 2103(c).

"(b) REPORT TO CONGRESS.—The Director shall submit to the Congress a report by October 1 of each year in which grants are made available under this part which shall contain a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants under 2103(b)(4), and an evaluation of programs established under this part.

"SEC. 2307. DEFINITIONS.

"For the purpose of this part:

"(1) The term 'Director' means the Director of the Bureau of Justice Assistance.

"(2) The term 'domestic violence' means any act or threatened act of violence, including any forceful detention of an individual, which—

"(A) results or threatens to result in physical injury; and

"(B) is committed by an individual against another individual (including an elderly individual) to whom such individual is or was related by blood or marriage or otherwise legally related or with whom such individual is or was lawfully residing.".

(b) CONFORMING AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 1241 of this Act, is amended by striking the matter relating to part W and inserting the following:

"part w—domestic violence intervention

"Sec. 2301. Grant authorization.
"Sec. 2302. Use of funds.
"Sec. 2303. Applications.
"Sec. 2304. Allocation of funds; limitations on grants.
"Sec. 2305. Award of grants.
"Sec. 2306. Reports.
"Sec. 2307. Definitions.

"part x—transition; effective date; repealer

"Sec. 2401. Continuation of rules, authorities, and proceedings.".

SEC. 1822. AUTHORIZATION OF APPROPRIATIONS.

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793), as amended by section 1242 of this Act, is amended by adding after paragraph (16) the following:

"(17) There are authorized to be appropriated $25,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994 to carry out the projects under part U.".

Subtitle B—Midnight Basketball

SEC. 1831. GRANTS FOR MIDNIGHT BASKETBALL LEAGUE ANTICRIME PROGRAMS.

(a) AUTHORITY.—The Attorney General of the United States, in consultation with the Secretary of Housing and Urban Development, shall make grants, to the extent that amounts are approved in appropriations Acts under subsection (m) to—

(1) eligible entities to assist such entities in carrying out midnight basketball league programs meeting the requirements of subsection (d); and

(2) eligible advisory entities to provide technical assistance to eligible entities in establishing and operating such midnight basketball league programs.

(b) ELIGIBLE ENTITIES.—

(1) IN GENERAL.—Subject to paragraph (2), grants under subsection (a)(1) may be made only to the following eligible entities:

(A) Entities eligible under section 520(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11903a(b)) for a grant under section 520(a) of such Act.

(B) Nonprofit organizations providing crime prevention, employment counseling, job training, or other educational services.

(C) Nonprofit organizations providing federally-assisted low-income housing.

(2) PROHIBITION ON SECOND GRANTS.—A grant under subsection (a)(1) may not be made to an eligible entity if the entity has previously received a grant under such subsection, except that the Attorney General may exempt an eligible advisory entity from the prohibition under this paragraph in extraordinary circumstances.

(c) USE OF GRANT AMOUNTS.—Any eligible entity that receives a grant under subsection (a)(1) may use such amounts only—

(1) to establish or carry out a midnight basketball league program under subsection (d);

(2) for salaries for administrators and staff of the program;

(3) for other administrative costs of the program, except that not more than 5 percent of the grant amount may be used for such administrative costs; and

(4) for costs of training and assistance provided under subsection (d)(9).

(d) PROGRAM REQUIREMENTS.—Each eligible entity receiving a grant under subsection (a)(1) shall establish a midnight basketball league program as follows:

(1) The program shall establish a basketball league of not less than 8 teams having 10 players each.

(2) Not less than 50 percent of the players in the basketball league shall be residents of federally assisted low-income housing.

(3) The program shall be designed to serve primarily youths and young adults from a neighborhood or community whose population has not less than 2 of the following characteristics (in comparison with national averages):

(A) A substantial problem regarding use or sale of illegal drugs.

(B) A high incidence of crimes committed by youths or young adults.

(C) A high incidence of persons infected with the human immunodeficiency virus or sexually transmitted diseases.

(D) A high incidence of pregnancy or a high birth rate, among adolescents.

(E) A high unemployment rate for youths and young adults.

(F) A high rate of high school drop-outs.

(4) The program shall require each player in the league to attend employment counseling, job training, and other educational classes provided under the program, which shall be held immediately following the conclusion of league basketball games at or near the site of the games.

(5) The program shall serve only youths and young adults who demonstrate a need for such counseling, training, and education provided by the program, in accordance with criteria for demonstrating need, which shall be established by the Attorney General in consultation with the Secretary of Housing and Urban Development and with the Advisory Committee.

(6) Basketball games of the league shall be held between the hours of 10:00 p.m. and 2:00 a.m. at a location in the neighborhood or community served by the program.

(7) The program shall obtain sponsors for each team in the basketball league. Sponsors shall be private individuals or businesses in the neighborhood or community served by the program who make financial contributions to the program and participate in or supplement the employment, job training, and educational services provided to the players under the program with additional training or educational opportunities.

(8) The program shall comply with any criteria established by the Attorney General in consultation with the Secretary of Housing and Urban Development and with the Advisory Committee established under subsection (i).

(9) Administrators or organizers of the program shall receive training and technical assistance provided by eligible advisory entities receiving grants under subsection (h).

(e) GRANT AMOUNT LIMITATIONS.—

(1) PRIVATE CONTRIBUTIONS.—The Attorney General, in consultation with the Secretary of Housing and Urban Development, may not make a grant under subsection (a)(1) to an eligible entity that applies for a grant under subsection (f) unless the applicant entity certifies to the Attorney General and the Secretary that the entity will supplement the grant amounts with amounts of funds from non-Federal sources, as follows:

(A) In each of the first 2 years that amounts from the grant are disbursed (under paragraph (4)), an amount sufficient to provide not less than 35 percent of the cost of carrying out the midnight basketball league program.

(B) In each of the last 3 years that amounts from the grant are disbursed, an amount sufficient to provide not less than 50 percent of the cost of carrying out the midnight basketball league program.

(2) NON-FEDERAL FUNDS.—For purposes of this subsection, the term "funds from non-Federal sources" includes amounts from nonprofit organizations, public housing agencies, States, units of general local government, and Indian housing authorities, private contributions, any salary paid to staff (other than from grant amounts under subsection (a)(1)) to carry out the program of the eligible entity, in-kind contributions to carry out the program (as determined by the Attorney General, in consultation with the Secretary of Housing and Urban Development and with the Advisory Committee), the value of any donated material, equipment, or building, the value of any lease on a building, the value of any utilities provided, and the value of any time and services contributed by volunteers to carry out the program of the eligible entity.

(3) PROHIBITION ON SUBSTITUTION OF FUNDS.—Grant amounts under subsection (a)(1) and amounts provided by States and units of general local government to supplement grant amounts may not be used to replace other public funds previously used, or designated for use, under this section.

(4) MAXIMUM AND MINIMUM GRANT AMOUNTS.—The Attorney General, in consultation with the Secretary of Housing and Urban Development, may not make a grant under subsection (a)(1) to any single eligible entity in an amount less than $50,000 or exceeding $125,000.

(5) DISBURSEMENT.—Amounts provided under a grant under subsection (a)(1) shall be disbursed to the eligible entity receiving the grant over the 5-year period beginning on the date that the entity is selected to receive the grant, as follows:

(A) In each of the first 2 years of such 5-year period, 23 percent of the total grant amount shall be disbursed to the entity.

(B) In each of the last 3 years of such 5-year period, 18 percent of the total grant amount shall be disbursed to the entity.

(f) APPLICATIONS.—To be eligible to receive a grant under subsection (a)(1), an eligible entity shall submit to the Attorney General an application in the form and manner required by the Attorney General (after consultation the Secretary of Housing and Urban Development and with the Advisory Committee), which shall include—

(1) a description of the midnight basketball league program to be carried out by the entity, including a description of the employment counseling, job training, and other educational services to be provided;

(2) letters of agreement from service providers to provide training and counseling services required under subsection (d) and a description of such service providers;

(3) letters of agreement providing for facilities for basketball games and counseling, training, and educational services required under subsection (d) and a description of the facilities;

(4) a list of persons and businesses from the community served by the program who have expressed interest in sponsoring, or have made commitments to sponsor, a team in the midnight basketball league; and

(5) evidence that the neighborhood or community served by the program meets the requirements of subsection (d)(3).

(g) SELECTION.—The Attorney General, in consultation with the Secretary of Housing and Urban Development and the with Advisory Committee, shall select eligible entities that have submitted applications under subsection (f) to

receive grants under subsection (a)(1). The Attorney General, in consultation with the Secretary of Housing and Urban Development and with the Advisory Committee, shall establish criteria for selection of applicants to receive such grants. The criteria shall include a preference for selection of eligible entities carrying out midnight basketball league programs in suburban and rural areas.

(h) TECHNICAL ASSISTANCE GRANTS.—Technical assistance grants under subsection (a)(2) shall be made as follows:

(1) ELIGIBLE ADVISORY ENTITIES.—Technical assistance grants may be made only to entities that—

(A) are experienced and have expertise in establishing, operating, or administering successful and effective programs for midnight basketball and employment, job training, and educational services similar to the programs under subsection (d); and

(B) have provided technical assistance to other entities regarding establishment and operation of such programs.

(2) USE.—Amounts received under technical assistance grants shall be used to establish centers for providing technical assistance to entities receiving grants under subsection (a)(1) of this section and section 520(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11903a(a)) regarding establishment, operation, and administration of effective and successful midnight basketball league programs under this subsection.

(3) NUMBER AND AMOUNT.—To the extent that amounts are provided in appropriations Acts under subsection (m)(2) in each fiscal year, the Attorney General, in consultation with the Secretary of Housing and Urban Development, shall make technical assistance grants under subsection (a)(2). In each fiscal year that such amounts are available the Attorney General, in consultation with the Secretary of Housing and Urban Development, shall make 2 such grants, as follows:

(A) One grant shall be made to an eligible advisory entity for development of midnight basketball league programs in public housing projects.

(B) One grant shall be made to an eligible advisory entity for development of midnight basketball league programs in suburban or rural areas.

Each grant shall be in an amount not exceeding $50,000.

(i) ADVISORY COMMITTEE.—The Attorney General, in consultation with the Secretary of Housing and Urban Development, shall appoint an Advisory Committee to assist in providing grants under this subsection. The Advisory Committee shall be composed of not more than 7 members, as follows:

(1) Not fewer than 2 individuals who are involved in managing or administering midnight basketball programs that the Secretary determines have been successful and effective. Such individuals may not be involved in a program assisted under this subsection or a member or employee of an eligible advisory entity that receives a technical assistance grant under subsection (a)(2).

(2) A representative of the Office for Substance Abuse Prevention of the Public Health Service, Department of Health and Human Services, who is involved in administering the grant program for prevention, treatment, and rehabilitation model projects for high risk youth under section 509A of the Public Health Service Act (42 U.S.C. 290aa–8), who shall be selected by the Secretary of Health and Human Services.

(3) A representative of the Department of Education, who shall be selected by the Secretary of Education.

(4) A representative of the Department of Health and Human Services, who shall be selected by the Secretary of Health and Human Services from among officers and employees of the Department involved in issues relating to high-risk youth.

(j) REPORTS.—The Attorney General, in consultation with the Secretary of Housing and Urban Development, shall require each eligible entity receiving a grant under subsection (a)(1) and each eligible advisory entity receiving a grant under subsection (a)(2) to submit for each year in which grant amounts are received by the entity, a report describing the activities carried out with such amounts.

(k) STUDY.—To the extent amounts are provided under appropriation Acts pursuant to subsection (m)(3), the Attorney General, in consultation with the Secretary of Housing and Urban Development, shall make a grant to one entity qualified to carry out a study under this subsection. The entity shall use such grant amounts to carry out a scientific study of the effectiveness of midnight basketball league programs under subsection (d) of eligible entities receiving grants under subsection (a)(1). The Attorney General, in consultation with the Secretary of Housing and Urban Development, shall require such entity to submit a report describing the study and any conclusions and recommendations resulting from the study to the Congress and the Attorney General and the Secretary not later than the expiration of the 2-year period beginning on the date that the grant under this subsection is made.

(l) DEFINITIONS.—For purposes of this section:

(1) The term "Advisory Committee" means the Advisory Committee established under subsection (i).

(2) The term "eligible advisory entity" means an entity meeting the requirements under subsection (h)(1).

(3) The term "eligible entity" means an entity described under subsection (b)(1).

(4) The term "federally assisted low-income housing" has the meaning given the term in section 5126 of the Public and Assisted Housing Drug Elimination Act of 1990.

(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) for grants under subsection (a)(1), $2,500,000 in each of fiscal years 1992 and 1993;

(2) for technical assistance grants under subsection (a)(2), $100,000 in each of fiscal years 1992 and 1993; and

(2) for a study grant under subsection (k), $250,000 in fiscal year 1992.

TITLE XIX—MISCELLANEOUS CRIMINAL PROCEDURE AND CORRECTIONS

Subtitle A—Revocation of Probation and Supervised Release

SEC. 1901. IMPOSITION OF SENTENCE.

Section 3553(a)(4) of title 18, United States Code, is amended to read as follows:

"(4) the kinds of sentence and the sentencing range established for—

"(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that are in effect on the date the defendant is sentenced; or

"(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code;".

SEC. 1902. TECHNICAL AMENDMENT TO MANDATORY CONDITIONS OF PROBATION.

Section 3563(a)(3) of title 18, United States Code, is amended by striking "possess illegal controlled substances" and inserting "unlawfully possess a controlled substance".

SEC. 1903. REVOCATION OF PROBATION.

(a) IN GENERAL.—Section 3565(a) of title 18, United States Code, is amended—

(1) in paragraph (2) by striking "impose any other sentence that was available under subchapter A at the time of the initial sentencing" and inserting "resentence the defendant under subchapter A"; and

(2) by striking the last sentence.

(b) MANDATORY REVOCATION.—Section 3565(b) of title 18, United States Code, is amended to read as follows:

"(b) MANDATORY REVOCATION FOR POSSESSION OF CONTROLLED SUBSTANCE OR FIREARM OR REFUSAL TO COOPERATE IN DRUG TESTING.—If the defendant—

"(1) possesses a controlled substance in violation of the condition set forth in section 3563(a)(3);

"(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of probation prohibiting the defendant from possessing a firearm; or

"(3) refuses to cooperate in drug testing, thereby violating the condition imposed by section 3563(a)(4);

the court shall revoke the sentence of probation and resentence the defendant under subchapter A to a sentence that includes a term of imprisonment.".

SEC. 1904. SUPERVISED RELEASE AFTER IMPRISONMENT.

Section 3583 of title 18, United States Code, is amended—

(1) in subsection (d), by striking "possess illegal controlled substances" and inserting "unlawfully possess a controlled substance";

(2) in subsection (e)—

(A) by striking "person" each place such term appears in such subsection and inserting "defendant"; and

(B) by amending paragraph (3) to read as follows:

"(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or"; and

(3) by striking subsection (g) and inserting the following:

"(g) MANDATORY REVOCATION FOR POSSESSION OF CONTROLLED SUBSTANCE OR FIREARM OR FOR REFUSAL TO COOPERATE WITH DRUG TESTING.—If the defendant—

"(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

"(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm; or

"(3) refuses to cooperate in drug testing imposed as a condition of supervised release;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

"(h) SUPERVISED RELEASE FOLLOWING REVOCATION.—When a term of supervised release is revoked and the defendant is required to serve a

term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (e)(3), the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

"(i) DELAYED REVOCATION.—The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.".

Subtitle B—List of Veniremen

SEC. 1911. LIST OF VENIREMEN.

Section 3432 of title 18, United States Code, is amended to read as follows:

"§ 3432. Indictment and list of jurors and witnesses for prisoner in capital cases

"(a) A person charged with treason or other capital offense shall, a reasonable time before commencement of trial, be furnished with—

"(1) a copy of the indictment;

"(2) a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment and at the sentencing hearing, stating the place of abode of each venireman and witness;

"(3) the relevant written or recorded statements of such witnesses, relevant portions of memoranda containing reports of their statements, and copies of documents and opportunity to examine tangible objects that the government intends to use in the trial or sentencing hearing; and

"(4) such other reports, statements, or information as the court may order.

"(b) The list of veniremen and the name and address of a witness or other information identifying a witness need not be furnished under this section if the court finds by the preponderance of the evidence that providing the list or the name or address may jeopardize the life or safety of any person.".

Subtitle C—Immunity

SEC. 1921. IMMUNITY.

Section 6003(b) of title 18, United States Code, is amended—

(1) by striking "or" before "Deputy Assistant Attorney General" and inserting a comma; and

(2) by inserting "or one other officer or employee of the Criminal Division designated by the Attorney General" after "Deputy Assistant Attorney General".

Subtitle D—Clarification of 18 U.S.C. 5032's Requirement That Any Prior Record of a Juvenile Be Produced Before the Commencement of Juvenile Proceedings

SEC. 1931. CLARIFICATION OF 18 U.S.C. 5032's REQUIREMENT THAT ANY PRIOR RECORD OF A JUVENILE BE PRODUCED BEFORE THE COMMENCEMENT OF JUVENILE PROCEEDINGS.

Section 5032 of title 18, United States Code, is amended by striking "Any proceedings against a juvenile under this chapter or as an adult shall not be commenced until" and inserting "A juvenile shall not be transferred to adult prosecution nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until".

Subtitle E—Petty Offenses

SEC. 1941. AUTHORIZATION OF PROBATION FOR PETTY OFFENSES IN CERTAIN CASES.

Section 3561(a)(3) of title 18, United States Code, is amended by adding at the end: "However, this paragraph does not preclude the imposition of a sentence to a term of probation for a petty offense if the defendant has been sentenced to a term of imprisonment at the same time for another such offense.".

SEC. 1942. TRIAL BY A MAGISTRATE IN PETTY OFFENSE CASES.

Section 3401 of title 18, United States Code, is amended in subsection (b) by adding "other than a petty offense" after "misdemeanor".

SEC. 1943. CONFORMING AUTHORITY FOR MAGISTRATES TO REVOKE SUPERVISED RELEASE IN ADDITION TO PROBATION IN MISDEMEANOR CASES IN WHICH THE MAGISTRATE IMPOSED SENTENCE.

Section 3401(d) of title 18, United States Code, is amended by adding at the end the following: "A magistrate judge who has sentenced a person to a term of supervised release shall also have power to revoke or modify the term or conditions of such supervised release.".

Subtitle F—Optional Venue for Espionage and Related Offenses

SEC. 1944. OPTIONAL VENUE FOR ESPIONAGE AND RELATED OFFENSES.

(a) IN GENERAL.—Chapter 211 of title 18, United States Code, is amended by inserting:

"§ 3239. Optional venue for espionage and related offenses.

"The trial for any offense involving a violation, begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular State or district, of—

"(1) section 793, 794, 798, or section 1030(a)(1) of this title;

"(2) section 601 of the National Security Act of 1947 (50 U.S.C. 421); or

"(3) section 4(b) or 4(c) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b) or (c));

may be in the District of Columbia or in any other district authorized by law.".

(b) CLERICAL AMENDMENT.—The item relating to section 3239 in the table of sections at the beginning of chapter 211 of title 18, United States Code, is amended to read as follows:

"3239. Optional venue for espionage and related offense.".

Subtitle G—General

SEC. 1951. ENHANCED PENALTIES FOR CERTAIN OFFENSES.

(a) SECTION 1705(b).—Section 206(b) of the International Economic Emergency Powers Act (50 U.S.C. 1705(b)) is amended by striking "$50,000" and inserting "$1,000,000".

(b) SECTION 1705(a).—Section 206(a) of the International Economic Emergency Powers Act (50 U.S.C. 1705(a)) is amended by striking "$10,000" and inserting "$1,000,000".

(c) SECTION 1541.—Section 1541 of title 18, United States Code, is amended—

(1) by striking "$500" and inserting "$250,000"; and

(2) by striking "one year" and inserting "five years".

(d) CHAPTER 75.—Sections 1542, 1543, 1544 and 1546 of title 18, United States Code, are each amended—

(1) by striking "$2,000" each place it appears and inserting "$250,000"; and

(2) by striking "five years" each place it appears and inserting "ten years".

(e) Section 1545.—Section 1545 of title 18, United States Code, is amended—

(1) by striking "$2,000" and inserting "$250,000"; and

(2) by striking "three years" and inserting "ten years".

SEC. 1952. SENTENCING GUIDELINES INCREASE FOR TERRORIST CRIMES.

The United States Sentencing Commission is directed to amend its sentencing guidelines to provide an increase of not less than three levels in the base offense level for any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime.

SEC. 1953. EXTENSION OF THE STATUTE OF LIMITATIONS FOR CERTAIN TERRORISM OFFENSES.

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by inserting after section 3285 the following:

"§ 3286. Extension of statute of limitations for certain terrorism offenses

"Notwithstanding the provisions of section 3282, no person shall be prosecuted, tried, or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2331 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2340A (torture) of this title or section 902 (i), (j), (k), (l), or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1572 (i), (j), (k), (l), or (n)), unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 213 is amended by inserting below the item for:

"3285. Criminal contempt."

the following:

"3286. Extension of statute of limitations for certain terrorism offenses.".

SEC. 1954. VICTIM'S RIGHT OF ALLOCUTION IN SENTENCING.

Rule 32 of the Federal Rules of Criminal Procedure is amended by—

(1) striking "and" following the semicolon in subdivision (a)(1)(B);

(2) striking the period at the end of subdivision (a)(1)(C) and inserting in lieu thereof "; and";

(3) inserting after subdivision (a)(1)(C) the following:

"(D) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement and to present any information in relation to the sentence.";

(4) in the second to last sentence of subdivision (a)(1), striking "equivalent opportunity" and inserting in lieu thereof "opportunity equivalent to that of the defendant's counsel";

(5) in the last sentence of subdivision (a)(1) inserting "the victim," before "or the attorney for the Government."; and

(6) adding at the end the following:

"(f) DEFINITIONS.—For purposes of this rule—

"(1) 'victim' means any individual against whom an offense for which a sentence is to be imposed has been committed, but the right of allocution under subdivision (a)(1)(D) may be exercised instead by—

"(A) a parent or legal guardian in case the victim is below the age of eighteen years or incompetent; or

"(B) one or more family members or relatives designated by the court in case the victim is deceased or incapacitated;

if such person or persons are present at the sentencing hearing, regardless of whether the victim is present; and

"(2) 'crime of violence or sexual abuse' means a crime that involved the use or attempted or threatened use of physical force against the person or property of another, or a crime under chapter 109A of title 18, United States Code.".

SEC. 1955. CRIMINAL HISTORY RECORD INFORMATION FOR THE ENFORCEMENT OF LAWS RELATING TO GAMING.

A State gaming enforcement office located within a State Attorney General's office may obtain from the Interstate Identification Index of the FBI criminal history record information for licensing purposes through an authorized criminal justice agency.

SEC. 1956. PRISON IMPACT ASSESSMENTS.

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 4047. Prison impact assessments

"(a) Any submission of legislation by the Judicial or Executive branch which could increase or decrease the number of persons incarcerated or in Federal penal institutions shall be accompanied by a prison impact statement, as defined in subsection (b) of this section.

"(b) The Attorney General shall, in consultation with the Sentencing Commission and the Administrative Office of the United States Courts, prepare and furnish prison impact assessments under subsection (c) of this section, and in response to requests from Congress for information relating to a pending measure or matter that might affect the number of defendants processed through the Federal criminal justice system. A prison impact assessment on pending legislation must be supplied within 7 days of any request. A prison impact assessment shall include—

"(1) projections of the impact on prison, probation, and post prison supervision populations;

"(2) an estimate of the fiscal impact of such population changes on Federal expenditures, including those for construction and operation of correctional facilities for the current fiscal year and 5 succeeding fiscal years;

"(3) an analysis of any other significant factor affecting the cost of the measure and its impact on the operations of components of the criminal justice system; and

"(4) a statement of the methodologies and assumptions utilized in preparing the assessment.

"(c) The Attorney General shall prepare and transmit to the Congress, by March 1 of each year, a prison impact assessment reflecting the cumulative effect of all relevant changes in the law taking effect during the preceding calendar year.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 303 is amended by adding at the end the following new item:

"4047. Prison impact assessments.".

SEC. 1957. INTERSTATE ENFORCEMENT OF PROTECTION ORDERS.

(a) FULL FAITH AND CREDIT GIVEN TO PROTECTION ORDERS.—Any protection order issued consistent with the terms of subsection (b) by the court of one State (the issuing State) shall be accorded full faith and credit by the court of another State (the enforcing State) and enforced as if it were the order of the enforcing State.

(b) PROTECTION ORDER.—A protection order issued by a State court is consistent with the terms of this section if—

(1) such court has jurisdiction over the parties and matter under the law of such State; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) CROSS OR COUNTER PETITION.—A protection order issued by a State court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) if a cross or counter petition has been filed, if the court did not make specific findings that each party was entitled to such an order.

(d) DEFINITIONS.— As used in this section—

(1) the term "spouse or intimate partner" includes—

(A) a present or former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and

(B) any other person similarly situated to a spouse, other than a child, who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides;

(2) the term "protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts by one spouse against his or her spouse or intimate partner, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion of an abused spouse or intimate partner; and

(3) the term "State" includes a State of the United States, the District of Columbia, and any Indian tribe, commonwealth, territory, or possession of the United States.

SEC. 1958. SPECIAL RULE FOR CERTAIN HABEAS CORPUS PETITIONS RELATING TO DEATH SENTENCES.

(a) IN GENERAL.—Any existing race bias claim, whether or not previously raised or determined, unless determined on the merits in a Federal habeas corpus proceeding, may be raised in a proceeding commenced under chapter 153 of title 28, United States Code, not later than 1 year after the date of the enactment of this Act and shall be determined on the merits. In determining the merits of that claim, the law in effect at the time of the determination shall apply.

(b) DEFINITION.—As used in this subsection, the term "existing race bias claim" means a claim of race discrimination, or bias on the basis of race—

(1) made by a person seeking relief with respect to a sentence of death imposed before the date of the enactment of this Act; and

(2) based on a Supreme Court decision announced before such date of enactment.

SEC. 1959. NATIONAL INSTITUTE OF JUSTICE STUDY.

(a) FEASIBILITY STUDY.—The National Institute of Justice shall study the feasibility of establishing a clearinghouse to provide information to interested persons to facilitate the transfer of prisoners in State correctional institutions to other such correctional institutions, pursuant to the Interstate Corrections Compact or other applicable interstate compact, for the purpose of allowing prisoners to serve their prison sentences at correctional institutions in close proximity to their families.

(b) REPORT TO CONGRESS.—The National Institute of Justice shall, not later than 1 year after the date of the enactment of this Act, submit to the Committees on the Judiciary of the House of Representatives and the Senate a report containing the results of the study conducted under subsection (a), together with any recommendations the Institute may have on establishing a clearinghouse described in such subsection.

(c) DEFINITION.—For purposes of this section, the term "State" includes the District of Columbia and any territory or possession of the United States.

SEC. 1960. RIGHT OF THE VICTIM TO AN IMPARTIAL JURY.

Rule 24(b) of the Federal Rules of Criminal Procedure is amended by striking "the Government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges"and inserting "each side is entitled to 6 peremptory challenges".

TITLE XX—FIREARMS AND RELATED AMENDMENTS

Subtitle A—Firearms and Related Amendments

SEC. 2001. ENHANCED PENALTY FOR USE OF A SEMIAUTOMATIC FIREARM DURING A CRIME OF VIOLENCE OR A DRUG TRAFFICKING CRIME.

(a) IN GENERAL.—Section 924(c)(1) of title 18, United States Code, is amended by striking "and if the firearm is a short-barreled rifle, short-barreled shotgun" and inserting "if the firearm is a semiautomatic firearm, a short-barreled rifle, or a short-barreled shotgun,".

(b) SEMIAUTOMATIC FIREARM.—Section 921(a) of such title is amended by adding at the end the following:

"(29) The term 'semiautomatic firearm' means any repeating firearm which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.".

SEC. 2002. INCREASED PENALTY FOR SECOND OFFENSE OF USING AN EXPLOSIVE TO COMMIT A FELONY.

Section 844(h) of title 18, United States Code, is amended by striking "ten" and inserting "twenty".

SEC. 2003. SMUGGLING FIREARMS IN AID OF DRUG TRAFFICKING.

Section 924 of title 18, United States Code, is amended by adding at the end the following:

"(i) Whoever, with the intent to engage in or to promote conduct which—

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3) of this section);

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than ten years, fined under this title, or both.".

SEC. 2004. PROHIBITION AGAINST THEFT OF FIREARMS OR EXPLOSIVES.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding after the subsection added by section 2003 of this Act the following:

"(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned not less than two nor more than ten years, fined in accordance with this title, or both.".

(b) EXPLOSIVES.—Section 844 of such title is amended by adding at the end the following:

"(k) Whoever steals any explosive materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce

shall be imprisoned not less than two nor more than ten years, fined in accordance with this title, or both.".

SEC. 2005. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.

Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1)(B), by striking "(a)(6),"; and

(2) in paragraph (2), by inserting "(a)(6)," after "subsection".

SEC. 2006. SUMMARY DESTRUCTION OF EXPLOSIVES SUBJECT TO FORFEITURE.

Section 844(c) of title 18, United States Code, is amended by redesignating subsection (c) as subsection (c)(1) and by inserting after and below the end the following:

"(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture where it is impracticable or unsafe to remove the materials to a place of storage, or where it is unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least one credible witness. The seizing officer shall make a report of the seizure and take samples as the Secretary may by regulation prescribe.

"(3) Within sixty days after any destruction made pursuant to paragraph (2), the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that—

"(A) the property has not been used or involved in a violation of law; or

"(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.".

SEC. 2007. ELIMINATION OF OUTMODED LANGUAGE RELATING TO PAROLE.

Section 924 of title 18, United States Code, is amended—

(1) in subsection (c)(1), by striking "No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein."; and

(2) in subsection (e)(1), by striking ", and such person shall not be eligible for parole with respect to the sentence imposed under this subsection".

SEC. 2008. ENHANCED PENALTIES FOR USE OF A FIREARM IN THE COMMISSION OF COUNTERFEITING OR FORGERY.

Section 924(c)(1) of title 18, United States Code, is amended by inserting "or during and in relation to any felony punishable under chapter 25" after "United States,".

SEC. 2009. MANDATORY PENALTIES FOR FIREARMS POSSESSION BY VIOLENT FELONS AND SERIOUS DRUG OFFENDERS.

(a) 1 PRIOR CONVICTION.—Section 924(a)(2) of title 18, United States Code, is amended by inserting ", and if the violation is of section 922(g)(1) by a person who has a previous conviction for a violent felony or a serious drug offense (as defined in subsections (e)(2)(A) and (B) of this section), a sentence imposed under this paragraph shall include a term of imprisonment of not less than five years" before the period.

(b) 2 PRIOR CONVICTIONS.—Section 924 of such title is amended by adding after the subsections added by sections 2003 and 2004(a) of this Act the following:

"(k)(1) Notwithstanding subsection (a)(2) of this section, any person who violates section 922(g) and has 2 previous convictions by any court referred to in section 922(g)(1) for a violent felony (as defined in subsection (e)(2)(B) of this section) or a serious drug offense (as defined in subsection (e)(2)(A) of this section) committed on occasions different from one another shall be fined as provided in this title, imprisoned not less than 10 years and not more than 20 years, or both.

"(2) Notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).".

SEC. 2010. REPORTING OF MULTIPLE FIREARMS SALES.

Section 923(g)(3) of title 18, United States Code, is amended—

(1) by striking "five consecutive business" and inserting "thirty consecutive"; and

(2) by adding at the end the following: "Each licensee shall forward a copy of the report to the chief law enforcement officer of the place of residence of the unlicensed person not later than the close of business on the date that the multiple sale or disposition occurs.".

SEC. 2011. RECEIPT OF FIREARMS BY NONRESIDENT.

Section 922(a) of title 18, United States Code, is amended—

(1) in paragraph (7)(C), by striking "and";

(2) in paragraph (8)(C), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms.".

SEC. 2012. PROHIBITION AGAINST CONSPIRACY TO VIOLATE FEDERAL FIREARMS OR EXPLOSIVES LAWS.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding after the subsections added by sections 2003, 2004(a), and 2009(b) of this Act the following:

"(l) Whoever conspires to commit any offense punishable under this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

(b) EXPLOSIVES.—Section 844 of such title is amended by adding after the subsection added by section 2004(b) of this Act the following:

"(l) Whoever conspires to commit any offense punishable under this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 2013. PROHIBITION AGAINST THEFT OF FIREARMS OR EXPLOSIVES FROM LICENSEE.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding after the subsections added by sections 2003, 2004(a), 2009(b), and 2012(a) of this Act the following:

"(m) Whoever steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined in accordance with this title, imprisoned not more than ten years, or both.".

(b) EXPLOSIVES.—Section 844 of such title is amended by adding after the subsections added by sections 2004(b) and 2012(b) of this Act the following:

"(m) Whoever steals any explosive material from a licensed importer, licensed manufacturer, licensed dealer, or permittee shall be fined in accordance with this title, imprisoned not more than ten years, or both.".

SEC. 2014. PROHIBITION AGAINST DISPOSING OF EXPLOSIVES TO PROHIBITED PERSONS.

Section 842(d) of title 18, United States Code, is amended by striking "licensee" and inserting "person".

SEC. 2015. COMPLIANCE WITH STATE AND LOCAL FIREARMS LICENSING LAWS REQUIRED BEFORE ISSUANCE OF FEDERAL LICENSE TO DEAL IN FIREARMS.

(a) IN GENERAL.—Section 923(d)(1) of title 18, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(3) by adding at the end the following:

"(F) in the case of an application for a license to engage in the business of dealing in firearms—

"(i) the applicant has complied with all requirements imposed on persons desiring to engage in such a business by the State and political subdivision thereof in which the applicant conducts or intends to conduct such business; and

"(ii) the application includes a written statement which—

"(I) is signed by the chief of police of the locality, or the sheriff of the county, in which the applicant conducts or intends to conduct such business, the head of the State police of such State, or any official designated by the Secretary; and

"(II) certifies that the information available to the signer of the statement does not indicate that the applicant is ineligible to obtain such a license under the law of such State and locality.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to applications for a license that is issued on or after the date of the enactment of this Act.

SEC. 2016. INCREASED PENALTY FOR INTERSTATE GUN TRAFFICKING.

Section 924 of title 18, United States Code, is amended by adding after the subsections added by sections 2003, 2004(a), 2009(b), 2012(a), and 2013(a) of this Act the following:

"(n) Whoever, with the intent to engage in conduct which constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.".

SEC. 2017. PROHIBITION AGAINST TRANSACTIONS INVOLVING STOLEN FIREARMS WHICH HAVE MOVED IN INTERSTATE OR FOREIGN COMMERCE.

Section 922(j) of title 18, United States Code, is amended to read as follows:

"(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.".

SEC. 2018. POSSESSION OF EXPLOSIVES BY FELONS AND OTHERS.

Section 842(i) of title 18, United States Code, is amended by inserting "or possess" after "to receive".

Subtitle B—Assault Weapons

SEC. 2021. PROHIBITION AGAINST POSSESSION AND TRANSFER OF ASSAULT WEAPONS.

(a) PROHIBITION.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(s)(1) It shall be unlawful for any person to possess an assault weapon, unless—

"(A) the weapon was lawfully and continuously possessed by the person since before the

date the weapon is included in the list set forth in section 921(a)(30); or

"(B) the weapon was lawfully transferred to the person after the effective date of this subsection.

"(2) It shall be unlawful for any person to transfer an assault weapon, unless—

"(A) the weapon was lawfully and continuously possessed by the person since before the date the weapon is included in the list set forth in section 921(a)(30); and

"(B) the transfer is in accordance with regulations prescribed by the Secretary.".

(b) ASSAULT WEAPON DEFINED.—Section 921(a) of such title is amended by adding after the paragraph added by section 2001(b) of this Act the following:

"(30)(A) The term 'assault weapon' means any of the following weapons, or a copy thereof:

"(i) Action Arms Israeli Military Industries UZI and Galil.

"(ii) Auto Ordnance 27A1 Thompson, 27A5 Thompson, and M1 Thompson.

"(iii) Beretta AR–70 (SC–70).

"(iv) Colt AR–15 and CAR–15.

"(v) Fabrique Nationale FN/FAL, FN/LAR, and FNC.

"(vi) INTRATEC TEC–9.

"(vii) MAC 10 and 11.

"(viii) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs.

"(ix) Springfield BM59, SAR48, and G3SA.

"(x) Steyr AUG.

"(xi) Street Sweeper and Striker 12.

"(xii) All Ruger Mini-14 models with folding stocks.

"(xiii) Armscorp FAL.

"(B) The term 'copy' means, with respect to a weapon specified in subparagraph (A), a weapon, by whatever name known, which embodies the same basic configuration as the weapon so specified.".

(c) AUTHORITY OF THE SECRETARY OF THE TREASURY TO RECOMMEND MODIFICATIONS TO THE LIST OF ASSAULT WEAPONS.—

(1) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by adding at the end the following:

"§ 931. Recommendation of modifications to the list of assault weapons

"From time to time, the Secretary, in consultation with the Attorney General, may recommend to the Congress that certain weapons be added to, or removed from, the list set forth in section 921(a)(30).".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 44 of such title is amended by adding at the end the following:

"931. Recommendation of modifications to the list of assault weapons.".

(d) PENALTIES.—

(1) UNLAWFUL POSSESSION OR TRANSFER OF ASSAULT WEAPON.—Section 924(a)(1)(B) of such title is amended by striking "or (q)" and inserting "(r), or (s)".

(2) ENHANCED PENALTY FOR POSSESSION OR USE OF ASSAULT WEAPON DURING CRIME OF VIOLENCE OR DRUG TRAFFICKING CRIME.—Section 924(c)(1) of such title, as amended by section 2001(a) of this Act, is amended by inserting "an assault weapon," after "semiautomatic firearm,".

(e) REGULATIONS GOVERNING TRANSFER OF ASSAULT WEAPONS.—

(1) REGULATIONS.—Section 926 of such title is amended by adding at the end the following:

"(d) Within 60 days after the date of the enactment of this subsection, the Secretary shall prescribe regulations governing the transfer of assault weapons, which shall allow such a transfer to proceed within 30 days after the Secretary receives such documentation as the Secretary may require to be submitted with respect to the transfer, and shall include provisions for determining whether the transferee is a person described in section 922(g).".

(2) PENALTY FOR VIOLATION OF REGULATIONS.—Section 924(a) of such title is amended—

(A) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(B) by adding at the end the following:

"(5) Whoever, in violation of a regulation issued under section 926(d), transfers an assault weapon that has been lawfully and continuously possessed by the person since before the date the weapon is included in the list set forth in section 921(a)(30) shall be fined not more than $500.".

Subtitle C—Large Capacity Ammunition Feeding Devices

SEC. 2031. PROHIBITION AGAINST POSSESSION OR TRANSFER OF LARGE CAPACITY AMMUNITION FEEDING DEVICES.

(a) PROHIBITION.—Section 922 of title 18, United States Code, is amended by adding after the subsection added by section 2021(a) of this Act the following:

"(t)(1) It shall be unlawful for any person to possess or transfer any large capacity ammunition feeding device.

"(2) Paragraph (1) shall not apply to any otherwise lawful possession or otherwise lawful transfer of a large capacity ammunition feeding device that was lawfully possessed before the date of the enactment of this subsection.".

(b) LARGE CAPACITY AMMUNITION FEEDING DEVICE DEFINED.—Section 921(a) of such title is amended by adding after the paragraphs added by sections 2001(b) and 2021(b) of this Act the following:

"(31)(A) Except as provided in subparagraph (B), the term 'large capacity ammunition feeding device' means—

"(i) a detachable magazine, belt, drum, feed strip, or similar device which has, or which can be readily restored or converted to have, a capacity of more than 7 rounds of ammunition; and

"(ii) any part or combination of parts, designed or intended to convert a detachable magazine, belt, drum, feed strip, or similar device into a device described in clause (i).

"(B) The term 'large capacity ammunition feeding device' does not include any attached tubular device designed to accept and capable of operating with only .22 rimfire caliber ammunition.".

(c) PENALTY.—Section 924(a)(1)(B) of such title, as amended by section 2021(d)(1) of this Act, is amended by striking "or (s)" and inserting "(s), or (t)".

(d) REGULATIONS.—Section 926 of such title is amended by adding after the subsection added by section 2021(e)(1) of this Act the following:

"(e) The Secretary shall promulgate regulations requiring manufacturers of large capacity ammunition feeding devices to stamp each such device manufactured after the date of the enactment of this subsection with a permanent distinguishing mark selected in accordance with regulations.".

TITLE XXI—SPORTS GAMBLING

SEC. 2101. SHORT TITLE.

This title may be referred to as the "Professional and Amateur Sports Protection Act".

SEC. 2102. PROFESSIONAL AND AMATEUR SPORTS PROTECTION.

(a) IN GENERAL.—Part VI of title 28 of the United States Code is amended by adding at the end the following:

"CHAPTER 178—PROFESSIONAL AND AMATEUR SPORTS PROTECTION

"§ 3701. Definitions

"For purposes of this chapter—

"(1) the term 'amateur sports organization' means—

"(A) a person or governmental entity that sponsors, organizes, or conducts a competitive game in which one or more amateur athletes participate, or

"(B) a league or association of persons or governmental entities described in subparagraph (A),

"(2) the term 'governmental entity' means a State, a political subdivision of a State, or an entity or organization that has governmental authority over a geographical area that is under the authority of the Government of the United States,

"(3) the term 'professional sports organization' means—

"(A) a person or governmental entity that sponsors, organizes, or conducts a competitive game in which one or more professional athletes participate, or

"(B) a league or association of persons or governmental entities described in subparagraph (A),

"(4) the term 'person' has the meaning given such term in section 1 of title 1, and

"(5) the term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.

"§ 3702. Unlawful sports gambling

"It shall be unlawful for—

"(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law, or

"(2) a person to sponsor, operate, advertise, or promote, pursuant to the law of a governmental entity,

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

"§ 3703. Injunctions

"A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.

"§ 3704. Applicability

"Section 3702 shall not apply to—

"(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a governmental entity, to the extent that the particular scheme was in operation in the period beginning September 1, 1989, and ending August 31, 1990, in such governmental entity pursuant to the law of any governmental entity;

"(2) a commercial casino gaming scheme in operation in a gambling establishment (as defined in section 1081 of title 18), to the extent that the particular commercial casino gaming scheme is—

"(A) described in paragraph (1) with respect to a governmental entity, and

"(B) in operation not later than 2 years after the effective date of this chapter, in a governmental entity in which commercial casino gaming was in operation in such an establishment throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation, or

"(3) parimutuel animal racing.".

(b) CLERICAL AMENDMENTS.—The table of chapters for part VI of title 28, United States Code, is amended—

(1) by amending the item relating to chapter 176 to read as follows:

"176. Federal Debt Collection Procedure ..... 3001", and

(2) by adding at the end the following:

"178. Professional and Amateur Sports Protection ..... 3701".

TITLE XXII—TECHNICAL CORRECTIONS

SEC. 2201. AMENDMENTS RELATING TO FEDERAL FINANCIAL ASSISTANCE FOR LAW ENFORCEMENT.

(a) TESTING CERTAIN SEX OFFENDERS FOR HUMAN IMMUNE DEFICIENCY VIRUS.—(1) Section 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756) is amended—

(1) in subsection (a) by striking "Of" and inserting "Subject to subsection (f), of",

(2) in subsection (c) by striking "subsections (b) and (c)" and inserting "subsection (b)",

(3) in subsection (e) by striking "or (e)" and inserting "or (f)",

(4) in subsection (f)(1)—

(A) in subparagraph (A)—

(i) by striking ", taking into consideration subsection (e) but", and

(ii) by striking "this subsection," and inserting "this subsection", and

(B) in subparagraph (B) by striking "amount" and inserting "funds".

(b) CORRECTIONAL OPTIONS GRANTS.—(1) Section 515(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(A) by striking "subsection (a) (1) and (2)" and inserting "paragraphs (1) and (2) of subsection (a)", and

(B) in paragraph (2) by striking "States" and inserting "public agencies".

(2) Section 516 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(A) in subsection (a) by striking "for section" each place it appears and inserting "shall be used to make grants under section", and

(B) in subsection (b) by striking "section 515(a)(1) or (a)(3)" and inserting "paragraph (1) or (3) of section 515(a)".

(3) Section 1001(a)(5) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(5)) is amended by inserting "(other than chapter B of subpart 2)" after "and E".

(c) DENIAL OR TERMINATION OF GRANT.—Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by striking "M," and inserting "M,".

(d) DEFINITIONS.—Section 901(a)(21) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791(21)) is amended by adding a semicolon at the end.

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended in paragraph (3) by striking "and N" and inserting "N, O, P, Q, R, S, T, U, V, and W".

(f) PUBLIC SAFETY OFFICERS DISABILITY BENEFITS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended—

(1) in section 1201—

(A) in subsection (a) by striking "subsection (g)" and inserting "subsection (h),", and

(B) in subsection (b)—

(i) by striking "subsection (g)" and inserting "subsection (h)",

(ii) by striking "personal", and

(iii) in the first proviso by striking "section" and inserting "subsection", and

(2) in section 1204(3) by striking "who was responding to a fire, rescue or police emergency".

(g) HEADINGS.—(1) The heading for part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797) is amended to read as follows:

"PART M—REGIONAL INFORMATION SHARING SYSTEMS".

(2) The heading for part O of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797) is amended to read as follows:

"PART O—RURAL DRUG ENFORCEMENT".

(h) TABLE OF CONTENTS.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(1) in the item relating to section 501 by striking "Drug Control and System Improvement Grant" and inserting "drug control and system improvement grant",

(2) in the item relating to section 1403 by striking "Application" and inserting "Applications", and

(3) in the items relating to part O by redesignating sections 1401 and 1402 as sections 1501 and 1502, respectively.

(i) OTHER TECHNICAL AMENDMENTS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(1) in section 202(c)(2)(E) by striking "crime,," and inserting "crime,",

(2) in section 302(c)(19) by striking a period at the end and inserting a semicolon,

(3) in section 602(a)(1) by striking "chapter 315" and inserting "chapter 319",

(4) in section 603(a)(6) by striking "605" and inserting "606",

(5) in section 605 by striking "this section" and inserting "this part",

(6) in section 606(b) by striking "and Statistics" and inserting "Statistics",

(7) in section 801(b)—

(A) by striking "parts D," and inserting "parts",

(B) by striking "part D" each place it appears and inserting "subpart 1 of part E",

(C) by striking "403(a)" and inserting "501", and

(D) by striking "403" and inserting "503",

(8) in the first sentence of section 802(b) by striking "part D," and inserting "subpart 1 of part E or under part",

(9) in the second sentence of section 804(b) by striking "Prevention or" and inserting "Prevention, or",

(10) in section 808 by striking "408, 1308," and inserting "507",

(11) in section 809(c)(2)(H) by striking "805" and inserting "804",

(12) in section 811(e) by striking "Law Enforcement Assistance Administration" and inserting "Bureau of Justice Assistance",

(13) in section 901(a)(3) by striking "and," and inserting ", and",

(14) in section 1001(c) by striking "parts" and inserting "part".

(j) CONFORMING AMENDMENT TO OTHER LAW.—Section 4351(b) of title 18, United States Code, is amended by striking "Administrator of the Law Enforcement Assistance Administration" and inserting "Director of the Bureau of Justice Assistance".

SEC. 2202. GENERAL TITLE 18 CORRECTIONS.

(a) SECTION 1031.—Section 1031(g)(2) of title 18, United States Code, is amended by striking "a government" and inserting "a Government".

(b) SECTION 208.—Section 208(c)(1) of title 18, United States Code, is amended by striking "Banks" and inserting "banks".

(c) SECTION 1007.—The heading for section 1007 of title 18, United States Code, is amended by striking "Transactions" and inserting "transactions" in lieu thereof.

(d) SECTION 1014.—Section 1014 of title 18, United States Code, is amended by striking the comma which follows a comma.

(e) ELIMINATION OF OBSOLETE CROSS REFERENCE.—Section 3293 of title 18, United States Code, is amended by striking "1008,".

(f) ELIMINATION OF DUPLICATE SUBSECTION DESIGNATION.—Section 1031 of title 18, United States Code, is amended by redesignating the second subsection (g) as subsection (h).

(g) CLERICAL AMENDMENT TO PART I TABLE OF CHAPTERS.—The item relating to chapter 33 in the table of chapters for part I of title 18, United States Code, is amended by striking "701" and inserting "700".

SEC. 2203. CORRECTIONS OF ERRONEOUS CROSS REFERENCES AND MISDESIGNATIONS.

(a) Section 1791(b) of title 18, United States Code, is amended by striking "(c)" wherever it appears and inserting in lieu thereof "(d)".

(b) Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207–51; 21 U.S.C. 857)" and inserting in lieu thereof "section 422 of the Controlled Substances Act (21 U.S.C. 863)".

(c) Section 2703(d) of title 18, United States Code, is amended by striking "section 3126(2)(A)" and inserting in lieu thereof "section 3127(2)(A)".

(d) Section 666(d) of title 18, United States Code, is amended—

(1) by redesignating the 4th paragraph relating to the definition of the term "State" as paragraph (5);

(2) by striking "and" at the end of paragraph (3); and

(3) by striking the period at the end of paragraph (4) and inserting "; and".

(e) Section 4247(h) of title 18, United States Code, is amended by striking "subsection (e) of section 4241, 4243, 4244, 4245, or 4246," and inserting in lieu thereof "subsection (e) of section 4241, 4244, 4245, or 4246, or subsection (f) of section 4243,".

(f) Section 408(b)(2)(A) of the Controlled Substances Act (21 U.S.C. 848(b)(2)(A)) is amended by striking "subsection (d)(1)" and inserting in lieu thereof "subsection (c)(1)".

(g)(1) Section 994(h) of title 28, United States Code, is amended by striking "section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)" each place it appears and inserting in lieu thereof "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

(2) Section 924(e) of title 18, United States Code, is amended by striking "the first section or section 3 of Public Law 96–350 (21 U.S.C. 955a et seq.)" and inserting in lieu thereof "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

(h) Section 2596(d) of the Crime Control Act of 1990 is amended, effective retroactively to the date of enactment of such Act, by striking "951(c)(1)" and inserting in lieu thereof "951(c)(2)".

SEC. 2204. REPEAL OF OBSOLETE PROVISIONS IN TITLE 18.

Title 18, United States Code, is amended—

(1) in section 212, by striking "or of any National Agricultural Credit Corporation," and by striking "or National Agricultural Credit Corporations,";

(2) in section 213, by striking "or examiner of National Agricultural Credit Corporations";

(3) in section 709, by striking the seventh and thirteenth paragraphs;

(4) in section 711, by striking the second paragraph;

(5) by striking section 754, and amending the table of sections for chapter 35 by striking the item relating to section 754;

(6) in sections 657 and 1006, by striking "Reconstruction Finance Corporation,", and by striking "Farmers' Home Corporation,";

(7) in section 658, by striking "Farmers' Home Corporation,";

(8) in section 1013, by striking ", or by any National Agricultural Credit Corporation";

(9) in section 1160, by striking "white person" and inserting "non-Indian";

(10) in section 1698, by striking the second paragraph;

(11) by striking sections 1904 and 1908, and amending the table of sections for chapter 93 by striking the items relating to such sections;

(12) in section 1909, by inserting "or" before "farm credit examiner" and by striking "or an examiner of National Agricultural Credit Corporations,";

(13) by striking sections 2157 and 2391, and amending the table of sections for chapters 105 and 115, respectively, by striking the items relating to such sections;

(14) in section 2257 by striking the subsections (f) and (g) that were enacted by Public Law 100-690;

(15) in section 3113, by striking the third paragraph; and

(16) in section 3281, by striking "except for offenses barred by the provisions of law existing on August 4, 1939".

SEC. 2205. CORRECTION OF DRAFTING ERROR IN THE FOREIGN CORRUPT PRACTICES ACT.

Section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2) is amended, in subsection (a)(3), by striking "issuer" and inserting in lieu thereof "domestic concern".

SEC. 2206. ELIMINATION OF REDUNDANT PENALTY PROVISION IN 18 U.S.C. 1116.

Section 1116(a) of title 18, United States Code, is amended by striking ", and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years".

SEC. 2207. ELIMINATION OF REDUNDANT PENALTY.

Section 1864(c) of title 18, United States Code, is amended by striking "(b) (3), (4), or (5)" and inserting in lieu thereof "(b)(5)".

SEC. 2208. CORRECTIONS OF MISSPELLINGS AND GRAMMATICAL ERRORS.

Title 18, United States Code, is amended—

(1) in section 513(c)(4), by striking "association or persons" and inserting in lieu thereof "association of persons";

(2) in section 1956(e), by striking "Evironmental" and inserting in lieu thereof "Environmental";

(3) in section 3125, by striking the quotation marks in paragraph (a)(2), and by striking "provider for" and inserting in lieu thereof "provider of" in subsection (d); and

(4) in section 3731, by striking "order of a district courts" and inserting in lieu thereof "order of a district court" in the second undesignated paragraph.

TITLE XXIII—DEATH PENALTY PROCEDURES

SEC. 2301. DEATH PENALTY PROCEDURES.

(a) TITLE 18 AMENDMENT.—Title 18, United States Code, is amended by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH PENALTY PROCEDURES

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(1) an offense described in section 794 or section 2381 of this title;

"(2) an offense described in section 1751(c)(2) of this title;

"(3) an offense referred to in section 408(c)(1) of the Controlled Substances Act, committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) of that section or twice the gross receipts described in subsection (b)(2)(B) of that section;

"(4) an offense constituting a felony violation of the Controlled Substances Act, the Controlled Substances Import and Export Act, or the Maritime Drug Law Enforcement Act where the defendant knowingly or intentionally causes the death of another individual in the course of the violation or from the use of the controlled substance involved in the violation;

"(5) an offense under section 922(u) of this title (relating to drive-by shooting);

"(6) an offense under section 36, 2280, 2281, 2332, 2339, or 2340A of this title, or section 902(i) or 902(n) of the Federal Aviation Act of 1958 in which the defendant, as determined beyond a reasonable doubt at a sentencing proceeding under this chapter, intentionally, knowingly, or with reckless disregard for human life, caused the death of another individual; or

"(7) any other offense—

"(A) for which a sentence of death is provided by law; and

"(B) in which the defendant, as determined beyond a reasonable doubt at a sentencing proceeding under this chapter, intentionally or knowingly caused the death of another individual,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified. However, no person may be sentenced to death who was less than 18 years of age at the time of the offense.

"§ 3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) DURESS.—The defendant was under duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant's participation in the offense was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

"(4) FORESEEABILITY.—The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of murder, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"(5) YOUTH.—The defendant was youthful, although not under the age of 18.

"(6) PRIOR RECORD.—The defendant did not have a significant prior criminal record.

"(7) MENTAL OR EMOTIONAL DISTURBANCE.—The defendant committed the offense under severe mental or emotional disturbance.

"(8) PUNISHMENT OF OTHERS EQUALLY CULPABLE.—Another defendant or defendants, equally culpable in the crime, will not be punished by death.

"(9) CONSENT OF VICTIM.—The victim consented to the criminal conduct that resulted in the victim's death.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's background, character or record or any other circumstance of the offense that the defendant may proffer as a mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

"(1) PREVIOUS ESPIONAGE OR TREASON CONVICTION.—The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of life imprisonment or death was authorized by statute.

"(2) RISK OF SUBSTANTIAL DANGER TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk to the national security.

"(3) RISK OF DEATH TO ANOTHER.—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591(2) or (5) through (7), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors for which notice has been given and determine which, if any, exist:

"(1) CONDUCT OCCURRED DURING COMMISSION OF SPECIFIED CRIMES.—The conduct resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 1203 (hostage taking), section 1751 (violence against the President or Presidential staff), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2381 (treason) of this title, section 1826 of title 28 (persons in custody as recalcitrant witnesses or hospitalized following insanity acquittal), or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n) (aircraft piracy)), unless the above-listed offense is the offense for which the death penalty is being sought.

"(2) INVOLVEMENT OF FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—The defendant—

"(A) during and in relation to the commission of the offense or in escaping or attempting to es-

cape apprehension used a firearm as defined in section 921 of this title; or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use of a firearm, as defined in section 921 of this title, against another person.

"(3) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(4) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(5) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense or in escaping or attempting to escape apprehension, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) HEINOUS, CRUEL OR DEPRAVED MANNER OF COMMISSION.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(7) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value, unless this is an element of the offense.

"(8) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value, unless this is an element of the offense.

"(9) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(10) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity, and the defendant was or should have been aware of that old age, youth, or infirmity.

"(11) TYPE OF VICTIM.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if there was no Vice President, the officer next in order of succession to the office of the President of the United States, or any person acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if that official was in the United States on official business; or

"(D) a Federal public servant who was outside of the United States or who was a Federal judge, a Federal law enforcement officer, an employee (including a volunteer or contract employee) of a Federal prison, or an official of the Federal Bureau of Prisons—

"(i) while such public servant was engaged in the performance of his official duties;

"(ii) because of the performance of such public servant's official duties; or

"(iii) because of such public servant's status as a public servant.

For purposes of this paragraph, the terms 'President-elect' and 'Vice President-elect' mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2; a 'Federal law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense; 'Federal prison' means a Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and 'Federal judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

"(d) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section 3591 (3) or (4), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist—

"(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm, as defined in section 921 of this title, to threaten, intimidate, assault, or injure a person.

"(5) DISTRIBUTION TO PERSONS UNDER TWENTY-ONE.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor for which notice has been given exists.

"§3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the Government, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, shall sign and file with the court, and serve on the defendant, a notice that the Government in the event of conviction will seek the sentence of death. The notice shall set forth the aggravating factor or factors enumerated in section 3592, and any other aggravating factor not specifically enumerated in section 3592, that the Government, if the defendant is convicted, will seek to prove as the basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court shall permit the attorney for the Government to amend the notice upon a showing of good cause a reasonable time before the sentencing phase of the trial begins.

"(b) HEARING BEFORE A COURT OR JURY.—When the attorney for the Government has filed a notice as required under subsection (a) and the defendant is found guilty of or pleads guilty to an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under the section is necessary; or

"(3) before the court alone, upon motion of the defendant and with the approval of the attorney for the Government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to—

"(1) any matter relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

"(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

The information presented may include the trial transcript and exhibits. Any other information

relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the Government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of an aggravating factor is on the Government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(1), an aggravating factor required to be considered under section 3592(b) is found to exist;

"(2) an offense described in section 3591 (2) or (5)–(7), an aggravating factor required to be considered under section 3592(c) is found to exist; or

"(3) an offense described in section 3591 (3) or (4), an aggravating factor required to be considered under section 3592(d) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist under subsection (d) outweigh any mitigating factor or factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it is never required to impose a death sentence and that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not be influenced by prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon the recommendation under section 3593(e) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without the possibility of release.

"§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor;

"(B) the evidence and information support the special findings of the existence of an aggravating factor or factors; and

"(C) the proceedings did not involve any other prejudicial error requiring reversal of the sentence that was properly preserved for appeal or reflected in the record;

it shall affirm the sentence, provided that if any reviewing court determines that any aggravating factor was not supported by the evidence or is not a proper aggravating factor, the sentence shall be affirmed if the court finds that a remaining aggravating factor found to exist is one allowed under section 3592 and that the remaining aggravating factor or factors found to exist substantially outweigh any mitigating factors found to exist.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593 or for imposition of another authorized sentence as appropriate.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"§ 3596. Implementation of a sentence of death

"(a) IN GENERAL.—A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

"(b) SPECIAL BARS TO EXECUTION.—A sentence of death shall not be carried out upon a woman while she is pregnant, or upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability—

"(1) cannot understand the nature of the pending proceedings, what such person was tried for, the reason for the punishment, or the nature of the punishment; or

"(2) lacks the capacity to recognize or understand facts which would make the punishment unjust or unlawful, or lacks the ability to convey such information to counsel or to the court.

"(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—No employee of any State department of corrections, the Federal Bureau of Prisons, the United States Marshals Service, or the United States Department of Justice, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section or to participate in the prosecution or appeal of any capital case if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"§ 3596A. Special provisions for Indian country

"Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country as defined in section 1151 of this title, and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction.

"§ 3597. Use of State facilities

"A United States Marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"§ 3598. Appointment of counsel

"(a) REPRESENTATION OF INDIGENT DEFENDANTS.—Notwithstanding any other provision of law, this section shall govern the appointment of counsel for any defendant or applicant against whom a sentence of death may be sought, or on whom a sentence of death has been imposed, for an offense against the United States, and for any defendant or applicant seeking to vacate or set aside a death sentence in a proceeding under section 2254 or 2255 of title 28, United States Code, where the defendant or applicant is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services. Such a defendant or applicant shall be entitled

to appointment of counsel and the furnishing of such other services in accordance with subsections (b) through (g).

"(b) REPRESENTATION BEFORE FINALITY OF JUDGMENT.—A defendant or applicant within the scope of this section shall have counsel appointed for trial representation as provided in section 3005 of this title. Each counsel so appointed shall continue to represent the defendant or applicant through every subsequent stage of available judicial proceedings, unless replaced by the court with similarly qualified counsel.

"(c) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment of a Federal court imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the district court that imposed the sentence. Within ten days of receipt of such notice, the district court shall proceed to make a determination whether the defendant or applicant is eligible under this section for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order—

"(1) appointing one or more counsel to represent the defendant or applicant upon a finding that the defendant or applicant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel;

"(2) finding, after a hearing if necessary, that the defendant or applicant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or

"(3) denying the appointment of counsel upon a finding that the defendant or applicant is financially able to obtain adequate representation.

"(d) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant or applicant who is entitled to appointment of counsel under this section, at least one counsel appointed for trial representation must have been admitted to the bar for at least five years and have at least three years of experience in the trial of felony cases in the federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to practice in the court of appeals for at least five years and have at least three years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant or applicant, with due consideration of the seriousness of the penalty and the unique and complex nature of the litigation.

"(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—Except as otherwise provided in this section, the provisions of section 3006A of this title shall apply to appointments under this section.

"(f) ANCILLARY SERVICES.—Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant or applicant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's or applicant's attorneys to obtain such services on behalf of the defendant or applicant and shall order the payment of fees and expenses therefore, under subsection (g). Upon a finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc.

"(g) RATE OF COMPENSATION.—Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to attorneys appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under subsection (f), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of subsections (b) through (f).

"(h) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"§ 3599. Collateral Attack on Judgment Imposing Sentence of Death

"(a) TIME FOR MAKING SECTION 2255 MOTION.—In a case in which sentence of death has been imposed, and the judgment has become final as described in section 3598(c) of this title, a motion in the case under section 2255 of title 28, United States Code, must be filed within one year of the issuance of the order relating to appointment of counsel under section 3598(c) of this title. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding sixty days. A motion described in this section shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) STAY OF EXECUTION.—The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence, and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such motion by a district court; or

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the motion under that section is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of his decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

"(c) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim was (A) the result of governmental action in violation of the Constitution of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the applicant's guilt of the offense or offenses for which the capital sentence was imposed or in the validity of the sentence under Federal law.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18, United States Code, is amended by adding the following new item after the item relating to chapter 227:

"228. Death penalty procedures ..... 3591.".

(c) VOIR DIRE.—Rule 24(a) of the Federal Rules of Criminal Procedure is amended by adding at the end thereof the following: "In death penalty cases, the court shall permit the defendant or his attorney and the attorney for the Government to conduct direct, oral examination of any of the prospective jurors.".

TITLE XXIV—DEATH PENALTY

SEC. 2401. SHORT TITLE.

This title may be cited as the "Federal Death Penalty Act of 1991".

SEC. 2402. DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.

Section 34 of title 18, United States Code, is amended by striking "to the death penalty" and all that follows through the end of the section, and inserting "to imprisonment for life. If the death results from an intentional killing, the defendant may be sentenced to the death penalty.".

SEC. 2403. CONFORMING AMENDMENT RELATING TO ESPIONAGE.

Section 794(a) of title 18, United States Code, is amended by striking the period at the end of the section and inserting ", except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 of this title that the offense directly concerned nuclear weaponry, military spacecraft and satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; sources or methods of intelligence or counterintelligence operations; or any other major weapons system or major element of defense strategy.".

SEC. 2404. CONFORMING AMENDMENT RELATING TO TRANSPORTING EXPLOSIVES.

Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 2405. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF FEDERAL PROPERTY BY EXPLOSIVES.

Section 844(f) of title 18 of the United States Code is amended by striking "as provided in section 34 of this title".

SEC. 2406. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF INTERSTATE PROPERTY BY EXPLOSIVES.

Section 844(i) of title 18 of the United States Code is amended by striking "as provided in section 34 of this title".

SEC. 2407. CONFORMING AMENDMENT RELATING TO MURDER.

The second paragraph of section 1111(b) of title 18 of the United States Code is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;".

SEC. 2408. CONFORMING AMENDMENT RELATING TO KILLING OFFICIAL GUESTS OR INTERNATIONALLY PROTECTED PERSONS.

Section 1116(a) of title 18 of the United States Code is amended by striking "any such person

who is found guilty of murder in the first degree shall be sentenced to imprisonment for life".

SEC. 2409. MURDER BY FEDERAL PRISONER.

Chapter 51 of title 18 of the United States Code, as amended by section 1713 of this Act, is amended—

(1) by adding at the end thereof the following:

"§ 1119. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal prison under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of release.

"(b) For purposes of this section—

"(1) 'Federal prison' means any Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government;

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death."; and

(2) by adding at the end of the table of sections at the beginning of such chapter the following:

"1119. Murder by a Federal prisoner.".

SEC. 2410. CONFORMING AMENDMENT RELATING TO KIDNAPPING.

Section 1201(a) of title 18, United States Code, is amended by inserting after "or for life" the following "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 2411. CONFORMING AMENDMENT RELATING TO HOSTAGE TAKING.

Section 1203(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 2412. CONFORMING AMENDMENT RELATING TO MAILABILITY OF INJURIOUS ARTICLES.

The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and all that follows to the period at the end of the paragraph.

SEC. 2413. CONFORMING AMENDMENT RELATING TO PRESIDENTIAL ASSASSINATION.

Subsection (c) of section 1751 of title 18 of the United States Code is amended to read as follows:

"(c) Whoever attempts to murder or kidnap any individual designated in subsection (a) of this section shall be punished—

"(1) by imprisonment for any term of years or for life, or

"(2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to murder the President of the United States and results in serious bodily injury to the President (as defined in section 1365 of this title) or comes dangerously close to causing the death of the President.".

SEC. 2414. CONFORMING AMENDMENT RELATING TO MURDER FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting "and if death results, shall be punished by death or life imprisonment, or shall be fined in accordance with this title, or both".

SEC. 2415. CONFORMING AMENDMENT RELATING TO VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Section 1959(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine in accordance with this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine in accordance with this title, or both;".

SEC. 2416. CONFORMING AMENDMENT RELATING TO WRECKING TRAINS.

The second to the last paragraph of section 1992 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and all that follows before the period at the end of that second to last paragraph.

SEC. 2417. CONFORMING AMENDMENT RELATING TO BANK ROBBERY.

Section 2113(e) of title 18 of the United States Code is amended by striking the words "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof "or if death results shall be punished by death or life imprisonment".

SEC. 2418. CONFORMING AMENDMENT RELATING TO TERRORIST ACTS.

Section 2332(a)(1) of title 18, United States Code, as so redesignated by section 1735 of this Act, is amended to read as follows:

"(1) if the killing is murder as defined in section 1111(a) of this title, or if the killing is the result of conduct that constitutes a reckless disregard of human life, be fined under this title, punished by death or imprisonment for any term of years or for life, or both;".

SEC. 2419. CONFORMING AMENDMENT RELATING TO AIRCRAFT HIJACKING.

(a) IN GENERAL.—Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1473), is amended by striking subsection (c).

(b) CLERICAL AMENDMENT.—The table of contents for the Federal Aviation Act of 1958 is amended by striking the item relating to subsection (c) of section 903.

SEC. 2420. CONFORMING AMENDMENT RELATING TO GENOCIDE.

Section 1091(b)(1) of title 18 of the United States Code is amended by striking "a fine of not more than $1,000,000 and imprisonment for life;" and inserting in lieu thereof "by death or imprisonment for life, or a fine of not more than $1,000,000, or both;".

SEC. 2421. PROTECTION OF COURT OFFICERS AND JURORS.

Section 1503 of title 18, United States Code, is amended—

(1) by designating the current text as subsection (a);

(2) by striking "fined not more than $5,000 or imprisoned not more than five years, or both." and inserting in lieu thereof "punished as provided in subsection (b).";

(3) by adding at the end the following:

"(b) The punishment for an offense under this section is—

"(1) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title;

"(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than twenty years; and

"(3) in any other case, imprisonment for not more than ten years."; and

(4) in subsection (a), as designated by this section, by striking "commissioner" each place it appears and inserting in lieu thereof "magistrate judge".

SEC. 2422. PROHIBITION OF KILLINGS IN RETALIATION AGAINST WITNESSES, VICTIMS, AND INFORMANTS.

Section 1513 of title 18, United States Code, is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting a new subsection (a) as follows:

"(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

"(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

"(B) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer; shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

"(B) in the case of an attempt, imprisonment for not more than twenty years.".

SEC. 2423. DEATH PENALTY FOR THE MURDER OF FEDERAL LAW ENFORCEMENT OFFICIALS.

Section 1114 of title 18, United States Code, is amended by striking "punished as provided under sections 1111 and 1112 of this title," and inserting "punished, in the case of murder, by a sentence of death or life imprisonment as provided under section 1111 of this title, or, in the case of manslaughter, a sentence as provided under section 1112 of this title,".

SEC. 2424. DEATH PENALTY FOR THE MURDER OF PERSONS AIDING FEDERAL LAW ENFORCEMENT OFFICIALS.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, as amended by section 2409 of this Act, is amended by adding at the end the following:

"§ 1120. Killing persons aiding Federal investigations

"Whoever intentionally kills—

"(1) a State or local official, law enforcement officer, or other officer or employee while working with Federal law enforcement officials in furtherance of a Federal criminal investigation—

"(A) while the victim is engaged in the performance of official duties;

"(B) because of the performance of the victim's official duties; or

"(C) because of the victim's status as a public servant; or

"(2) any person assisting a Federal criminal investigation, while the assistance is being rendered and because of it,

shall be punished as provided in sections 1111 and 1112 of title 18, United States Code. Whoever attempts to commit such a killing shall be punished as provided in section 1113.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following:

"1120. Killing persons aiding Federal investigations.".

SEC. 2425. AMENDMENT TO FEDERAL AVIATION ACT.

Section 902(n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(n)) is amended by—

(1) striking paragraph (3); and

(2) redesignating paragraph (4) as paragraph (3).

SEC. 2426. TORTURE.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 113A the following:

"CHAPTER 113B—TORTURE

"Sec.
"2340. Definitions.
"2340A. Torture.
"2340B. Exclusive remedies.

"§2340. Definitions

"As used in this chapter—

"(1) the term 'torture' means an act committed by a person, acting under color of law, specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within the custody or physical control of the actor;

"(2) the term 'severe mental pain or suffering' means the prolonged mental harm caused by or resulting from—

"(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

"(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

"(C) the threat of imminent death; or

"(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

"(3) the term 'United States' includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958.

"§2340A. Torture

"(a) Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than twenty years, or both; and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) There is jurisdiction over the prohibited activity in subsection (a) if—

"(1) the alleged offender is a national of the United States; or

"(2) the alleged offender is present in the United States, without regard to the nationality of the victim or the alleged offender.

"§2340B. Exclusive remedies

"Nothing in this chapter precludes the application of State or local laws on the same subject, nor shall anything in this chapter create any substantive or procedural right enforceable by law by any party in any civil proceeding.".

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113B the following new item:

"113B. Torture ..... 2340".

SEC. 2427. WEAPONS OF MASS DESTRUCTION.

(a) OFFENSE.—Chapter 113A of title 18, United States Code, is amended by adding at the end the following:

"§2339. Use of weapons of mass destruction

"(a) Whoever uses, or attempts or conspires to use, a weapon of mass destruction against—

"(1) a national of the United States while such national is outside of the United States;

"(2) any person within the United States; or

"(3) any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States;

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

"(b) For purposes of this section—

"(1) 'national of the United States' has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(2) 'weapon of mass destruction' means—

"(A) any destructive device as defined in section 921 of this title;

"(B) poison gas;

"(C) any weapon involving a disease organism; or

"(D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113A of title 18, United States Code, is amended by adding at the end the following:

"2339. Use of weapons of mass destruction.".

SEC. 2428. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FEDERAL FACILITIES.

Section 930 of title 18, United States Code, is amended—

(1) by redesignating subsections (c), (d), (e), (f) and (g) as subsections (d), (e), (f), (g), and (h) respectively;

(2) in subsection (a), by striking "(c)" and inserting "(d)"; and

(3) inserting after subsection (b) the following:

"(c) Whoever kills or attempts to kill any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall—

"(1) in the case of a killing constituting murder as defined in section 1111(a) of this title, be punished by death or imprisoned for any term of years or for life; and

"(2) in the case of any other killing or an attempted killing, be subject to the penalties provided for engaging in such conduct within the special maritime and territorial jurisdiction of the United States under sections 1112 and 1113 of this title.".

SEC. 2429. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(b) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.—Section 242 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(c) FEDERALLY PROTECTED ACTIVITIES.—Section 245(b) of title 18, United States Code, is amended in the matter following paragraph (5) by inserting ", or may be sentenced to death" after "or for life".

(d) DAMAGE TO RELIGIOUS PROPERTY; OBSTRUCTION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.—Section 247(c)(1) of title 18, United States Code, is amended by inserting ", or may be sentenced to death" after "or both".

SEC. 2430. INTENTIONALLY KILLING A FEDERAL WITNESS IN THE WITNESS PROTECTION PROGRAM.

Section 1512 of title 18, United States Code, is amended—

(1) by inserting after subsection (c) the following:

"(d) Whoever violates this section by intentionally killing an individual provided protection under section 3521 of this title shall be subject to the death penalty."; and

(2) by redesignating subsections (d) through (h) as subsections (e) through (i).

SEC. 2431. DRIVE-BY SHOOTINGS.

(a) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding after the subsections added by sections 2021(a) and 2031(a) of this Act the following:

"(u) It shall be unlawful for any person knowingly—

"(1) to discharge a firearm from within a motor vehicle; and

"(2) thereby create a grave risk to human life.".

(b) PENALTY.—Section 924(a) of such title is amended by adding after the paragraph added by section 2021(e)(2)(B) of this Act the following:

"(6) Whoever knowingly violates section 922(u) shall be fined under this title or imprisoned not more than 25 years, or both, and if death results from conduct prohibited by that section, shall be punished by death or imprisonment for life or any term of years.".

SEC. 2432. INAPPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

The provisions of chapter 228 of title 18, United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

The CHAIRMAN. No amendment to said substitute, as modified, is in order except those amendments printed in part 2 of House Report 102–253. Said amendments shall be considered in the order and manner specified in said report and shall be considered as read. Debate time specified for each amendment shall be equally divided and controlled by the proponent of the amendment and a Member opposed thereto. Said amendments shall not be subject to amendment, except as specified in House Report 102–253. Where House Report 102–253 specifies consideration of amendments en bloc, said amendments shall be so considered and shall not be subject to a demand for a division of the question.

It is in order at any time for the chairman of the Committee on the Judiciary to offer amendments en bloc consisting of amendments, and modifications in the text of any amendments which are germane thereto, printed in part 2 of House Report 102–253. Said amendments en bloc shall be considered as read and shall be debatable for 20 minutes, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The original proponents of the amendments en bloc shall have permission to insert statements in the CONGRESSIONAL RECORD immediately before disposition of the amendments en bloc. Said amendments en bloc shall not be subject to amendment or to a demand for a division of the question.

If amendments numbered 9 and 10 printed in part 2 of House Report 102–253 are both adopted, only the latter amendment which is adopted shall be considered as finally adopted and reported back to the House.

The Chair will announce the number of the amendment made in order by House Resolution 247 in order to give notice to the Committee of the Whole as to the order of recognition.

It is now in order to consider amendment No. 1 printed in part 2 of House Report 102–253.

PARLIAMENTARY INQUIRY

Mr. SENSENBRENNER. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. SENSENBRENNER. Mr. Chairman, with respect to the amendments en bloc made in order if offered by the chairman of the committee, the gentleman from Texas [Mr. BROOKS], would a reservation of a point of order against germaneness lie at the time the gentleman offered that amendment?

The CHAIRMAN. The gentleman is correct.

Mr. SENSENBRENNER. I thank the Chair.

AMENDMENTS EN BLOC OFFERED BY MR. STAGGERS

Mr. STAGGERS. Mr. Chairman, I offer amendments en bloc made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendments.

The text of the amendments is as follows:

Amendments en bloc offered by Mr. STAGGERS: Page 251, strike line 17 and all that follows through line 19 on page 282.

Page 283, line 7, strike "the death penalty" and insert "life imprisonment without the possibility of release".

Page 283, strike line 8 and all that follows through line 22 and insert the following:

SEC. 2403. ESPIONAGE.

Section 794(a) of title 18 is amended by adding at the end the following: "Such person shall be punished by life in prison without the possibility of release if the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 of this title that the offense directly concerned nuclear weaponry, military spacecraft and satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; sources or methods of intelligence or counterintelligence operations; or any other major weapons system or major element of defense strategy.".

Page 284, line 23, strike "death or by imprisonment for life" and insert "imprisonment for life without the possibility of release".

Page 285, line 15, strike "death or".

Page 286, beginning in line 9, strike "death or life imprisonment" and insert "imprisonment for life without the possibility of release".

Page 286, beginning in line 15, strike "death or life imprisonment" and insert "imprisonment for life without the possibility of release".

Page 287, line 10, strike "death or imprisonment for any term of years or for life" and insert "imprisonment for life without the possibility of release".

Page 287, beginning in line 22, strike "death or life imprisonment" and insert "imprisonment for life without the possibility of release".

Page 288, line 6, strike "death or life imprisonment" and insert "imprisonment for life without the possibility of release".

Page 288, beginning in line 22, strike "death or life imprisonment" and insert "imprisonment for life without the possibility of release".

Page 289, beginning on line 9, strike "death or imprisonment for any term of years or for life" and insert "imprisonment for life without the possibility of release".

Page 289, line 25, strike "death or imprisonment for life" and insert "imprisonment for life without the possibility of release".

Page 292, line 6, strike "death or life imprisonment".

Page 295, beginning in line 11, strike "death or imprisoned for any term of years or for life" and insert "imprisonment for life without the possibility of release".

Page 296, beginning in line 18, strike "death or imprisoned for any term of years or for life" and insert "imprisonment for life without the possibility of release".

Page 298, beginning in line 3, strike "death or imprisoned for any term of years or for life" and insert "imprisonment for life without the possibility of release".

Page 298, in each of lines 14, 18, and 22, and on page 299, line 2, strike "death" each place it appears and insert "imprisonment for life without the possibility of release".

Page 299, line 11, strike "the death penalty" and insert "imprisonment for life without the possibility of release".

Page 300, beginning in line 4, strike "death or imprisoned for life or any term of years" and insert "imprisonment for life without the possibility of release".

Page 300, after line 11, insert the following:

SEC. 2433. RESTITUTION.

Section 3663 of title 18, United States Code, is amended by adding at the end the following:

"(i) Notwithstanding any other provision of law, any defendant sentenced to life imprisonment with possibility of release shall be ordered to pay restitution, which shall include not less than 50 percent of any income received, directly or indirectly, during imprisonment, and which shall be paid to the family or the estate of the victim of the crime for which the defendant is sentenced, unless the victim was engaged in criminal activity at the time of the crime for which the defendant is sentenced. In the event that a defendant is sentenced for the death of more than one victim, the amounts paid to the families or the estates of the victims shall be apportioned by the court.".

The CHAIRMAN. Under the rule, the gentleman from West Virginia [Mr. STAGGERS] will be recognized for 10 minutes, and a Member in opposition will be recognized for 10 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I am opposed to the Staggers amendment.

The CHAIRMAN. The gentleman from Wisconsin [Mr. SENSENBRENNER] will be recognized for 10 minutes.

The Chair recognizes the gentleman from West Virginia [Mr. STAGGERS].

Mr. STAGGERS. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, my amendment is an alternative to the death penalty. My amendment is life without release. It is not a simple life sentence. It is life without release. Mine is mandatory, where the death sentence is often or is an option, and it is in an arbitrary manner.

Mine would call for restitution to the victim's family by the criminal who would perpetrate that crime.

I oppose the death penalty, and that is why I am offering what I think is a tough, fair and cost-effective alternative to capital punishment. I oppose capital punishment for a variety of reasons. It does not deter crime. Studies have shown that the critical factor in deterring crime is certainty of punishment, not severity of punishment. Mine is mandatory, so mine is certain.

Capital punishment is imposed, as I said, in an arbitrary manner. The same crime, two different individuals, and you have two different sentences. It is not a consistent type of punishment, so there is always that chance in the criminal's mind that he will get off.

Life imprisonment, as I said earlier, also is a cost-effective alternative. It is less expensive because of the super due process requirement in capital trials to keep a prisoner in prison for his life, as opposed to executing him.

Also there will be those who say that public opinion demands that we have capital punishment, but actually if you ask the public which they would prefer, capital punishment or life without release with the assurance that the criminal would not get out, they would opt for the latter as opposed to the former, so I present an alternative.

The concern in the public mind is protection from the criminal. Mine provides that protection.

Life without release constitutes death by incarceration. In fact if you look at what the criminal mind is thinking, there was a survey of the inmates on death row in Tennessee. Half of those awaiting death responded that a sentence of life without release would be worse in their minds than the death penalty.

Mine is an alternative. I would hope that people will take it seriously and look at being a tough, certain penalty, as opposed to an arbitrary uncertain penalty.

If you want to be tough on crime, vote to protect society through incarceration, not execution, and support my amendment.

Mr. Chairman, my colleagues, today you will have the opportunity to vote for a tough, fair, and cost-effective alternative to capital punishment.

In every instance where the bill now would call for the death penalty as an option, my amendment would provide for a mandatory life sentence without release. Moreover, my amendment would require that the offender pay restitution to the victim's family.

Let me make it clear that this amendment would provide for mandatory life imprisonment without release, where the criminal would spend the rest of his or her life incarcerated. It is not simply a life sentence which we all know allows for possible release. Society would be just as protected as if the death penalty were imposed, because the criminal would remain behind bars and off the streets.

I am an opponent of capital punishment for a variety of reasons, but I do believe in tough and certain penalties for criminals. Studies show that the critical factor in deterring crime is certainty of punishment, not severity. My amendment offers this certainty of punishment through its mandatory feature. The death penalty in the bill is only an option and therefore is by no means certain.

Capital punishment is imposed in an arbitrary manner. For the same crime, one person

is sentenced to death, while another is not. In such a system, there can be no consistency nor fairness.

The fallibility of human judgment is one of the most compelling reasons to oppose the death penalty. It simply does not allow for human error. The history of capital punishment in this country is replete with executions and near-executions of the innocent. The irrevocability and finality of the death penalty stands in stark contrast to any other form of punishment.

Life imprisonment is the cost-efficient alternative to capital punishment. It is less expensive to impose a sentence of life without release than to sentence someone to death. Studies have shown that the super due process required in a capital trial is more costly than a trial where life imprisonment is imposed.

While much has been made of public support for the death penalty, several recent surveys show that this support is fleeting when respondents are presented an option of long-term imprisonment. Surveys conducted in West Virginia, California, New York, Nebraska, and Virginia all revealed a public preference for life without parole, plus restitution over the death penalty.

All of these surveys point to the real concern of Americans over violent crime—protection. Life imprisonment without release provides this protection to society by keeping the criminals behind bars and off the streets without any of the problems inherent in capital punishment.

I would also argue that a sentence of life without release is a worse sentence than death because it is tantamount to death by incarceration. Indeed, in a recent survey of Tennessee death row inmates, half of those awaiting death responded that a sentence of life without release would be worse.

I believe the mass execution of criminals by the State is morally wrong, it cheapens the sanctity of life which our Nation should preserve, not destroy. If you want to be tough on crime, vote to protect society through incarceration not execution vote in favor of the Staggers amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from West Virginia, as he usually is, is accurate in describing his amendment. His amendment is one that is philosophically opposed to the death penalty in all circumstances, including the assassination of the President, airline hijacking where a death results, acts of political terrorism, drug kingpins, who murder people, and the like. It goes directly against the thrust of both the democratic version of the bill, as well as the amendments to be offered by my colleague, the gentleman from Pennsylvania [Mr. GEKAS] relative to the death penalty.

□ 1700

Let me make this perfectly clear: If you are opposed to the death penalty under any and all circumstances, vote in favor of the Staggers amendment because that is the intellectually honest position for those who are opposed to the death penalty, in any case, to take.

However, if you believe that the death penalty does have a use in certain circumstances where not only a terrible crime has been committed but the jury that sat in judgment of the defendant reaches the conclusion based upon his demeanor and listening to all of the evidence in court that the death penalty is warranted, it would allow them to vote in favor of putting that defendant, whom they have convicted to death.

So I would very strongly encourage people to vote "no" because the death penalty, in my opinion, serves as a useful deterrent.

Mr. Chairman, when we debated an identical amendment last year in the context of the crime bill, it was defeated in the House by a vote of 103 to 322. I would urge my colleagues to be consistent with that vote and to vote down the Staggers amendment.

Mr. EDWARDS of California. Mr. Chairman, I thank the gentleman from West Virginia for yielding to me this time.

I compliment the gentleman on his excellent amendment and I hope it is overwhelmingly approved.

Mr. Chairman, there are 36 States that have the death penalty in America and 14 which do not. And, believe it or not, the 36 who have the death penalty have generally a higher murder rate than the 14 who do not have the death penalty, which is a very good proof or strong evidence that the death penalty is not a deterrent.

Now, the amendment of the gentleman from West Virginia provides not at all that the murderer is on the street; the sentence must be life imprisonment without the possibility of parole. And he adds in the amendment restitution for the victim's family, provision for that, which is really very important.

As the gentleman from West Virginia [Mr. STAGGERS] pointed out, Mr. Chairman, all of the polls indicate that although people might very well be for the death penalty, if offered the alternative of life imprisonment without possibility of parole instead of the death penalty, a sizable majority would select life imprisonment without the possibility of release.

So, Mr. Chairman, I again congratulate the gentleman from West Virginia on his amendment and hope that it is approved.

Mr. SENSENBRENNER. Mr. Chairman, in the spirit of bipartisan cooperation, I yield such time as he may consume to the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Chairman, that is just because the gentleman from Wisconsin knows that I am against this amendment.

Mr. Chairman, I accept the generosity of my distinguished friend, the gentleman from Wisconsin [Mr. SENSENBRENNER].

Mr. Chairman, I must rise in opposition to the amendment offered by the gentleman from West Virginia.

This amendment would strike the death penalty provisions of the bill reported by the committee and substitute provisions requiring mandatory life imprisonment without possibility of release. The amendment also includes provisions requiring defendants so sentenced to pay restitution to the families or estates of their victims.

I want to emphasize that I have tremendous respect for my friend from West Virginia, as I did for his distinguished father. He is a hard-working and conscientious member of the Judiciary Committee whom we all greatly admire. I know this proposal reflects his deeply held personal views on this most sensitive of public policy questions. Nevertheless, I must oppose this amendment.

As I have stated in the past, certain crimes are so despicable—so heinous—that those who commit them must rightly pay with their lives. A society cannot send out mixed or ambiguous signals about how certain despicable acts will be treated. The committee bill reflects this philosophy, and I believe it should be preserved. I urge my colleagues on both sides of the aisle to oppose this amendment.

Mr. STAGGERS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from New York [Mr. SERRANO].

Mr. SERRANO. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in support of the Staggers amendment. I believe that it is a fair and honest approach to deal with a very serious problem. I represent south Bronx in New York, and this is an issue that is discussed on a daily basis. Yet nothing in the community has shown yet that a death penalty would be a deterrent to crime, that a death penalty would be in fact something that would deter people from committing these crimes that they commit all the time.

The Staggers amendment, however, speaks to something that those who support the death penalty refuse to deal with, and that is: mandatory imprisonment, life imprisonment without release, without parole.

Mr. Chairman, I submit to you that if we really took the time to study this issue, if we really took the time to really look at what makes people rethink their attitude, the possibility of spending the rest of your natural life in prison would be, for many people, a true deterrent.

Some of the people, unfortunately, that I grew up with were not troubled by the thought of dying; that is how they live in some of these communities. They live with death as part of their daily existence. And yet the

thought of spending their natural life in prison would, I think, in my opinion, be a justified, a proper and a dignified way of dealing with this problem.

After all, is not the idea to try to show society that we are better than a person who commits a crime? Yet how do we answer? "You kill someone, we are going to lower ourselves to your level, we are going to kill you."

Mr. Chairman, I submit to you that the Staggers amendment really affects this.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

Mr. STAGGERS. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. CONYERS], the distinguished chairman of the Committee on Government Operations.

Mr. CONYERS. Mr. Chairman, I rise in strong support of the Staggers amendment. It would substitute life in prison without possibility of release for the death penalties included in the bill.

I support this substitute amendment, and strongly oppose the death penalty provisions included in the bill. Once again, it looks like we are playing the game of who can be tougher. How many death penalty offenses can we dream up so that our death penalty is bigger than their death penalty.

Many of these offenses will never happen—attempting to kidnap the President, assassination of a Supreme Court Justice. Others, however, are more troubling. The bill includes the death penalty for drive-by shootings. I cannot imagine a Federal interest in these shootings, except to make us look tougher than the other guys.

Drug kingpins? There doesn't even have to be a body, let alone a direct connection to a homicide. This provision is counterproductive. It will tie up cases for years on constitutional grounds and will block the extradition of criminals to stand trial here. And as anyone watching the Noriega trial knows, drug kingpins don't get tough sentences—they get witness fees and protection in exchange for testimony.

In short, Mr. Chairman, these death penalty provisions have no place in this bill. By including them we are playing politics with crime in the worst way.

Let me just make clear what all of us already know about the death penalty.

The death penalty does not deter crime. Anyone who argues that those involved in drive-by shootings would be dissuaded by the death penalty ignores the constant threat of death and violence that these people live under every day.

The death penalty is imposed in an arbitrary manner, dependent on the prosecutor and frequently with racial disparity.

It does not allow for error.

It is expensive and time consuming.

There are not rational arguments in favor of the death penalty.

In sum, the death penalty is unacceptable in a civilized society. I urge my colleagues to reject the death penalty provisions in this bill and to support the Staggers amendment.

□ 1710

Mr. STAGGERS. Mr. Chairman, I yield 1 minute to the usually brilliant gentleman from New York [Mr. SCHUMER]. On this issue I think it may be wrong thinking.

Mr. SCHUMER. Mr. Chairman, I rise in opposition to my friend from West Virginia's amendment to strike the authorization for the death sentence and replace it with mandatory terms of life imprisonment. Although I respect the principles and convictions that are motivating him, I must disagree with him.

I support the death penalty. I do believe that for some of the very worst offenses the death penalty is an appropriate form of retributive punishment and may indeed be necessary to ensure that justice is done. In some cases it may also act as a deterrent.

I have looked carefully at this issue since becoming chairman of the Subcommittee on Crime and Criminal Justice, held hearings, and crafted a bill that I think covers those very worst Federal crimes while not mindlessly and needlessly expanding the scope across the board to every conceivable offense. The death penalty is not a panacea—standing alone it certainly will not solve the crime problem—but in certain cases it is totally justified.

So, although I understand that reasonable, well-intentioned people who support law enforcement and are anticrime can and do disagree, I am in favor of the death penalty and therefore must oppose the amendment.

Mr. STAGGERS. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, once again let me tell my colleagues that this is an alternative. I believe it is a tough, fair, cost-effective alternative. It is mandatory, as opposed to the arbitrary option that the death penalty is. It is not simply life sentence; it is life without release. There is restitution to the victim's family. It does protect society; that is what society wants.

Mr. Chairman, this is an alternative we need, and I would urge a "yes" vote.

Mr. WEISS. Mr. Chairman, I rise today in strong support of the amendment offered by the gentleman from West Virginia. In my more than 25 years of public service as a district attorney, city councilman, and Member of Congress I have witnessed, firsthand, the devastating spread of crime. I understand the need to deal aggressively with crime, and I understand the need to provide tough law enforcement protection.

The death penalty, however, is not the answer. It does nothing to reduce crime; what it does do, is enable its supporters to sound tough on crime while avoiding action on the causes of crime. If we are serious about reducing crime, then we must address the varied social and economic problems that are at its root. By supporting the Staggers amendment we can act tough while still showing compassion and respect for the dignity of human life.

At a time when the United States stands nearly alone in the Western World in its use of the death penalty, I am amazed that our debate is not over the elimination of the death penalty, but rather over its expansion. H.R. 3371 would expand the death penalty to 50 additional offenses. Do any of my colleagues really believe that by expanding the number of offenses punishable by death, crime will be reduced? By focusing so intensely on the death penalty, our attention is diverted from the important issues which we must address.

The Staggers amendment replaces the death penalty with a mandatory life sentence without parole. In addition, it provides for financial restitution for the families of the victims. This amendment is tough on criminals. It allows us to put aside the death penalty rhetoric and show our respect for the dignity of human life.

Mr. Chairman, it is my strong belief that there is no place for capital punishment in a democratic society. I urge my colleagues to show respect for human life and support the Staggers amendment.

The CHAIRMAN. The question is on the amendments en bloc offered by the gentleman from West Virginia [Mr. STAGGERS].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SENSENBRENNER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 101, noes 322, not voting 10, as follows:

[Roll No. 311]

AYES—101

Abercrombie	Jacobs	Penny
Ackerman	Jefferson	Peterson (MN)
Andrews (ME)	Jontz	Rahall
AuCoin	Kildee	Rangel
Berman	Kleczka	Roybal
Bonior	Klug	Sabo
Brown	Kopetski	Sanders
Clay	Kostmayer	Sawyer
Collins (IL)	LaFalce	Scheuer
Collins (MI)	Lehman (FL)	Serrano
Conyers	Levin (MI)	Sharp
Cox (IL)	Lewis (GA)	Shays
DeFazio	Lowey (NY)	Skaggs
Dellums	Markey	Slaughter (NY)
Dixon	McCloskey	Smith (IA)
Dorgan (ND)	McDermott	Smith (NJ)
Downey	McHugh	Staggers
Edwards (CA)	McNulty	Stark
Engel	Mfume	Stokes
Evans	Miller (CA)	Studds
Fazio	Mineta	Swift
Feighan	Mink	Towns
Flake	Mollohan	Unsoeld
Foglietta	Moody	Vento
Ford (MI)	Mrazek	Visclosky
Ford (TN)	Nagle	Washington
Frank (MA)	Neal (MA)	Waters
Gejdenson	Oberstar	Weber
Goodling	Obey	Weiss
Hamilton	Olin	Wheat
Hayes (IL)	Olver	Wise
Hertel	Owens (NY)	Wolpe
Hochbrueckner	Payne (NJ)	Yates
Hoyer	Pelosi	

NOES—322

Alexander	Fish	McDade
Allard	Franks (CT)	McEwen
Anderson	Frost	McGrath
Andrews (NJ)	Gallegly	McMillan (NC)
Andrews (TX)	Gallo	McMillen (MD)
Annunzio	Gaydos	Meyers
Anthony	Gekas	Michel
Applegate	Gephardt	Miller (OH)
Archer	Geren	Miller (WA)
Armey	Gibbons	Moakley
Aspin	Gilchrest	Molinari
Atkins	Gillmor	Montgomery
Bacchus	Gilman	Moorhead
Baker	Gingrich	Moran
Ballenger	Glickman	Morella
Barnard	Gonzalez	Morrison
Barrett	Gordon	Murphy
Barton	Goss	Murtha
Bateman	Gradison	Myers
Bellenson	Grandy	Natcher
Bennett	Green	Nichols
Bentley	Guarini	Nowak
Bereuter	Gunderson	Nussle
Bevill	Hall (OH)	Oakar
Bilbray	Hall (TX)	Ortiz
Bilirakis	Hammerschmidt	Orton
Bliley	Hancock	Owens (UT)
Boehlert	Hansen	Oxley
Boehner	Harris	Packard
Borski	Hastert	Pallone
Boucher	Hatcher	Panetta
Boxer	Hayes (LA)	Parker
Brewster	Hefley	Pastor
Brooks	Hefner	Patterson
Broomfield	Henry	Paxon
Browder	Herger	Payne (VA)
Bruce	Hoagland	Pease
Bryant	Hobson	Perkins
Bunning	Horn	Peterson (FL)
Burton	Horton	Petri
Bustamante	Houghton	Pickett
Byron	Hubbard	Pickle
Camp	Huckaby	Porter
Campbell (CA)	Hughes	Poshard
Campbell (CO)	Hunter	Price
Cardin	Hutto	Pursell
Carper	Hyde	Quillen
Chandler	Inhofe	Ramstad
Chapman	Ireland	Ravenel
Clement	James	Ray
Clinger	Jenkins	Reed
Coble	Johnson (CT)	Regula
Coleman (MO)	Johnson (SD)	Rhodes
Coleman (TX)	Johnson (TX)	Richardson
Combest	Johnston	Ridge
Condit	Jones (GA)	Riggs
Cooper	Jones (NC)	Rinaldo
Costello	Kanjorski	Ritter
Coughlin	Kaptur	Roberts
Cox (CA)	Kasich	Roe
Coyne	Kennedy	Roemer
Cramer	Kennelly	Rogers
Crane	Kolbe	Rohrabacher
Cunningham	Kolter	Ros-Lehtinen
Dannemeyer	Kyl	Rose
Darden	Lagomarsino	Rostenkowski
Davis	Lancaster	Roth
de la Garza	Lantos	Roukema
DeLauro	LaRocco	Rowland
DeLay	Laughlin	Russo
Derrick	Leach	Sangmeister
Dickinson	Lehman (CA)	Santorum
Dicks	Lent	Sarpalius
Dingell	Levine (CA)	Saxton
Donnelly	Lewis (FL)	Schaefer
Dooley	Lightfoot	Schiff
Doolittle	Lipinski	Schroeder
Dornan (CA)	Livingston	Schulze
Dreier	Lloyd	Schumer
Duncan	Long	Sensenbrenner
Durbin	Lowery (CA)	Shaw
Dwyer	Luken	Shuster
Early	Machtley	Sikorski
Eckart	Manton	Sisisky
Edwards (OK)	Marlenee	Skeen
Edwards (TX)	Martin	Skelton
Emerson	Martinez	Slattery
English	Matsui	Smith (FL)
Erdreich	Mavroules	Smith (OR)
Espy	Mazzoli	Smith (TX)
Ewing	McCandless	Snowe
Fascell	McCollum	Solarz
Fawell	McCrery	Solomon
Fields	McCurdy	Spence
Spratt	Thomas (GA)	Weldon
Stallings	Thomas (WY)	Whitten
Stearns	Thornton	Williams
Stenholm	Torres	Wilson
Stump	Torricelli	Wolf
Sundquist	Traficant	Wyden
Swett	Traxler	Wylie
Synar	Upton	Yatron
Tallon	Valentine	Young (AK)
Tanner	Vander Jagt	Young (FL)
Tauzin	Volkmer	Zeliff
Taylor (MS)	Vucanovich	Zimmer
Taylor (NC)	Walker	
Thomas (CA)	Walsh	

NOT VOTING—10

Callahan	Hopkins	Slaughter (VA)
Carr	Lewis (CA)	Waxman
Dymally	Neal (NC)	
Holloway	Savage	

□ 1733

The Clerk announced the following pair:

On this vote:

Mr. Waxman for, with Mr. Lewis of California against.

Mr. DWYER of New Jersey and Mr. LENT changed their vote from "aye" to "no."

Mrs. COLLINS of Illinois, Messrs. HAYES of Illinois, TOWNS, and JEFFERSON, and Ms. PELOSI changed their vote from "no" to "aye".

So the amendments en bloc were rejected.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair will announce its intention to adhere as closely as possible to a 15-minute minimum for votes. The committee has a great deal of business to complete on this bill, and asks for the cooperation of all Members so that we may complete our business as efficiently as possible.

It is now in order to consider amendment 2 printed in part 2 of House Report 101-253.

AMENDMENT OFFERED BY MR. HUGHES

Mr. HUGHES. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HUGHES: Page 253, strike line 1 and all that follows through line 10.

Redesignate succeeding paragraphs accordingly.

Page 252, line 22, insert "or" after the semicolon.

The CHAIRMAN. Under the rule, the gentleman from New Jersey [Mr. HUGHES] will be recognized for 7½ minutes, and a Member opposed will be recognized for 7½ minutes.

Mr. GEKAS. Mr. Chairman, I ask that the Chair recognize me in opposition to this amendment and grant me the requisite time.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GEKAS] will control 7½ minutes in opposition.

The Chair recognizes the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Chairman, my amendment is to the death penalty provision of the bill. I support the death penalty in select instances of the most egregious of offenses. My amendment would eliminate recklessness as a basis for imposing the Federal death penalty for homicide. The amendment instead provides that the general rule under the bill, "intentionally or knowingly causing the death of another individual," will be the uniform standard.

Overall, the death penalty provisions of the bill are good provisions. They not only restore the Federal death penalty, which has been gradually unavailable for almost 20 years, but expand it considerably.

Under this expansion, which I support, the death penalty extends to many offenses which it did not previously reach.

Under this expansion, the key question is not what is the underlying Federal offense and does it warrant the death penalty. Instead, the question is what is the conduct, and does it justify the death penalty.

The bill appropriately provides the death penalty for virtually any Federal homicide offense if the required circumstances exist.

□ 1740

These circumstances are, No. 1, that Federal jurisdiction is established and, No. 2, that sufficient culpability exists to justify the death penalty.

My amendment relates to the second of these considerations, the degree of culpability.

I commend my colleague, the gentleman from New York [Mr. SCHUMER] the chairman of the Subcommittee on Crime and Criminal Justice, for developing a proper standard of culpability for the imposition of the Federal death penalty. This standard, which applies to all but a few of the death penalty offenses included in the bill, is that the defendant must have "intentionally or knowingly caused the death of another individual."

This standard is applied to the vast majority of the some 50 offenses for which the death penalty is provided in the bill. However, for a few offenses, most of which are offenses created by the bill, not just the extension of the death penalty to already existing offenses, the death penalty can be imposed based on reckless conduct.

Many of my fellow Members are lawyers. Most are not. However, one does not have to be a trained lawyer to know that in any society, any legal system, the death penalty is the ultimate penalty. It is imposed only for the gravest of offenses and based on the highest level of individual culpability.

Our existing Federal murder statute, though currently unenforceable on procedural grounds, unrelated to the policy expressed in the statute, is instructive in this regard.

The Federal murder statute presently on the books begins by stating

that "murder is the unlawful killing of a human being with malice aforethought." That law draws a line between first-degree and second-degree murders, the line that separates death penalty offenses from non-death penalty offenses. Death penalty offenses are described as those perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing.

Those of us in law school remember the debate over how much time is required for premeditation. From 1981 until this year, I chaired the Subcommittee on Crime which developed the forerunner of the death penalty provisions we are considering today. We wrote many of the provisions in the bill today.

Last year in hearings on that legislation we held an extremely valuable hearing in which our witnesses were constitutional scholars who are experts on the death penalty. Of the four that we had on one panel who were constitutional scholars, two were selected by me and two were selected by my colleague, the gentleman from Florida [Mr. MCCOLLUM] to make sure we had a bipartisan, objective panel on the question of what kind of death penalty statute we should draft.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from Missouri.

Mr. SKELTON. Mr. Chairman, what about a situation where we have a drive-by shooting, someone drives by?

Mr. HUGHES. Mr. Chairman, I am going to get to that.

We had a long hearing with lots of controversy and exchange of strong, divergent opinion. In reviewing that hearing, I noted that near the end of the day, I remarked to our four witnesses that, in regard to one question, "I think that is the only thing all four of you have agreed upon so far." The question was the standard that we should apply in death penalty cases. They all agreed, all four experts, that we should develop a knowing standard.

One of our constitutional scholars was a man by the name of Fein, Bruce Fein, a former Reagan administration official of the Justice Department who is recognized as a constitutional scholar throughout the country. Mr. Fein stated:

As a matter of prudence, I generally would be inclined to oppose extending the death penalty to the reckless disregard standard at the Federal level. I think the deterrent effect is, we know that the evidence is inclusive. The importance, in my judgment, of the death penalty as an option is a moral statement which is accomplished whether or not you have the reckless disregard standard.

Moreover, we have already got too much litigation, too many endless 8-, 9-, 10-year appeals trying to flesh out the particular ramifications of the Tison case,—

Tison v. *Arizona, which is the heart of this argument,*

which was limited to the situation where the participant involved in a conspiracy that itself led to the intentional killing of someone.

The bottom line is that what we are doing by extending this to reckless indifference is expanding it in a fashion that was never intended. Those that believe we can do this constitutionally under *Tison* v. *Arizona are mistaken. We cannot do that. And to expand the death penalty to those instances where there was a reckless disregard as opposed to an intent to commit the act which one committed, I am afraid is the wrong way for us to go.*

Mr. GLICKMAN. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I think this is an important amendment and one that my colleagues should take seriously. I, like the gentleman in the well, support the death penalty. But I also support hundreds of years of western jurisprudence which says that one has to intentionally and knowingly kill somebody before the ultimate punishment can happen, death. And what the bill is moving into the area of is punishing people by death who did not intentionally and knowingly kill somebody. That lowers the standard for the ultimate penalty of all, and I think it is extremely imprudent.

I applaud the gentleman for his statement.

Mr. HUGHES. Mr. Chairman, there is so much misunderstanding about this so-called drive-by killing.

People do not express an intent to kill or to steal or do anything else. That knowing standard is gleaned from the circumstances. We can have a drive-by killing and from the circumstances glean an intent to kill, but to expand that to recklessness, I do not think meets constitutional muster, No. 1. And No. 2, it is a path that we should not chart.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as that great philosopher said, this was Yogi Berra who said, "This is deja vu all over again." This is the very same argument we had last term and the term before on the workability of a proper death and capital punishment statute.

The gentleman from New Jersey insists now, as he did last term, that the only kind of death penalty that our society can muster grit enough to use is one where an intentional killing is part of the scene.

We argued last year, as we argue now, I said, "What about the drive-in killing, the drive-by killing?"

The gentleman argued against my point at that time, when I said that when someone drives by a crowd on a corner and indiscriminately shoots out the window and someone dies at his hands, that individual should be able to go before a jury to have that jury determine whether or not the death penalty ought to apply.

Reckless disregard for life is recognized by the same hundred years of western law that the gentleman from Kansas refers to as being part of a death sentence case. Reckless indifference for life, if it causes death of our fellow human beings, in an indiscriminate shooting case or a rape case or a burglary case, should give the jury the right to bring back the death penalty.

What about a case where a rape, a brutal rape occurs and the rapist, in his own mind, or he can say that he did choke his victim on top of that to keep her quiet? And the lady dies at his hands. Should he be heard to say, pursuant to what the gentleman from New Jersey says, "I didn't intend to kill, I only intended to keep her quiet?"

I say to my colleagues that his action, reckless disregard, indifference for the life of that individual should raise this killing that I just described, this rape killing to a point where a proper jury in a proper case can deliberate as to whether or not to impose the death penalty.

If one is against the death penalty, vote for the Hughes amendment. It eviscerates it. It takes the teeth right out of it.

If one is for the death penalty in proper, reasonable cases, as our society demands, as 80 percent of the American people time and time again in every kind of recorded poll possible indicate in favor of the death penalty, then vote against this element that the gentleman from New Jersey is talking about.

If I may further state one thing, in our amendment, the one that we will have a chance to debate and upon which to vote tomorrow, we have a general standard that is adopted in most of the States that have the death penalty. And that standard says that if indeed a death occurs at the hands of a criminal who utilized a reckless disregard for human life or such aggravated recklessness that the death should be elevated to a point where the jury should decide on death or life as the ultimate punishment, then that standard should be applied.

□ 1750

What the gentleman from New York and the gentleman from New Jersey have done in their bill is to acknowledge that we are right, because they have put into their bill a smathering, a sop to us that indeed the drive-by killer they say, who from within the confines of the automobile shoots indiscriminately should be punishable by death, but if he steps out of the car and walks a few paces, parks the car, walks out and then shoots indiscriminately, under their bill the death penalty

would not apply. Under ours, however, it would.

One further statement. Today's killing, did Members read about or hear about today's killing, the mass killing I believe in Texas. Ladies and gentlemen, this is the perfect example of why Members should support the Gekas amendment tomorrow or tonight and reject the Hughes amendment. In this case an individual drove a vehicle into a restaurant, stepped out of the vehicle and then began to shoot indiscriminately and killed 22 people, and he himself died either at his own hand or else somehow or other. Ladies and gentlemen, this is a stark example of why Members should reject the Hughes amendment and adopt the Gekas amendment tomorrow, because under the Hughes doctrine that is being offered here today it is possible that the jury would never be able to deliberate as to this case if this fellow were ever brought to trial, and he cannot now of course be, as to whether or not he should receive the death penalty for that heinous act. Our amendment, trust me, would cover that situation.

We were successful in convincing Members last term and the term before. This is no time to abandon the toughness that we require in capital punishment cases, in cases involving murder, and all of those serious crimes about which we hear so often.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for yielding and also rise in opposition to the amendment.

While I certainly do not believe, as the gentleman from Pennsylvania does, that a reckless standard should be applied across the board, I think there are some instances where recklessness is the appropriate standard. One of them would be terrorism. An example is a terrorist hijacks an airplane, tells everyone, to get off the plane and then blows it up, not realizing someone is in the bathroom and they die. That is a standard where I think intent does not work.

I have a great deal of respect for my colleague from New Jersey, but I think that the Tison case, at least in my reading, can allow in certain instances a recklessness standard to prevail.

So I urge opposition to the amendment.

Mr. GEKAS. Reclaiming my time, I thank the gentleman for his support. It is astounding to receive his support, but I do so gladly. I think the argument has been made.

Mr. SCHUMER. If the gentleman will yield further, he received that support from subcommittee through to full committee, if the gentleman will recall.

Mr. GEKAS. Yes, and that is what I am saying. I am astounded that we have come this far together. It is wonderful.

At any rate, there is no need to argue the case any more. Most of the States have this standard. The common law incorporated it, and 100 years, as the gentleman from Kansas said, of Western law is incorporated into this standard of reckless disregard of rights.

Reject the Hughes amendment and support the Gekas amendment when it appears on the docket.

Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from New Jersey [Mr. HUGHES] has 30 seconds remaining and the gentleman from Pennsylvania [Mr. GEKAS] has 30 seconds remaining.

Mr. GEKAS. Mr. Chairman, I yield 30 seconds to the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL of California. Mr. Chairman, I thank the gentleman for yielding this time.

In 30 seconds I rise to point out in *Tison* v. *Arizona* 481 U.S. 137 at 157 the court holds:

* * * reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making * * * a capital sentencing judgment.

And the court reference is precedent going back to 1547, for the proposition that you do not need intent to kill to impose the death penalty.

Mr. HUGHES. Mr. Chairman, I yield myself my remaining 30 seconds.

Mr. Chairman, I just love the rhetoric in this Chamber anymore. Intent to kill is gleaned from circumstances. You can have a drive-by killing and have it an intent to kill. People do not express an intent to kill verbally. You glean it from the circumstances.

The gentleman from Pennsylvania [Mr. GEKAS] would have the death penalty reserved for a situation where a couple of kids on New Year's Eve are out driving along and shoot a gun up in the air, and they kill somebody in a tenement building. Is that what Members want to reserve the death penalty for? That is ridiculous.

The CHAIRMAN. All time has expired.

The quesiton is on the amendment offered by the gentleman from New Jersey [Mr. HUGHES].

The amendment was rejected.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in part 2 of the House Report 102–253.

AMENDMENT OFFERED BY MR. HUGHES

Mr. HUGHES. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HUGHES: Page 252, strike lines 7 through 14.

Redesignate succeeding paragraphs accordingly.

The CHAIRMAN. Under the rule, the gentleman from New Jersey [Mr. HUGHES] will be recognized for 7½ minutes and a Member opposed will be recognized for 7½ minutes.

Mr. MCCOLLUM. Mr. Chairman, I rise to claim the 7½ minutes in opposition.

The CHAIRMAN. The gentleman from Florida [Mr. MCCOLLUM] will be recognized for 7½ minutes in opposition.

The Chair recognizes the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Chairman, I yield myself 5½ minutes.

Mr. Chairman, the purpose of this amendment is to strike the provisions of the bill that provide the dealth penalty for dealing in large amounts of illegal drugs, even when no death results.

I support the death penalty. I was a State prosecutor for 10 years before I came to the Congress. In one of the last cases I tried, I successfully sought the death penalty. The so-called drug kingpin provision which is the subject of this amendment should not be confused with the provisions of the same name which we enacted as part of the 1988 Drug Act.

That provision—which we identify as the Gekas amendment after our friend and colleague from Pennsylvania—was limited to major drug offenders who intentionally killed. I supported that provision.

Today, however, we are asked to extend the death penalty to drug cases where no one died, not even by accident.

There's not much point in drawing out the debate on this question. Each Member has probably already made up his or her mind whether he or she thinks we should execute people simply because they deal in drugs.

The fact is, however, there is no reason to believe that the courts would uphold such a provision.

In previous crime and drug bills, we have debated whether we can, and should, provide the death penalty when a person supplies another with drugs and an accidental death results from taking the drugs.

That's not what this provision is about. Deaths which occur in the course of drug crimes are in the bill, but this amendment does not alter those provisions.

Earlier we debated the question whether a reckless killing—as opposed to an intentional one—could form the basis of a valid death penalty. That's not what is involved here either.

This goes much further. No death need occur. The Supreme Court has drawn few bright lines in death penalty cases, but it has drawn one here. For example, the Court has thrown out the death penalty for rape, despite the fact

that is unquestionably one of the most violent and reprehensible crimes.

In determining what is and what is not cruel and unusual punishment within the constitutional prohibition, the Court is guided by whether a substantial number of States have enacted such a death penalty.

No State has the death penalty for simply being a drug dealer, another fact which indicates that the Supreme Court would reject it.

I'm not alone in this view. Less than 2 years ago, the head of the Criminal Division of the Department of Justice, in testimony before the Senate, expressed doubts whether such a provision would be constitutional.

Similar concerns were expressed by constitutional scholars in hearings last year by the Subcommittee on Crime, which I then chaired on a proposal substantially the same as that we are considering in my amendment to strike.

Perhaps because of this doubt, no such provision was in the President's crime bill as it was sent to us in the last Congress. The President's bill was developed, as it should be, by the Department of Justice. Later, the death penalty for drug trafficking without a resulting death was proposed by the drug czar, Mr. Bennett. It was only after Mr. Bennett proposed it that the Department of Justice, no doubt feeling the political winds that blow on such hot button issues, began to defend and support the proposal.

Apart from the questionable constitutionality of the measure, it may prove to be counterproductive. If we really are going after the true superdrug kingpins, we are talking about the Escobars and Ochoas in Colombia and the Kun Sahs in the Golden Triangle of Southeast Asia.

In Colombia's on-again, off-again agonizing over international extradition, we are now in an off-again stage. The surest way to make this repudiation of extradition permanment is to impose a death penalty provision.

Is that what we really want? If my amendment is successful, these kingpins will still face a mandatory life sentence without possibility of release. That's already in our laws. Do we want to give up the prospect of locking up Pablo Escobar or Jorge Ochoa for life in the Marion penitentiary? Do we want to, in exchange for an empty gesture of putting an unenforceable death penalty on the books, leave Escobar and other kingpins in Colombia, living in the lap of luxury in so-called prisons which they design, construct, staff, and control?

The death penalty must be used as a measured response. We must not, no matter how great our frustration over our drug problem use the death penalty in situations where it is not justified and appropriate. Under our system of justice, punishment must be, both morally and constitutionally, proportionate to the crime. The death penalty for selling illegal drugs, even in large amounts, does not meet that standard.

□ 1800

Mr. SMITH of Florida. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I am happy to yield to the gentleman from Florida.

Mr. SMITH of Florida. I thank the gentleman for yielding.

Mr. Chairman, I understand and support the gentleman's argument. It is a very correct argument.

I would like to ask the gentleman a question. Is it correct that there is no death penalty for kidnaping currently?

Mr. HUGHES. That is correct.

Mr. SMITH of Florida. Is it correct that there is no death penalty for rape currently in the United States on the Federal level?

Mr. HUGHES. The gentleman is correct.

Mr. SMITH of Florida. Therefore, if there were to pass this provision of the bill allowing a deathless penalty where no death occurs to create a capital punishment, we would have an imbalance to the extent, if I am correct, that a woman might be kidnaped and raped, taken halfway across the country, brutally beaten, viciously assaulted, raped repeatedly, and when the person is caught would not be subject to the death penalty, but somebody who may have trafficked in some drugs at some point where no death occurs would be subject to the death penalty? Is that correct?

Mr. HUGHES. The gentleman is right. I do not have any sympathy for drug traffickers. We ought to put them in the slammer for a long time. That is not at issue.

It is trying to develop something that makes sense that provides a culpability that will pass constitutional muster.

Mr. McCOLLUM. Mr. Chairman, I yield myself such time as I may consume.

I would like to make it very clear that what this vote is all about that we are discussing here.

The gentleman from New Jersey, for whom I have the utmost respect, my former chairman of the Crime Subcommittee when I served on it with him for a number of years, wants to strike from this bill the drug kingpin death penalty that this body passed overwhelmingly in the last Congress, but which did not become law for various reasons of the conference committee that we had with the other body. We put this into the bill this time not in the same form as it was last time when I offered it, but essentially the basic provision and drift is there.

I would hope that we would keep that drug kingpin death penalty and allow the opportunity for it to be perfected to put it back in its form from the last Congress once again in a few amendments down the road.

But what this amendment, what it does now, is provide for the death penalty simply when there is drug dealing in such large quantities as to constitute twice the amount of narcotics necessary presently under present law to get a life sentence. That is a huge quantity of narcotics. That is many kilos of cocaine; that is a whole lot of heroin; that is an enormous amount. It is so much that I cannot imagine how anyone could come to the conclusion other than that if you traffic in this large quantity of narcotics that the deaths not only of one or two people will result but the deaths of many people will result.

There is a precedent clearly for this sort of thing. There is also a precedent for the death penalty when there is no death that results, but that is not what we are expecting here. The precedent when no death results, the clearest one, is espionage, treason. We have had that death penalty and it has been constitutional for years. We have a death penalty, and we think it is perfectly constitutional, where there are terrorist acts that are concerned. We just discussed some of those.

But here is a case where a narcotics dealer is trafficking in huge quantities of narcotics, and nobody could deny the fact that that is the case, that death does result from this sizable transaction that would be involved in something like this.

So I urge my colleagues to strongly support the provision in the bill. Let us enhance it later, but let us support this provision and keep this drug kingpin death penalty and defeat the Hughes amendment.

Mr. CAMPBELL of California. Mr. Chairman, will the gentleman yield?

Mr. McCOLLUM. I am happy to yield to the gentleman from California.

Mr. CAMPBELL of California. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I would like at this stage to engage in a colloquy with my colleague. Before doing so, I would like just to establish the predicate for the inquiry I will be making.

The issue is a fair one to ask, whether the death penalty may constitutionally be imposed for a crime when there is no proven individual killing, and I grant that the Supreme Court has held the death penalty inappropriate in the case of simple rape in Coker versus Georgia, and in that case the Supreme Court said that horrible as rape was there was no nexus to a death. Nevertheless, when the court revisited the issue in Tison versus Arizona, which has been referred to previously in the debate, in the Supreme Court in 1987, the Supreme Court held, and I quote, "The apparent consensus that substantial participation in a violent felony under circumstances likely to result in

the loss of innocent human life may justify the death penalty even absent an intent to kill," and then in the holding part of the case said, "We hold," and this is at page 157, "We hold that the reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death represents a highly culpable mental state, a mental state that may be taken into account in making a capital sentencing judgment." So the reference to a highly culpable mental state engaged in conduct which carries a grave risk of death appears from the Supreme Court's opinion in Tison versus Arizona to be an adequate predicate for the imposition of the death penalty even though you may not be able to prove any single individual died.

I present this to my colleague, the gentleman from Florida, because I know, and all Members of this House know that it was he who originally authored this language and who has been the pioneer of this provision in the law, for which he deserves more credit than he has been given. It is my purpose in engaging the gentleman in this discussion to ask whether it is his belief, as the author of this provision, that to deal in drugs of the amount specified in the bill at this point does indicate a grave risk of death.

Mr. MCCOLLUM. Absolutely. No question about it.

Mr. CAMPBELL of California. And the sources of death, I take it, that would be brought about from this kind of drug-dealing would include death from an overdose, death from habit, death from the kind of criminal activity engaged in the sale of this drug?

Mr. MCCOLLUM. Yes. The gentleman is correct.

Mr. CAMPBELL of California. In conclusion, is it an acceptable statement to the best of the gentleman's interpretation of the evidence the gentleman has heard in his Crime Subcommittee and in the Committee on the Judiciary that engaging in the sale of drugs of the amount provided in this part of the statute carries with it, "a grave risk of death"?

Mr. MCCOLLUM. Yes. The gentleman is correct.

Mr. CAMPBELL of California. Mr. Chairman, I thank the gentleman for yielding.

Mr. MCCOLLUM. Mr. Chairman, I reserve the balance of my time.

Mr. HUGHES. Mr. Chairman, I yielded 30 seconds to our colleague, the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Ms. Chairman, in the Tison case which was pointed out by our law professor friend, Justice was pointed out by our law professor friend, Justice Campbell, a death did result. There was killings.

What the amendment by the gentleman from New Jersey is trying to do is to make sure that in the case of a drug kingpin there has to be a killing. There has to be a death. That seems to be, again, consistent with American jurisprudence that death results. Otherwise, we are going down a never-never land of potentially putting in the death penalty for all sorts of crimes in our society we do not like where death does not result, and that is a very dangerous trend to go down.

□ 1810

Mr. MCCOLLUM. Mr. Chairman, I yield 1½ minutes to my distinguished colleague, the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I thank my colleague for yielding me this time.

Once again, Mr. Chairman, I rise in opposition to the amendment, although I understand how deeply the author feels about it.

Again, I think in this crime bill we have tried to craft a carefully done death penalty. I think there will be some people on the one side who say it goes too far. Some people on the other will say it does not go far enough. I think if the Members read it carefully, they will agree that it is carefully done, but a very tough bill.

I would say on the kingpins, we do indeed occasionally feel that the death penalty is appropriate because of society's approprium against certain people. Treason and espionage do not have to result in death and they have a long part of American and Anglo-Saxon jurisprudence in terms of the death penalty.

So I say to my colleagues that those who deal in huge amounts of drugs, the Ochoas and the Escobars, know that they are killing people. We all know that they are killing people. We also know that they probably more than anybody else, perhaps more than a poor mule on the street who gets involved in a shooting incident, deserve society's ultimate punishment.

So I feel again the amounts here are double those of the administration bill aimed simply at those who are at the very top of these drug enterprises. They are selling death on our streets and they do indeed deserve society's ultimate approprium, the death penalty.

Mr. MCCOLLUM. Mr. Chairman, I yield the balance of my time to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, let me just say this. Some situations are so horrible that they demand the extreme penalty. One of them is espionage. That is death to the country potentially, and dealing in huge amounts of narcotics is death on the installment plan to an awful lot of people. Either we get serious about drug kingpins and dealing with this tidal wave of narcotics, or we do not. It seems to me the death penalty is getting very serious about it. I think that is what the American people want, and it is what I want.

Mr. HUGHES. Mr. Chairman, I yield 30 seconds to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Chairman, the Hughes amendment is clearly correct. The death penalty for drug trafficking is clearly unconstitutional.

No one has been executed in the United States for a nonhomicidal offense in nearly a quarter century.

Some 38 States have the death penalty; none has it for drug trafficking.

Every single one of the 2,400 persons on death row in the United States is there for murder.

Just 2 years ago, when this administration sent up its first crime bill, it did not even ask for the death penalty for drug trafficking. In 1989, the Justice Department's chief anticrime spokesperson testified that the death penalty for drug trafficking where no death resulted was of "questionable" constitutionality.

Well, it is worse than questionable. In 1977, the Supreme Court held that the death penalty for rape of an adult woman was unconstitutional. The Court specifically noted that rape was probably the most serious offense short of homicide, yet no life is taken in rape and that was controlling.

Chief Justice Rehnquist, just this past June, said that if a crime does not result in death, the death penalty may not be imposed.

It is all easy to get into a bidding war over the death penalty and that is what we are in today. But we have a responsibility to get beyond symbolism. The Hughes amendment is correct. The Government cannot kill somebody who did not kill.

Mr. HUGHES. Mr. Chairman, I yield myself the balance of the time.

Look, we all want to get the Ochoas and the Escobars. If you think you are going to get them by creating a death penalty, you are kidding yourselves. Countries do not extradite to this country because of that. We can beat our chests and suggest that we are doing something tough, but what we are doing is self-defeating.

Put aside the constitutional question. If you want to do something tough about the Escobars, and the Ochoas, you put them in the slammer for life, and that is what what the law provides.

What you are going to do is you are going to make it impossible for us to extradite them to this country and prosecute them for their offenses.

Now, on the constitutional issue, the Tison case was a horrendous homicide. You know, read Tison. There was a death and Sandra Day O'Connor in her opinion read an intent to kill from all the circumstances, because the Tison brothers when they broke their father

out of jail knew he was going to kill, and it was the totality of circumstances that meant that was so.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from New Jersey [Mr. HUGHES].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. McCOLLUM, Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 106, noes 317, answered "present" 1, not voting 9, as follows:

[Roll No. 312]

AYES—106

Abercrombie	Jacobs	Penny
Ackerman	Jones (GA)	Peterson (MN)
Andrews (ME)	Kennelly	Rangel
Andrews (NJ)	Kildee	Roybal
AuCoin	Kleczka	Sabo
Berman	Klug	Sanders
Bonior	Kopetski	Sawyer
Boucher	Kostmayer	Scheuer
Cardin	LaFalce	Schroeder
Clay	Lehman (FL)	Serrano
Collins (IL)	Levin (MI)	Sharp
Collins (MI)	Levine (CA)	Skaggs
Conyers	Lewis (GA)	Smith (FL)
Cox (IL)	Lowey (NY)	Smith (IA)
Coyne	Markey	Smith (NJ)
Dellums	McCloskey	Solarz
Dixon	McDermott	Staggers
Dorgan (ND)	McHugh	Stark
Downey	McNulty	Stokes
Edwards (CA)	Mfume	Studds
Engel	Miller (CA)	Swift
Evans	Mineta	Synar
Feighan	Mink	Towns
Flake	Mollohan	Unsoeld
Foglietta	Moody	Vento
Ford (MI)	Mrazek	Visclosky
Ford (TN)	Nagle	Washington
Frank (MA)	Neal (MA)	Waters
Gejdenson	Oberstar	Weber
Glickman	Obey	Weiss
Gonzalez	Olver	Wheat
Green	Owens (NY)	Wise
Hamilton	Owens (UT)	Wolpe
Hertel	Payne (NJ)	Yates
Hoyer	Pease	
Hughes	Pelosi	

NOES—317

Alexander	Boxer	Cox (CA)
Allard	Brewster	Cramer
Anderson	Brooks	Crane
Andrews (TX)	Broomfield	Cunningham
Annunzio	Browder	Dannemeyer
Anthony	Brown	Darden
Applegate	Bruce	Davis
Archer	Bryant	de la Garza
Armey	Bunning	DeFazio
Aspin	Burton	DeLauro
Atkins	Bustamante	DeLay
Bacchus	Byron	Derrick
Baker	Camp	Dickinson
Ballenger	Campbell (CA)	Dicks
Barnard	Campbell (CO)	Dingell
Barrett	Carper	Donnelly
Barton	Carr	Dooley
Bateman	Chandler	Doolittle
Bellenson	Chapman	Dornan (CA)
Bennett	Clement	Dreier
Bentley	Clinger	Duncan
Bereuter	Coble	Durbin
Bevill	Coleman (MO)	Dwyer
Bilbray	Coleman (TX)	Early
Bilirakis	Combest	Eckart
Billey	Condit	Edwards (OK)
Boehlert	Cooper	Edwards (TX)
Boehner	Costello	Emerson
Borski	Coughlin	English
Erdreich	Lewis (CA)	Riggs
Espy	Lewis (FL)	Rinaldo
Ewing	Lightfoot	Ritter
Fascell	Lipinski	Roberts
Fawell	Livingston	Roe
Fields	Lloyd	Roemer
Fish	Long	Rogers
Franks (CT)	Lowery (CA)	Rohrabacher
Frost	Luken	Ros-Lehtinen
Gallegly	Machtley	Rose
Gallo	Manton	Rostenkowski
Gaydos	Marlenee	Roth
Gekas	Martin	Roukema
Gephardt	Martinez	Rowland
Geren	Matsui	Russo
Gibbons	Mavroules	Sangmeister
Gilchrest	Mazzoli	Santorum
Gillmor	McCandless	Sarpalius
Gilman	McCollum	Saxton
Gingrich	McCrery	Schaefer
Gordon	McCurdy	Schiff
Goss	McDade	Schulze
Gradison	McEwen	Schumer
Grandy	McGrath	Sensenbrenner
Guarini	McMillan (NC)	Shaw
Gunderson	McMillen (MD)	Shays
Hall (OH)	Meyers	Shuster
Hall (TX)	Michel	Sikorski
Hammerschmidt	Miller (OH)	Sisisky
Hancock	Miller (WA)	Skeen
Hansen	Moakley	Skelton
Harris	Molinari	Slattery
Hastert	Montgomery	Slaughter (NY)
Hatcher	Moorhead	Smith (OR)
Hayes (IL)	Moran	Smith (TX)
Hayes (LA)	Morella	Snowe
Hefley	Morrison	Solomon
Hefner	Murphy	Spence
Henry	Murtha	Spratt
Herger	Myers	Stallings
Hoagland	Natcher	Stearns
Hobson	Neal (NC)	Stenholm
Hochbrueckner	Nichols	Stump
Horn	Nowak	Sundquist
Horton	Nussle	Swett
Houghton	Oakar	Tallon
Hubbard	Olin	Tanner
Huckaby	Ortiz	Tauzin
Hunter	Orton	Taylor (MS)
Hutto	Oxley	Taylor (NC)
Hyde	Packard	Thomas (CA)
Inhofe	Pallone	Thomas (GA)
Ireland	Panetta	Thomas (WY)
James	Parker	Thornton
Jefferson	Pastor	Torres
Jenkins	Patterson	Torricelli
Johnson (CT)	Paxon	Traficant
Johnson (SD)	Payne (VA)	Traxler
Johnson (TX)	Perkins	Upton
Johnston	Peterson (FL)	Valentine
Jones (NC)	Petri	Vander Jagt
Jontz	Pickett	Volkmer
Kanjorski	Pickle	Vucanovich
Kaptur	Porter	Walker
Kasich	Poshard	Walsh
Kennedy	Price	Weldon
Kolbe	Pursell	Williams
Kolter	Quillen	Wilson
Kyl	Rahall	Wolf
Lagomarsino	Ramstad	Wyden
Lancaster	Ravenel	Wylie
Lantos	Ray	Yatron
LaRocco	Reed	Young (AK)
Laughlin	Regula	Young (FL)
Leach	Rhodes	Zeliff
Lehman (CA)	Richardson	Zimmer
Lent	Ridge	

ANSWERED "PRESENT"—1

Goodling

NOT VOTING—9

Callahan	Holloway	Slaughter (VA)
Dymally	Hopkins	Waxman
Fazio	Savage	Whitten

□ 1832

Messrs. PETERSON of Florida, JONTZ, SIKORSKI, and RINALDO changed their vote from "aye" to "no."

Mr. ABERCROMBIE, Mrs. SCHROEDER, and Mr. SWIFT changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in part 2 of House Report 102-253.

AMENDMENTS EN BLOC OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, I offer amendments en bloc.

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendments is en bloc as follows:

Amendments en bloc offered by Mr. GEKAS: Page 251, strike line 17 and all that follow through the end of the bill, and insert the following:

TITLE XXIII—DEATH PENALTY

SEC. 2301. SHORT TITLE.

This title may be cited as the "Federal Death Penalty Act of 1991".

SEC. 2302. DEATH PENALTY PROCEDURES.

TITLE 18 OF THE UNITED STATES CODE IS AMENDED.—

(1) by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH PENALTY PROCEDURES

"§3591. Sentence of death

"A defendant who has been found guilty of—

"(a) an offense described in section 794 or section 2381 of this title;

"(b) an offense described in section 1751(c) of this title if the offense, as determined beyond a reasonable doubt at a hearing under section 3593, constitutes an attempt to murder the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President;

"(c) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B);

"(d) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or members of the family or household of such a person;

"(e) an offense constituting a felony violation of the Controlled Substances Act (21

U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, intending to cause death or acting with reckless disregard for human life, engages in such a violation, and the death of another person results in the course of the violation or from the use of the controlled substance involved in the violation; or

"(f) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at a hearing under section 3593, caused the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or caused the death of a person through the intentional infliction of serious bodily injury;

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified: *Provided*, That no person may be sentenced to death who was less than eighteen years of age at the time of the offense or who is mentally retarded.

"§3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) DURESS.—The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant's participation in the offense, which was committed by another, was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

"(4) NO SIGNIFICANT CRIMINAL HISTORY.—The defendant did not have a significant history of other criminal conduct.

"(5) DISTURBANCE.—The defendant committed the offense under severe mental or emotional disturbance.

"(6) VICTIM'S CONSENT.—The victim consented to the criminal conduct that resulted in the victim's death.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's background, character or record or any other circumstance of the offense that the defendant may proffer as a mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(a), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) PREVIOUS ESPIONAGE OR TREASON CONVICTION.—The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of life imprisonment or death was authorized by statute.

"(2) RISK OF SUBSTANTIAL DANGER TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk to the national security.

"(3) RISK OF DEATH TO ANOTHER.—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (b) or (f), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) CONDUCT OCCURRED DURING COMMISSION OF SPECIFIED CRIMES.—The conduct resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 1203 (hostage taking), section 1751 (violence against the President or Presidential staff), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2331 (terrorist acts abroad against United States nationals), section 2332 (use of weapons of mass destruction), or section 2381 (treason) of this title, section 1826 of title 28 (persons in custody as recalcitrant witnesses or hospitalized following insanity acquittal), or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472 (i) or (n) (aircraft piracy)).

"(2) INVOLVEMENT OF FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—The defendant—

"(A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used or possessed a firearm as defined in section 921 of this title; or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use of attempted or threatened use of a firearm, as defined in section 921 of this title, against another person.

"(3) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(4) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(5) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense or in escaping or attempting to escape apprehension, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) HEINOUS, CRUEL OR DEPRAVED MANNER OF COMMISSION.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(7) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(8) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(9) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(10) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(11) TYPE OF VICTIM.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if there was no Vice President, the officer next in order of succession to the office of the President of the United States, or any person acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if that official was in the United States on official business; or

"(D) a Federal public servant who was outside of the United States or who was a Federal judge, a Federal law enforcement officer, an employee (including a volunteer or contract employee) of a Federal prison, or an official of the Federal Bureau of Prisons—

"(i) while such public servant was engaged in the performance of his official duties;

"(ii) because of the performance of such public servant's official duties; or

"(iii) because of such public servant's status as a public servant.

For purposes of this paragraph, the terms 'President-elect' and 'Vice President-elect' mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2; a 'Federal law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense; 'Federal prison' means a Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and 'Federal judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(d) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section 3591(c)-(e), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist—

"(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm, as defined in section 921 of this title, to threaten, intimidate, assault, or injure a person.

"(5) DISTRIBUTION TO PERSONS UNDER TWENTY-ONE.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(7) USING MINORS IN TRAFFICKING.—The offense or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"§3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the Government, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, shall sign and file with the court, and serve on the defendant, a notice that the Government in the event of conviction will seek the sentence of death. The notice shall set forth the aggravating factor or factors enumerated in section 3592, and any other aggravating factor not specifically enumerated in section 3592, that the Government, if the defendant is convicted, will seek to prove as the basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court may permit the attorney for the Government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—When the attorney for the Government has filed a notice as required under subsection (a) and the defendant is found guilty of an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under the section is necessary; or

"(3) before the court alone, upon motion of the defendant and with the approval of the attorney for the Government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to—

"(1) any matter relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

"(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

The information presented may include the trial transcript and exhibits. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant. The information presented by the Government in support of factors concerning the effect of the offense on the victim and the victim's family may include oral testimony, a victim impact statement that identifies the victim of the offense and the nature and extent of harm and loss suffered by the victim and the victim's family, and other relevant information. Information is admissible regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the Government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of an aggravating factor is on the Government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591 (a), an aggravating factor required to be considered under section 3592(b) is found to exist;

"(2) an offense described in section 3591 (b) or (f), an aggravating factor required to be considered under section 3592(c) is found to exist; or

"(3) an offense described in section 3591(c)-(e), an aggravating factor required to be considered under section 3592(d) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist under subsection (d) outweigh any mitigating factor or factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not be influenced by prejudice or bias relating to

the race, color, religion, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or any victim may be.

"§3594. Imposition of a sentence of death

"Upon the recommendation under section 3593(e) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without the possibility of release.

"§3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor;

"(B) the evidence and information support the special findings of the existence of an aggravating factor or factors; and

"(C) the proceedings did not involve any other prejudicial error requiring reversal of the sentence that was properly preserved for and raised on appeal;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593 or for imposition of another authorized sentence as appropriate, except that the court shall not reverse a sentence of death on the ground that an aggravating factor was invalid or was not supported by the evidence and information if at least one aggravating factor required to be considered under section 3592 remains which was found to exist and the court, on the basis of the evidence submitted at trial and the information submitted at the sentencing hearing, finds no mitigating factor or finds that the remaining aggravating factor or factors which were found to exist outweigh any mitigating factors.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"§3596. Implementation of a sentence of death

"(a) IN GENERAL.—A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

"(b) SPECIAL BARS TO EXECUTION.—A sentence of death shall not be carried out upon a person who lacks the mental capacity to understand the death penalty and why it was imposed on that person, or upon a woman while she is pregnant.

"(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—No employee of any State department of corrections, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"§3597. Use of State facilities

"A United States Marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"§3598. Appointment of counsel

"(a) REPRESENTATION OF INDIGENT DEFENDANTS.—Notwithstanding any other provision of law, this section shall govern the appointment of counsel for any defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, for an offense against the United States, where the defendant is or becomes financially unable to obtain adequate representation. Such a defendant shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in section 3599(b) of this title has occurred.

"(b) REPRESENTATION BEFORE FINALITY OF JUDGMENT.—A defendant within the scope of this section shall have counsel appointed for trial representation as provided in section 3005 of this title. At least one counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel.

"(c) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the district court that imposed the sentence. Within ten days of receipt of such notice, the district court shall proceed to make a determination whether the defendant is eligible under this section for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order: (1) appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel; (2) finding, after a hearing if necessary, that the defendant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or (3) denying the appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation. Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(d) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under this section, at least one counsel appointed for trial representation must have been admitted to the bar for at least five years and have at least three years of experience in the trial of felony cases in the federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to the bar for at least five years and have at least three years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

"(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—Except as otherwise provided in this section, the provisions of section 3006A of this title shall apply to appointments under this section.

"(f) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"§3599. Collateral attack on judgment imposing sentence of death

"(a) TIME FOR MAKING SECTION 2255 MOTION.—In a case in which sentence of death has been imposed, and the judgment has become final as described in section 3598(c) of this title, a motion in the case under section 2255 of title 28, United States Code, must be filed within ninety days of the issuance of the order relating to appointment of counsel under section 3598(c) of this title. The court in which the motion is filed, for good cause

shown, may extend the time for filing for a period not exceeding sixty days. A motion described in this section shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) STAY OF EXECUTION.—The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence, and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such motion by a district court; or

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the motion under that section is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of his decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

"(c) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim was (A) the result of governmental action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

"§3600. Application in Indian country

"Notwithstanding sections 1152 and 1153 of this title, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country as defined in section 1151 of this title and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has made an election that this chapter have effect over land and persons subject to its criminal jurisdiction."; and

(2) in the table of chapters at the beginning of part II, by adding the following new item after the item relating to chapter 227:

"228. Death penalty procedures ..... 3591.".

SEC. 103. CONFORMING AMENDMENT RELATING TO DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.

Section 34 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 104. CONFORMING AMENDMENT RELATING TO ESPIONAGE.

Section 794(a) of title 18 of the United States Code is amended by changing the period at the end of the section to a comma and by adding immediately thereafter the words "except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 of this title that the offense directly concerned nuclear weaponry, military spacecraft and satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; sources or methods of intelligence or counterintelligence operations; or any other major weapons system or major element of defense strategy.".

SEC. 105. CONFORMING AMENDMENT RELATING TO TRANSPORTING EXPLOSIVES.

Section 844(d) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 106. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF FEDERAL PROPERTY BY EXPLOSIVES.

Section 844(f) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 107. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF INTERSTATE PROPERTY BY EXPLOSIVES.

Section 844(i) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 108. CONFORMING AMENDMENT RELATING TO MURDER.

The second paragraph of section 1111(b) of title 18 of the United States Code is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;".

SEC. 109. CONFORMING AMENDMENT RELATING TO KILLING OFFICIAL GUESTS OR INTERNATIONALLY PROTECTED PERSONS.

Subsection (a) of section 1116 of title 18 of the United States Code is amended by inserting a period after "title" and striking the remainder of the subsection.

SEC. 110. MURDER BY FEDERAL PRISONER.

Chapter 51 of title 18 of the United States Code is amended—

(a) by adding at the end thereof the following:

"§1118. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal prison under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of release.

"(b) For purposes of this section—

"(1) 'Federal prison' means any Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government;

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death."; and

(b) by amending the section analysis to add:

"1118. Murder by a Federal prisoner.".

SEC. 111. CONFORMING AMENDMENT RELATING TO KIDNAPPING.

Section 1201 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 112. CONFORMING AMENDMENT RELATING TO HOSTAGE TAKING.

Section 1203 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 113. CONFORMING AMENDMENT RELATING TO MAILABILITY OF INJURIOUS ARTICLES.

The last paragraph of section 1716 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the paragraph.

SEC. 114. CONFORMING AMENDMENT RELATING TO PRESIDENTIAL ASSASSINATION.

Subsection (c) of section 1751 of title 18 of the United States Code is amended to read as follows:

"(c) Whoever attempts to murder or kidnap any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life if the conduct constitutes an attempt to murder the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President.".

SEC. 115. CONFORMING AMENDMENT RELATING TO MURDER FOR HIRE.

Subsection (a) of section 1958 of title 18 of the United States Code is amended by deleting the words "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting in lieu thereof "and if death results, shall be punished by death or life imprisonment, or shall be fined in accordance with this title, or both".

SEC. 116. CONFORMING AMENDMENT RELATING TO VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Paragraph (1) of subsection (a) of section 1959 of title 18 of the United States Code is amended to read as follows: "for murder, by death or life imprisonment, or a fine in accordance with this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine in accordance with this title, or both";

SEC. 117. CONFORMING AMENDMENT RELATING TO WRECKING TRAINS.

The second to the last paragraph of section 1992 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 118. CONFORMING AMENDMENT RELATING TO BANK ROBBERY.

Section 2113(e) of title 18 of the United States Code is amended by striking the words "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof "or if death results shall be punished by death or life imprisonment".

SEC. 119. CONFORMING AMENDMENT RELATING TO TERRORIST ACTS.

Section 2331(a)(1) of title 18 of the United States Code is amended to read as follows:

"(1)(A) if the killing is murder as defined in section 1111(a) of this title, be fined under this title, punished by death or imprisonment for any term of years or for life, or both;".

SEC. 120. CONFORMING AMENDMENT RELATING TO AIRCRAFT HIJACKING.

Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1473), is amended by striking subsection (c).

SEC. 121. CONFORMING AMENDMENT TO CONTROLLED SUBSTANCES ACT.

Section 408 of the Controlled Substances Act is amended by striking subsections (g)-(r).

SEC. 122. CONFORMING AMENDMENT RELATING TO GENOCIDE.

Section 1091(b)(1) of title 18 of the United States Code is amended by striking "a fine of not more than $1,000,000 and imprisonment for life;" and inserting in lieu thereof "death or imprisonment for life and a fine of not more than $1,000,000;".

SEC. 123. PROTECTION OF COURT OFFICERS AND JURORS.

Section 1503 of title 18, United States Code, is amended—

(1) by designating the current text as subsection (a);

(2) by striking the words "fined not more than $5,000 or imprisoned not more than five years, or both." and inserting in lieu thereof "punished as provided in subsection (b).";

(3) by adding at the end thereof a new subsection (b) as follows:

"(b) The punishment for an offense under this section is—

"(1) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title;

"(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than twenty years; and

"(3) in any other case, imprisonment for not more than ten years."; and

"(4) in subsection (a), as designated by this section, by striking "commissioner" each place it appears and inserting in lieu thereof "magistrate judge".

SEC. 124. PROHIBITION OF RETALIATORY KILLINGS OF WITNESSES, VICTIMS AND INFORMANTS.

Section 1513 of title 18, United States Code, is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting a new subsection (a) as follows:

"(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

"(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

"(B) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer;

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

"(B) in the case of an attempt, imprisonment for not more than twenty years.".

SEC. 125. DEATH PENALTY FOR MURDER OF FEDERAL LAW ENFORCEMENT OFFICERS.

Section 1114(a) of title 18, United States Code, is amended by striking "be punished as provided under sections 1111 and 1112 of this title, except that" and inserting ", in the case of murder as defined in section 1111 of this title, be punished by death or imprisonment for life, and, in the case of manslaughter as defined in section 1112 of this title, be punished as provided in that section, and".

SEC. 126. DEATH PENALTY FOR MURDER OF STATE OR LOCAL LAW ENFORCEMENT OFFICERS ASSISTING FEDERAL LAW ENFORCEMENT OFFICERS.

Section 1114 of title 18, United States Code, is amended by inserting ", or any State or local law enforcement officer while assisting, or on account of his or her assistance of, any Federal officer or employee covered by this section in the performance of duties," before "shall be punished".

SEC. 127. IMPLEMENTATION OF THE 1988 PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION.

(a) OFFENSE.—Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Violence at international airports

"(a) Whoever unlawfully and intentionally, using any device, substance or weapon,—

"(1) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

"(2) destroys or seriously damages the facilities of an airport serving international civil aviation or a civil aircraft not in service located thereon or disrupts the services of the airport;

if such an act endangers or is likely to endanger safety at that airport, or attempts to do such an act, shall be fined under this title or imprisoned not more than twenty years, or both; and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) There is jurisdiction over the prohibited activity in subsection (a) if (1) the prohibited activity takes place in the United States or (2) the prohibited activity takes place outside of the United States and the offender is later found in the United States.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following:

"36. Violence at international airports.".

(c) EFFECTIVE DATE.—This section shall take effect on the later of—

(1) the date of the enactment of this subtitle; or

(2) the date the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, has come into force and the United States has become a party to the Protocol.

SEC. 128. AMENDMENT TO FEDERAL AVIATION ACT.

Section 902(n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(n)) is amended by—

(1) striking out paragraph (3); and

(2) renumbering paragraph (4) as paragraph (3).

SEC. 129. OFFENSES OF VIOLENCE AGAINST MARITIME NAVIGATION OR FIXED PLATFORMS.

(a) OFFENSE.—Chapter 111 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 2280. Violence against maritime navigation

"(a) Whoever unlawfully and intentionally—

"(1) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;

"(2) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;

"(3) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;

"(4) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;

"(5) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship;

"(6) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship;

"(7) injures or kills any person in connection with the commission or the attempted commission of any of the offenses set forth in paragraphs (1) to (6); or

"(8) attempts to do any act prohibited under paragraphs (1)-(7);

shall be fined under this title or imprisoned not more than twenty years, or both; and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) Whoever threatens to do any act prohibited under paragraphs (2), (3) or (5) of subsection (a), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safe navigation of the ship in question, shall be fined under this title or imprisoned not more than five years, or both.

"(c) There is jurisdiction over the prohibited activity in subsections (a) and (b)—

"(1) in the case of a covered ship, if—

"(A) such activity is committed—

"(i) against or on board a ship flying the flag of the United States at the time the prohibited activity is committed;

"(ii) in the United States; or

"(iii) by a national of the United States or by a stateless person whose habitual residence is in the United States;

"(B) during the commission of such activity, a national of the United States is seized, threatened, injured or killed; or

"(C) the offender is later found in the United States after such activity is committed;

"(2) in the case of a ship navigating or scheduled to navigate solely within the territorial sea or internal waters of a country other than the United States, if the offender is later found in the United States after such activity is committed; and

"(3) in the case of any vessel, if such activity is committed in an attempt to compel the United States to do or abstain from doing any act.

"(d) The master of a covered ship flying the flag of the United States who has reasonable grounds to believe that he has on board his ship any person who has committed an

offense under Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation may deliver such person to the authorities of a State Party to that Convention. Before delivering such person to the authorities of another country, the master shall notify in an appropriate manner the Attorney General of the United States of the alleged offense and await instructions from the Attorney General as to what action he should take. When delivering the person to a country which is a State Party to the Convention, the master shall, whenever practicable, and if possible before entering the territorial sea of such country, notify the authorities of such country of his intention to deliver such person and the reason therefor. If the master delivers such person, he shall furnish the authorities of such country with the evidence in the master's possession that pertains to the alleged offense.

"(e) As used in this section, the term—

"(1) 'ship' means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles or any other floating craft: *Provided*, That the term does not include a warship, a ship owned or operated by a government when being used as a naval auxiliary or for customs or police purposes, or a ship which has been withdrawn from navigation or laid up;

"(2) 'covered ship' means a ship that is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country;

"(3) 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(4) 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law; and

"(5) 'United States', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas Islands and all territories and possessions of the United States.

"§ 2281. Violence against maritime fixed platforms

"(a) Whoever unlawfully and intentionally—

"(1) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation;

"(2) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety;

"(3) destroys a fixed platform or causes damage to it which is likely to endanger its safety;

"(4) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety;

"(5) injures or kills any person in connection with the commission or the attempted commission of any of the offenses set forth in paragraphs (1) to (4); or

"(6) attempts to do anything prohibited under paragraphs (1)-(5);

shall be fined under this title or imprisoned not more than twenty years, or both; and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) Whoever threatens to do anything prohibited under paragraphs (2) or (3) of subsection (a), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safety of the fixed platform, shall be fined under this title or imprisoned not more than five years, or both.

"(c) There is jurisdiction over the prohibited activity in subsections (a) and (b) if—

"(1) such activity is committed against or on board a fixed platform—

"(A) that is located on the continental shelf of the United States;

"(B) that is located on the continental shelf of another country, by a national of the United States or by a stateless person whose habitual residence is in the United States; or

"(C) in an attempt to compel the United States to do or abstain from doing any act;

"(2) during the commission of such activity against or on board a fixed platform located on a continental shelf, a national of the United States is seized, threatened, injured or killed; or

"(3) such activity is committed against or on board a fixed platform located outside the United States and beyond the continental shelf of the United States and the offender is later found in the United States.

"(d) As used in this section, the term—

"(1) 'continental shelf' means the sea-bed and subsoil of the submarine areas that extend beyond a country's territorial sea to the limits provided by customary international law as reflected in Article 76 of the 1982 Convention on the Law of the Sea;

"(2) 'fixed platform' means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes;

"(3) 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(4) 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law; and

"(5) 'United States', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas Islands and all territories and possessions of the United States.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 111 of title 18, United States Code, is amended by adding at the end thereof the following:

"2280. Violence against maritime navigation.
"2281. Violence against maritime fixed platforms.".

(c) EFFECTIVE DATES.—This section shall take effect on the later of—

(1) the date of the enactment of this Act; or

(2)(A) in the case of section 2280 of title 18, United States Code, the date the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation has come into force and the United States has become a party to that Convention; and

(B) in the case of section 2281 of title 18, United States Code, the date the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf has come into force and the United States has become a party to that Protocol.

SEC. 130. TORTURE.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 113A the following new chapter:

"CHAPTER 113B—TORTURE

"Sec.
2340. Definitions.
2340A. Torture.
2340B. Exclusive remedies.

"§ 2340. Definitions

"As used in this chapter—

"(1) 'torture' means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.

"(2) 'severe mental pain or suffering' means the prolonged mental harm caused by or resulting from: (a) the intentional infliction or threatened infliction of severe physical pain or suffering; (b) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (c) the threat of imminent death; or (d) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

"(3) 'United States' includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1301(38)).

"§ 2340A. Torture

"(a) Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than twenty years, or both; and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) There is jurisdiction over the prohibited activity in subsection (a) if: (1) the alleged offender is a national of the United States; or (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or the alleged offender.

"§ 2340B. Exclusive remedies

"Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.".

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113A the following new item:

"113B. Torture ..... 2340.".

(c) EFFECTIVE DATE.—This section shall take effect on the later of—

(1) the date of enactment of this section; or

(2) the date the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

SEC. 131. WEAPONS OF MASS DESTRUCTION.

(a) FINDINGS.—The Congress finds that the use and threatened use of weapons of mass destruction, as defined in the statute enacted by subsection (b) of this section, gravely harm the national security and foreign relations interests of the United States, seriously affect interstate and foreign commerce, and disturb the domestic tranquility of the United States.

(b) OFFENSE.—Chapter 113A of title 18, United States Code, is amended by adding the following new section:

"§ 2332. Use of weapons of mass destruction

"(a) Whoever uses, or attempts or conspires to use, a weapon of mass destruction—

"(1) against a national of the United States while such national is outside of the United States;

"(2) against any person within the United States; or

"(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States;

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

"(b) For purposes of this section—

"(1) 'national of the United States' has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(2) 'weapon of mass destruction' means—

"(a) any destructive device as defined in section 921 of this title;

"(b) poison gas;

"(c) any weapon involving a disease organism; or

"(d) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.".

(c) CLERICAL AMENDMENT.—The analysis for chapter 113A of title 18, United States Code, is amended by adding the following:

"2332. Use of weapons of mass destruction.".

SEC. 132. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FEDERAL FACILITIES.

Section 930 of title 18, United States Code, is amended by—

(a) redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g) respectively;

(b) in subsection (a), deleting "(c)" and inserting in lieu thereof "(d)"; and

(c) inserting after subsection (b) the following:

"(c) Whoever kills or attempts to kill any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall—

"(1) in the case of a killing constituting murder as defined in section 1111(a) of this title, be punished by death or imprisoned for any term of years or for life; and

"(2) in the case of any other killing or an attempted killing, be subject to the penalties provided for engaging in such conduct within the special maritime and territorial jurisdiction of the United States under sections 1112 and 1113 of this title.".

SEC. 133. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended by striking "shall be subject to imprisonment for any term of years or for life" and inserting in lieu thereof "shall be punished by death or imprisonment for any term of years or for life".

(b) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.—Section 242 of title 18, United States Code, is amended by striking "shall be subject to imprisonment for any term of years or for life" and inserting in lieu thereof "shall be punished by death or imprisonment for any term of years or for life".

(c) FEDERALLY PROTECTED ACTIVITIES.—Section 245(b) of title 18, United States Code, is amended by striking "shall be subject to imprisonment for any term of years or for life" and inserting in lieu thereof "shall be punished by death or imprisonment for any term of years or for life".

(d) DAMAGE TO RELIGIOUS PROPERTY; OBSTRUCTION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.—Section 247(c)(1) of title 18, United States Code, is amended by inserting "the death penalty or" before "imprisonment".

SEC. 134. DEATH PENALTY FOR MURDER OF FEDERAL WITNESSES.

Section 1512(a)(2)(A) of title 18, United States Code, is amended to read as follows:

"(A) in the case of murder as defined in section 1111 of this title, the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112 of this title;".

SEC. 135. DRIVE-BY SHOOTINGS.

(a) OFFENSE.—Chapter 44 of title 18, United States Code, is amended by adding the following new section:

"§ 931. Drive-by shootings

"(a) Whoever knowingly discharges a firearm at a person—

"(1) in the course of or in furtherance of drug trafficking activity; or

"(2) from a motor vehicle;

shall be punished by imprisonment for up to 25 years, and if death results shall be punished by death or by imprisonment for any term of years or for life.

"(b) For purposes of this section, "drug trafficking activity" means a drug trafficking crime as defined in section 929(a)(2) of this title, or a pattern or series of acts involving one or more drug trafficking crimes.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 45 of title 18, United States Code, is amended by adding the following:

"931. Drive-by shootings.".

SEC. 136. DEATH PENALTY FOR GUN MURDERS DURING FEDERAL CRIMES OF VIOLENCE AND DRUG TRAFFICKING CRIMES.

Section 924 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(i) Whoever, in the course of a violation of subsection (c) of this section, causes the death of a person through the use of a firearm, shall—

"(1) if the killing is a murder as defined in section 1111 of this title, be punished by death or by imprisonment for any term of years or for life; and

"(2) if the killing is manslaughter as defined in section 1112 of this title, be punished as provided in that section.".

SEC. 137. DEATH PENALTY FOR RAPE AND CHILD MOLESTATION MURDERS.

(a) OFFENSE.—Chapter 109A of title 18, United States Code, is amended by redesignating section 2245 as section 2246, and by adding the following new section:

"§ 2245. Sexual abuse resulting in death

"Whoever, in the course of an offense under this chapter, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 109A of title 18, United States Code, is amended by striking the item for section 2245 and adding the following

"2245. Sexual abuse resulting in death.

"2246. Definitions for chapter.".

SEC. 138. PROTECTION OF JURORS AND WITNESSES IN CAPITAL CASES.

Section 3432 of title 18, United States Code, is amended by inserting before the period the following: ", except that such list of the veniremen and witnesses need not be furnished if the court finds by a preponderance of the evidence that providing the list may jeopardize the life or safety of any person".

SEC. 139. INAPPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

The provisions of chapter 228 of title 18, United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

Strike subtitle B (relating to list of veniremen) of title XIX.

The CHAIRMAN. Pursuant to the rule, the gentleman from Pennsylvania [Mr. GEKAS] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

Mr. BROOKS. Mr. Chairman, I rise in opposition to the amendments.

The CHAIRMAN. The gentleman from Texas [Mr. BROOKS] will control the 10 minutes in opposition.

PARLIAMENTARY INQUIRY

Mr. GEKAS. Mr. Chairman, I have a point of parliamentary inquiry.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. GEKAS. Mr. Chairman, we have an indication under the rule that there are 20 minutes allocated to this issue. Does that mean 10 and 10? We read it one way, and then another, on another sheet.

The CHAIRMAN. The Chair will advise the gentleman from Pennsylvania [Mr. GEKAS] that there are 20 minutes allowed under the rule for his amendment, equally divided and controlled.

The rule also provides for a perfecting amendment that the Chair anticipates the gentleman from Texas [Mr. BROOKS] will offer, which will be separately debatable for 10 minutes, equally divided and controlled.

Mr. GEKAS. We understand, Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GEKAS] is recognized.

Mr. GEKAS. Mr. Chairman, the amendment which we now offer to the Members is the same one substantially as was approved by this body last term by an overwhelming margin, 271 to 159. It is one that contains a workmanlike, workable, satisfactory, judicially proper death penalty to apply evenhandedly in those vicious cases where it is warranted. To my colleagues I say, "Mind you, it is important to note that on this occasion, and any other occasion we have ever argued about the applicability of the death penalty, it was never a statute where we imposed the death penalty, but rather one in which we want to give a jury that is deliberating on a capital case the option as to whether or not to impose the death penalty."

Mr. Chairman, the irony of all that we are discussing is this: that we are at a stage of the proceedings in discussing the death penalty where a jury has already convicted an individual of murder in the first degree. They have already found that this individual has in

cold blood killed a fellow American citizen, has destroyed a human life. Now we are at a proceeding where they, the jury, should or should not be given the right to determine whether the death penalty should be applied.

Mr. Chairman, that is where our amendment comes in. We are saying now that the jury has found this individual guilty of murder in the first degree, has destroyed that life. Maybe it is that kind of a serious case which should allow them to impose the ultimate penalty of death. Our amendment covers those Federal statutes like bank robberies, and aircraft hijackings, and kidnaping, and even rape for the first time where a death occurs as a result of that rape and permits a jury, even in a child molestation case where a death occurs and is so recklessly indifferent to the life of that victim that the jury should be given the right to impose the death penalty. Those kinds of cases are given full implementation in our amendment as an option to the jury for the imposition of the death penalty in a proper case.

Mr. Chairman, that is an important element for the Members to consider as they vote on this amendment.

□ 1880

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Missouri

Mr. SKELTON. Mr. Chairman, let me ask the gentleman this: Is this really not and extension of what we used to know in the previous case law as the felony murder rule?

Mr. GEKAS. Yes; the gentleman is correct. The felony murder rule, which has always been a part of our jurisprudence, is embodied in what we are talking about in those serious cases like bank robbery, rape, and kidnaping, where a death occurred. Even if a defendant in his wildest dreams is going to be able to say, "I didn't intend to kill," if the circumstances are those where the jury is satisfied that a reckless indifference to life has occurred, the death penalty should be an option for the jury.

Mr. SKELTON. Mr. Chairman, let me give the gentleman a hypothetical.

Mr. GEKAS. I yield again to the gentleman from Missouri.

Mr. SKELTON. Suppose a defendant is attempting a rape and in the process there is a struggle, the victim falls and hits her head on the fireplace, for instance, and a death results. Certainly it is not intended, but it comes about as a result of the felony that the defendant is attempting. Would the death penalty be a choice for a jury in a situation such as that?

Mr. GEKAS. I would be a question of fact for the jury to determine. My position is that in those kinds of cases the jury should be given that choice under proper direction by the judge. I am certain that a judge in a case like I described, where the rapist begins to choke the victim to keep her quiet, in his own words, but kills her, there I would be ready to say that in that type of hypothetical every judge in the country would direct that the jury would have the option of the death penalty. In the gentleman's case it is less certain, but we still have those kinds of facts which should give the judge the discretion as to whether or not to give directions in that regard.

Mr. SKELTON. Let me give another hypothetical, if the gentleman would yield again. Suppose a defendant holds up a bank and on the way out the door his gun drops, discharging accidentally and killing a bystander. Would it apply there?

Mr. GEKAS. In my judgment again this would be a question of fact for the jury. The judge under proper previous Supreme Court cases where remoteness of the action might be so severe that he could not include it in the felon murder kind of example that you had elicited here, might not include that, but I would consider that is still a question of fact for the jury under proper guidance by the court. What we want to do is to include those where there is an intentional shooting, an intentional firing of a gun, even if there is no intentional killing.

Mr. SKELTON. Such as, as I raised the question a moment ago, of a drive-by killing?

Mr. GEKAS. Yes, that is correct.

Mr. SKELTON. Mr. Chairman, I thank the gentleman very much.

Mr. GEKAS. Mr. Chairman, the other important difference which the Members must consider as they look at the present bill and determine whether or not they want to adopt and vote for the Gekas amendment is this: As we know, this second proceeding in which the jury has to deliberate to determine whether or not the death penalty should be applied in this bifurcated hearing, in the second hearing under strict instructions by the judge the jury must find aggravating circumstances and/or mitigating circumstances, and if the aggravating circumstances outweigh the mitigating circumstances, they would be empowered to find the death penalty.

Now, here is where the bill that is before us unamended, the one I am trying to perfect or trying to make workable, this bill that is before us now, says that in a rape-murder case like the kind I described, or a bank robbery case, the kind I described, or a kidnaping-murder case of the kind I described, under the working of the bill, that jury that is deliberating must find that the aggravating circumstances on top of the circumstances under which they have already found a kidnaping occurred or a burglary occurred or a rape occurred or a robbery occurred.

That is too much to ask of a jury that is acting on behalf of society, and the Supreme Court has said in the Phelps that it is sufficient in an aggravated circumstance if the jury in looking at this case seizes upon that very act of which they found him guilty of murder in the first degree in the first place, the underlying crime of kidnaping, rape, or robbery. That should be enough.

The Gekas amendment takes into consideration the Phelps case and says that that jury which has found this individual guilty of murder in the first degree, which has already determined that it is a heinous and violent crime, rape/murder or a kidnaping/murder, now in this second case they are permitted under our amendment to say that underlying circumstance of kidnaping or rape was so aggravating that they feel it outweights the mitigating circumstances that may be present and they find the death penalty.

That is an important salient difference between the bill and the amendment we offer. I repeat that what I offer is what we approved in the last term and the term before, and the bill that comes up before us today without the Gekas amendment is weak in that regard and is flawed in that regard and in other regards.

Mr. Chairman, I ask the Members for adoption of the Gekas amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. BROOKS. Mr. Chairman, I yield 3 minutes and 30 seconds to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS].

There are several differences between the committee bill, which I have maintained has a tough, strong death penalty provision, and the amendment offered by the gentleman from Pennsylvania, and I think it is worth looking at a bunch of them.

First and most important, the amendment offered by the gentleman from Pennsylvania takes every death penalty count in the bill—there are 50 or 52—and moves it to a standard of recklessness for everything. While, as I have stated before, recklessness is occasionally an appropriate standard, it is not always an appropriate standard.

The gentleman mentioned earlier that the terrible tragedy that occurred in Texas today made it the reckless standard. That is untrue. Any prosecutor worth his salt could show that madman who did the terrible killing in Killeen, TX, was intentionally killing people. I would say to the gentleman from Pennsylvania and my colleagues that if we want to do something about preventing the kind of killing that went on today in Texas, then we should vote for an assault weapons ban which limits the number of clips in the gun which could be used. The madman today by reports had 14 gun clips and

was able to spray and spray and spray and kill. That is our chance to do something about that tomorrow. But today the recklessness standard is not disposative.

Let me give my colleagues an example of a recklessness standard where the death penalty would be allowed under the amendment offered by the gentleman from Pennsylvania. A person is driving recklessly in his car, goes through a red light, crashes into another car, and kills an IRS agent or any other Federal agent. The death penalty? How many of us think that in that instance there should be a death penalty?

Let us say kids on a Saturday night joy ride shoot a gun in the air and unfortunately it kills somebody on the ground a mile away. Should those kids get the death penalty? I do not think so.

To go to a recklessness standard across the board is not right. By voting for this proposal in the bill, I say to my colleagues, we have a tough death penalty standard, one we can be proud of, but we do not have to go so far as to include instances that, if this should become law, we would rue the day we would do something like that.

There are procedural problems in the amendment offered by the gentleman from Pennsylvania as well. If a lawyer in the case made reversible error in a capital case, the judge could not reverse it if the defendant's lawyer brought it up. Let us say the judge sees glaring reversible error in the courtroom, unless the defendant's lawyer brought it up, capital punishment could ensue. That is wrong.

In our desire to be tough, as we should be, let us not work ourselves into a frenzy where we will be doing things that will be unconstitutional and unconscionable.

Mr. Chairman, I urge that the gentleman's amendment be defeated.

Mr. BROOKS. Mr. Chairman, I have an amendment at the desk made in order under the rule.

PARLIAMENTARY INQUIRY

Mr. GEKAS. Mr. Chairman, I have a parliamentary inquiry.

Mr. BROOKS. Mr. Chairman, I reserve the balance of my time on this amendment, of course.

Mr. GEKAS. Mr. Chairman, I understand that we on this side have some time left. Is it the intent of the Chair that that time should be totally consumed before we go into the perfecting amendment, or is that necessary?

The CHAIRMAN. We will essentially suspend action on the amendment offered by the gentleman from Pennsylvania and take up the amendment to the amendment offered by the gentleman from Texas. We will then return to the gentleman's amendment for the time remaining.

Mr. GEKAS. I thank the Chair.

□ 1850

AMENDMENTS EN BLOC OFFERED BY MR. BROOKS OF THE AMENDMENTS EN BLOC OFFERED BY MR. GEKAS

Mr. BROOKS. Mr. Chairman, I offer amendments en bloc to the amendments en bloc offered by the gentleman from Pennsylvania [Mr. GEKAS].

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. BROOKS to the amendments en bloc offered by Mr. GEKAS:

(1) in section 102 of the Gekas amendment, strike from subsection (a) of section 3598 "Notwithstanding any other provision of law," and capitalize "this";

(2) add at the end of subsection (a) of section 3598: "This section shall not effect the appointment of counsel and the provision of ancillary legal services under sections 848(q)(4) through (10) of title 21, United States Code."; and

(3) in section 121 of the Gekas amendment, strike "(g)–(r)" and substitute "(g)–(p), (q)(1)–(3), and (r)".

The CHAIRMAN. Under the rule, the gentleman from Texas [Mr. BROOKS] will be recognized for 5 minutes, and a Member opposed to this perfecting amendment will be recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I rise in opposition to the Brooks perfecting amendment.

The CHAIRMAN. The gentleman from Wisconsin [Mr. SENSENBRENNER] will control the time in opposition.

The chair recognizes the gentleman from Texas [Mr. BROOKS].

PARLIAMENTARY INQUIRY

Mr. GEKAS. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GEKAS. Mr. Chairman, is the time allocation here 10 minutes for the Brooks amendment for the gentleman from Texas [Mr. BROOKS], and 10 minutes for our side?

The CHAIRMAN. Under the rule, 10 minutes total is allowed, to be divided 5 and 5.

Mr. GEKAS. Mr. Chairman, is the 5 minutes now allocated to the gentleman from Wisconsin [Mr. SENSENBRENNER]?

The CHAIRMAN. The gentleman from Wisconsin [Mr. SENSENBRENNER] rose to state his opposition and to request the time. That is correct.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in 1988, as part of the Anti-Drug Abuse Act, the House passed and President Reagan signed legislation providing competent counsel in all Federal death penalty, Federal collateral review, and Federal habeas corpus cases. These straightforward provisions gave counsel necessary resources and reasonable compensation. Since they became effective, the 1988 provisions have begun to mitigate the widely reported problems of inadequate counsel in capital cases—at least at the Federal habeas stage—which result only in additional litigation and delay.

Mr. Chairman, I think it should be noted that the author of that sensible and moderate 1988 measure was none other than the gentleman from Pennsylvania [Mr. GEKAS]. Now he is on the floor attempting, in effect, to kill his own legislative child.

In its broad weep, this year's Gekas amendment would repeal the counsel provisions in the 1988 law that this body adopted only just a few years ago. More specifically, while current law provides competent counsel in Federal habeas corpus proceedings, the amendment does away with it completely—and creates nothing but a vacuum in its place.

My amendment does only one thing—it preserves the 1988 language providing counsel at all Federal stages of death penalty litigation. It does not change the 1988 language, nor does it affect any other aspect of the gentleman's lengthy amendment to H.R. 3371. Providing competent counsel at any stage of the death penalty process insures that fewer mistakes will be made. As errors are minimized, so is delay—and the process of capital punishment as authorized in the law can be carried out more quickly. My amendment moves us toward these goals, and I urge its adoption.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, an amendment to the Gekas death penalty provisions submitted by Mr. BROOKS seeks to keep in effect the capital counsel standards under the Anti-Drug Abuse Act [ADAA] of 1988—in 21 U.S.C. 848. These would be repealed in the Gekas provision as part of a general repealer for the separate ADAA death penalty procedures, which is designed to ensure that the same standards and procedures will apply to all Federal capital offenses.

The Brooks amendment will result in inconsistent counsel standards for Federal capital cases, which will be impossible for the courts to apply, since there are significant differences between the Gekas provisions and the ADAA standards.

For example, the Gekas provisions give the defendant a right to two lawyers at trial—by cross-referencing 18 U.S.C. 3005—and give the defendant a right to a new lawyer at the start of collateral proceedings. There are no comparable rights for the defendant under the ADAA provisions. The Gekas provisions apply the counsel compensation standards that Congress has provided for all Federal proceedings under the Criminal Justice Act, 18 U.S.C.

3006A, which give courts legislative guidelines concerning appropriate compensation levels, while also providing procedures for authorizing any greater amount of compensation that may be needed to ensure a fair defense in a case. The ADAA provisions waive these legislative guidelines and leave the compensation decision to the unguided determinations of individual judges. Under the Brooks amendment, there would be no way for a court to determine which of these contradictory provisions apply.

The Brooks amendment may be motivated by a misrepresentation that a defense lawyer made at a subcommittee hearing, which claimed that capital defendants would not be entitled to ancillary services, such as expert witnesses and investigative costs, under the Gekas proposal. However, this representation was simply false. The general standards of the Criminal Justice Act 18 U.S.C. 3006A, apply under the Gekas provisions, including the rule of 18 U.S.C. 3006A(e) requiring courts to provide necessary expert, investigative, and other ancillary services in all Federal proceedings, both capital and noncapital. Keeping a separate provision that reiterates this requirement for capital cases only is pointless and unnecessary.

Similarly, keeping the ADAA provisions is unnecessary to ensure representation of Federal capital defendants in collateral proceedings. The Gekas provisions explicitly extend the right to appointed counsel for Federal capital defendants to collateral—section 2255 motion—proceedings, and also set counsel experience standards at all stages of litigation which are comparable to those of the ADAA provisions.

An alternative purpose of the Brooks amendment may be to retain the ADAA counsel provisions for application to State capital cases. However, this is simply out of place in a Federal death penalty title. Both the Edwards habeas proposal reported by the Judiciary Committee and the Hyde substitute contain extensive provisions governing provision of counsel in State cases. Any issues relating to counsel in State cases should be addressed in the context of those proposals.

Mr. BROOKS. Mr. Chairman, I yield such time as he may consume to my friend, the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, with the assertion to my good friend, the gentleman from Texas [Mr. BROOKS], that I fully expect this particular issue with so many different colorations to it will appear in our conference later on, I would like to suggest to the Chair that I want to accept this amendment at this juncture.

Mr. BROOKS. Mr. Chairman, I yield back the balance of my time on the perfecting amendment.

The CHAIRMAN. The question is on the amendments en bloc offered by the gentleman from Texas [Mr. BROOKS] to the amendments en bloc offered by the gentleman from Pennsylvania [Mr. GEKAS].

The amendments en bloc to the amendments en bloc were agreed to.

The CHAIRMAN. We will now return to the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS].

The gentleman from Pennsylvania [Mr. GEKAS] has 1 minute remaining, and the gentleman from Texas [Mr. BROOKS] has 6½ minutes remaining.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we close this debate exactly as we opened it. The Gekas amendment, which has been tested in the test tube of the Chamber of the House of Representatives on several occasions before and which has been approved overwhelmingly, is up for consideration again. I ask for the same kind of response. We owe it to the American people. We feel that, together with the Senate, who have passed a similar version, we are well on our way for the first time in a long time in the application of a proper death penalty to those serious murderers about which we read every day.

Mr. CHAPMAN. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Texas.

□ 1900

Mr. CHAPMAN. Mr. Chairman, may I inquire of the gentleman if he is aware, because I do not know, if the provisions of the gentleman's amendment as would be incorporated in this bill and become a part of the Federal statute, if this culpability requirement exists in any State criminal laws anywhere in the country? Is there a reckless-disregard, a gross-negligence standard that results in the death penalty under any State statutes anywhere in the country?

Mr. GEKAS. Mr. Chairman, yes, in most of the States that have the death penalty, the standard which we spoke about, the reckless disregard appears in those statutes.

Mr. BROOKS. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, even with the Brooks amendment, I would say, and I know that the good chairman of the committee agrees with me, that this amendment, the Gekas amendment, is not acceptable.

Again, the recklessness standard is the main difference between the Gekas bill and the universal recklessness standard as opposed to the committee bill which has reckless in some instances but not all.

I do want to reiterate to my colleagues that a recklessness standard goes too far in more instances than one would like. Recklessness, driving, killing a Federal worker, death penalty. Do we want that?

Mr. HUGHES. Mr. Chairman, will the gentleman yield?

Mr. SCHUMER. I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Chairman, it seems to me that if under Gekas, if a person is out drinking, robs a bank, leaves the bank and kills a pedestrian who runs in front of him as he is leaving the scene, Gekas would preserve the death penalty. What does that do to the other death penalty statutes that we have created for the most egregious of offenses?

Mr. SCHUMER. Mr. Chairman, reclaiming my time, not only would I agree with the gentleman, but while I disagree with the gentleman from New Jersey on all the applications of Tison, I would say to my colleagues, and this is a point I was not able to make before, that if we pass the Gekas amendment, the likelihood of this death penalty provision being declared unconstitutional is very hard.

Therefore, I would say to my colleagues that while the Supreme Court has certainly loosened up in terms of the death penalty and when it is allowed and when it is not cruel and unusual and what the procedures ought to be, I doubt they would go this far and we will be back here next year and the public would still be saying, "Why haven't you done anything like this?"

Mr. BROOKS. Mr. Chairman, I yield 30 seconds to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Chairman, under the Gekas amendment, the present law which is that the prosecution must advise the defense before the trial that they are going to ask for a death penalty, under the Gekas proposal, the trial can be over and the person found guilty and then the prosecution springs it on the defense that the death penalty was asked for. That is very unfair.

The defense might have handled the case entirely differently.

Mr. BROOKS. Mr. Chairman, I want to thank the gentleman from Pennsylvania [Mr. GEKAS] for graciously accepting the perfecting amendment, but that is just a small part of the bill.

The gentleman from New Jersey [Mr. HUGHES], and the gentleman from New York [Mr. SCHUMER], and the gentleman from California [Mr. EDWARDS], all chairmen worked long and hard, brought a lot of wisdom, expertise, time, study, and effort to work out this common ground on appropriate procedures for carrying out the death penalty.

I believe that the amendment of the gentleman will upset the balance that they have tried to reach to further the goal of fair and certain application of the death penalty.

I would hope that we would not pass the Gekas amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendments en bloc offered by the gentleman from Pennsylvania [Mr. GEKAS], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GEKAS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 213, noes 206, answered "present" 1, not voting 13, as follows:

[Roll No. 313]

AYES—213

Alexander	Gekas	Myers
Allard	Geren	Nichols
Andrews (NJ)	Gibbons	Nussle
Andrews (TX)	Gilchrest	Oxley
Applegate	Gillmor	Packard
Archer	Gilman	Pallone
Armey	Gingrich	Parker
Aspin	Goss	Patterson
Bacchus	Gradison	Paxon
Baker	Grandy	Peterson (FL)
Ballenger	Guarini	Petri
Barrett	Gunderson	Porter
Barton	Hall (TX)	Poshard
Bateman	Hammerschmidt	Pursell
Bentley	Hancock	Quillen
Bereuter	Hansen	Ramstad
Bevill	Harris	Ravenel
Bilbray	Hastert	Ray
Bilirakis	Hayes (LA)	Regula
Blliey	Hefley	Rhodes
Boehlert	Henry	Richardson
Boehner	Herger	Ridge
Borski	Hobson	Riggs
Broomfield	Horton	Rinaldo
Browder	Houghton	Ritter
Bruce	Hubbard	Rogers
Bunning	Huckaby	Rohrabacher
Burton	Hunter	Ros-Lehtinen
Byron	Hutto	Roth
Camp	Hyde	Rowland
Campbell (CA)	Inhofe	Santorum
Campbell (CO)	Ireland	Sarpalius
Chandler	James	Saxton
Clinger	Johnson (TX)	Schaefer
Coble	Kasich	Schiff
Coleman (MO)	Kolbe	Schulze
Combest	Kolter	Sensenbrenner
Condit	Kyl	Shaw
Cooper	Lagomarsino	Shuster
Coughlin	Lancaster	Skeen
Cox (CA)	Lent	Skelton
Cramer	Lewis (CA)	Smith (OR)
Crane	Lewis (FL)	Smith (TX)
Cunningham	Lightfoot	Snowe
Dannemeyer	Livingston	Solomon
Davis	Lloyd	Spence
DeLay	Lowery (CA)	Stallings
Dickinson	Luken	Stearns
Dingell	Machtley	Stenholm
Donnelly	Manton	Stump
Doolittle	Marlenee	Sundquist
Dornan (CA)	Martin	Swett
Dreier	Martinez	Tallon
Duncan	McCandless	Tanner
Early	McCollum	Tauzin
Edwards (OK)	McCrery	Taylor (MS)
Emerson	McDade	Taylor (NC)
English	McEwen	Thomas (CA)
Erdreich	McGrath	Thomas (GA)
Espy	McMillan (NC)	Thomas (WY)
Ewing	Meyers	Traficant
Fawell	Michel	Upton
Fields	Miller (OH)	Valentine
Franks (CT)	Miller (WA)	Vander Jagt
Frost	Molinari	Volkmer
Gallegly	Montgomery	Vucanovich
Gallo	Moorhead	Walker
Gaydos	Morrison	Walsh
Weldon	Wylie	Young (FL)
Wolf	Yatron	Zeliff
Wyden	Young (AK)	Zimmer

NOES—206

Abercrombie	Hayes (IL)	Orton
Ackerman	Hefner	Owens (NY)
Anderson	Hertel	Owens (UT)
Andrews (ME)	Hoagland	Panetta
Annunzio	Hochbrueckner	Pastor
Anthony	Horn	Payne (NJ)
Atkins	Hoyer	Payne (VA)
AuCoin	Hughes	Pease
Barnard	Jacobs	Pelosi
Beilenson	Jefferson	Penny
Bennett	Jenkins	Perkins
Berman	Johnson (CT)	Peterson (MN)
Bonior	Johnson (SD)	Pickett
Boucher	Johnston	Pickle
Boxer	Jones (GA)	Price
Brewster	Jontz	Rahall
Brooks	Kanjorski	Rangel
Brown	Kaptur	Reed
Bryant	Kennedy	Roe
Bustamante	Kennelly	Roemer
Cardin	Kildee	Rose
Carper	Kleczka	Rostenkowski
Carr	Klug	Roukema
Chapman	Kopetski	Roybal
Clay	Kostmayer	Russo
Clement	LaFalce	Sabo
Coleman (TX)	Lantos	Sanders
Collins (IL)	LaRocco	Sangmeister
Collins (MI)	Laughlin	Sawyer
Conyers	Leach	Scheuer
Costello	Lehman (CA)	Schroeder
Cox (IL)	Lehman (FL)	Schumer
Coyne	Levin (MI)	Serrano
Darden	Levine (CA)	Sharp
de la Garza	Lewis (GA)	Shays
DeFazio	Lipinski	Sikorski
DeLauro	Long	Sisisky
Dellums	Lowey (NY)	Skaggs
Derrick	Markey	Slattery
Dicks	Matsui	Slaughter (NY)
Dixon	Mavroules	Smith (FL)
Dooley	Mazzoli	Smith (IA)
Dorgan (ND)	McCloskey	Smith (NJ)
Downey	McCurdy	Solarz
Durbin	McDermott	Spratt
Dwyer	McHugh	Staggers
Eckart	McMillen (MD)	Stark
Edwards (CA)	McNulty	Stokes
Edwards (TX)	Mfume	Studds
Engel	Miller (CA)	Swift
Evans	Mineta	Synar
Fascell	Mink	Thornton
Fazio	Moakley	Torres
Feighan	Mollohan	Torricelli
Fish	Moran	Traxler
Flake	Morella	Unsoeld
Foglietta	Mrazek	Vento
Ford (MI)	Murtha	Visclosky
Ford (TN)	Nagle	Washington
Frank (MA)	Natcher	Waters
Gejdenson	Neal (MA)	Weber
Gephardt	Neal (NC)	Weiss
Glickman	Nowak	Wheat
Gonzalez	Oakar	Williams
Gordon	Oberstar	Wilson
Green	Obey	Wise
Hall (OH)	Olin	Wolpe
Hamilton	Olver	Yates
Hatcher	Ortiz	

ANSWERED "PRESENT"—1

Goodling

NOT VOTING—13

Callahan	Moody	Towns
Dymally	Murphy	Waxman
Holloway	Roberts	Whitten
Hopkins	Savage	
Jones (NC)	Slaughter (VA)	

□ 1922

The Clerk announced the following pair:

On this vote:

Mr. Roberts for, with Mr. Waxman against.

Messrs. REGULA, EWING, GUARINI, and BILBRAY changed their vote from "no" to "aye."

So the amendments en bloc, as amended, were agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. MC COLLUM

Mr. McCOLLUM. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. McCOLLUM:

Page 252, beginning in line 19, strike out "knowingly or intentionally causes the death of another individual" and insert ", intending to cause death or acting with reckless disregard for human live, engages in such a violation, and the death of another person results".

Page 252, after line 14, insert the following: "(4) an offense referred to in section 408(c)(1) of the Controlled Substances Act, committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise, or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or member of the family or household of such a person.

Redesignate succeeding paragraphs accordingly.

The CHAIRMAN. Under the rule, the gentleman from Florida [Mr. McCOLLUM) will be recognized for 7½ minutes, and a Member in opposition will be recognized for 7½ minutes.

Mr. BROOKS. Mr. Chairman, I am opposed to the amendment. I rise in opposition.

The CHAIRMAN. The gentleman from Texas [Mr. BROOKS] will be recognized for 7½ minutes.

Mr. BROOKS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore. (Mr. HATCHER) having assumed the chair, Mr. SKAGGS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 3371) to control and prevent crime, had come to no resolution thereon.

PERMISSION FOR COMMITTEE ON FOREIGN AFFAIRS TO SIT ON THURSDAY, OCTOBER 17, 1991, DURING THE 5-MINUTE RULE

Mr. GEJDENSON. Mr. Speaker, having checked with the minority, the gentleman from Michigan [Mr. BROOMFIELD] and the gentleman from Wisconsin [Mr. ROTH], I ask unanimous consent that, during tomorrow's business while the committee is under the 5-minute rule, the Committee on Foreign Affairs be granted permission to mark up the Export Administration Act.

The SPEAKER pro tempore (Mr. HATCHER). Is there objection to the re-

quest of the gentleman from Connecticut?

There was no objection.

ANNOUNCEMENT OF MOTION TO INSTRUCT ON H.R. 2686, DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1992

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, according to House rule XXVIII, clause 1, as amended on January 3, 1989, in the 101st Congress, I serve notice to the House that tomorrow, October 17, I will offer a privileged motion to instruct conferees to H.R. 2686, the Interior appropriations for fiscal year 1992, that: the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendments to the bill, H.R. 2686, be instructed to agree to the provisions contained in amendment numbered 212 of the Senate amendments.

ANNOUNCEMENT OF TRAGEDY IN KILLEEN, TX

(Mr. EDWARDS of Texas asked and was given permission to address the House for 1 minute.)

Mr. EDWARDS of Texas. Mr. Speaker, I am deeply saddened by the tragic news that comes from my district today, that at 12:40 p.m., Texas time, a lone gunman killed at least 22 citizens in Killeen, TX. The innocent victims were having lunch in a family restaurant when the gunman crashed a pickup truck through the front of the restaurant and began firing indiscriminately.

This is a deep human tragedy, and my thoughts and prayers go out to the victims, their families and loved ones.

In this one incident, less than a half an hour, more citizens lost their lives than in the month the 25,000 soldiers from Killeen fought for their country in Desert Storm.

Each Member of this House must search his or her own conscience as to how to respond to this incident. For myself, I will only ask that each and every one of you extend your thoughts and your prayers with those who were victims of this tragic, senseless crime.

APPOINTMENT OF CONFEREES ON H.R. 2521, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1992

The SPEAKER. The Chair appoints the following conferees on the bill, H.R. 2521, and without objection, the Chair reserves the right to appoint additional conferees: Messrs. MURTHA, DICKS, WILSON, HEFNER, AUCOIN, SABO, DIXON, DWYER of New Jersey, WHITTEN, MCDADE, YOUNG of Florida, MILLER of Ohio, LIVINGSTON, and LEWIS of California.

There was no objection.

THE WATERED-DOWN CRIME BILL

(Mr. SHAW asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHAW. Mr. Speaker, 7 months ago President Bush sent Congress a crime bill that was tough on crime, fair to crime victims, and reasonable in protecting Americans' individual rights.

But the crime bill we are debating today is so watered down that the President will not sign it in its current form. I know I will not vote for it unless we make some major changes.

We need real exclusionary rule and habeas corpus reforms that will free the justice system to do its job—put criminals behind bars and protect the rights of law-abiding Americans.

Mr. Speaker, we have real crime problems in this country. Drug-related mayhem continues to plague our cities.

The State's attorney in my district Michael Satz, in Florida has written me and urged me to vote against this bill because he knows it will hinder, not help those who want to make our streets safe. Let us get to work and put together a crime bill that will achieve that important goal.

Mr. Speaker, crime should not be a partisan issue. Let us work together to craft an anticrime bill. This is not such a bill.

Mr. Speaker, I am including in the RECORD a copy of Mr. Satz's letter, as follows:

FORT LAUDERDALE, FL,
October 11, 1991.

Hon. E. CLAY SHAW,
Congressman, 2338 Rayburn House Office Building, House of Representatives, Washington, DC.

DEAR CONGRESSMAN SHAW: I am writing to you to express my strong concerns with regard to the Crime Bill that was recently reported out of the House Judiciary Committee.

That portion of the Bill referred to as the Fairness in Death Sentencing Act would effectively require a racial quota system for capital punishment. Under this provision, if a capital defendant can show that a disproportionate number of persons of one race or national origin have been sentenced to death, or that a disproportionate number of murderers of victims of a certain race of national origin have been sentenced to death, then a prima facie case of racial discrimination has been established and the State must prove by clear and convincing evidence that identifiable, non-racial factors explain the statistical disparities. This provision places an unreasonable and impossible burden of proof upon the State and would adversely effect capital punishment litigation. Further, because it is fully retroactive, this provision will inure to the benefit of the more than 2,500 capital defendants now on death row in the United States, 324 of which are in Florida prisons. Passage of this provision will not further racial equality in capital sentencing, but will improperly inject race into capital charging and sentencing decisions in a constitutionally impermissible manner. Furthermore, our already overburdened courts will be further greatly burdened by post-conviction pleadings claiming racial discrimination in sentencing. The Fairness in Death Sentencing Act is a legislative attempt to overturn the United States Supreme Court's decision in *McClosky v. Kemp*, 481 U.S. 279 (1987), which explicitly *rejected* the use of statistical analysis as a sole basis for measuring racial equality in death penalty cases, and I would urge you to vote against it.

Equally troublesome is the Berman Amendment which would eliminate all procedural default, retroactivity, and exhaustion-of-state remedies limitations on raising race-related claims in federal habeas petitions attacking capital sentences that are brought within a year of the bill's enactment. This would have devastating consequences for the integrity of the capital sentences that are now in effect. Specifically, current procedural default rules would have *no* applicability to capital defendants who could deliberately withhold a timely race-related claim with the intention of asserting it in Federal Court years after a State Court has reviewed a conviction and sentence. Title XXII would also overturn the United States Supreme Court's decision in *Allen v. Hardy*, 478 U.S. 255 (1986). In *Allen* the Supreme Court refused to apply retroactively the rule established in *Batson v. Kentucky*, 476 U.S. 79 (1986), which provided that prosecutors may be required to explain and provide a non-invidious reason for the use of peremptory challenges to strike potential jurors from a particular racial group. Thus, prosecutors would be forced to explain and defend peremptory challenges exercised in cases tried years ago. Unless defeated, the Berman Amendment may well thwart the orderly and rational administration of justice as envisioned by the Supreme Court and will provide capital defendants under sentence of death with yet another means of avoiding the execution of their lawfully imposed sentences.

Furthermore, the habeas corpus reform proposal which was reported out of the House Judiciary Committee would provide greatly increased opportunity for delay, abuse and repetitive litigation in both capital and non-capital cases. Indeed, the purpose of this provision is to overturn the United States Supreme Court's decision in *Teague v. Lane*, 489 U.S. 288 (1988). This would enable a defendant to file successive habeas corpus petitions raising new claims even where those new claims have no bearing on the defendant's guilt. This provision would also set a general one-year time limit for filing a federal habeas corpus petition and includes an automatic stay provision where execution dates are set, therefore causing more delay. Furthermore, this provision would allow re-litigation of claims that have been rejected in earlier habeas corpus petitions.

It is for these reasons that I would respectfully urge you to vote against the Crime Bill reported out of the House Judiciary Committee.

Yours very truly,

MICHAEL J. SATZ,
State Attorney.

□ 1930

CRIME BILL ANALYSIS

The SPEAKER pro tempore (Mr. HATCHER). Under a previous order of the House, the gentleman from Florida [Mr. MCCOLLUM] is recognized for 5 minutes.

Mr. MCCOLLUM. Mr. Speaker, I thank the Chair for the opportunity to address the House for 5 minutes this evening about the crime bill that is under consideration right now.

We are going to be in a series of very crucial amendments tomorrow and perhaps continued into next week on this bill. We discussed a lot today about the death penalty, but the most critical amendments that are not related to that are coming up right away.

I think it is important for us to spend a moment or two tonight before we go out reflecting on what we are about to engage in on the debates that are coming up for the next couple days.

One debate that is going to occur right off the bat tomorrow is on habeas corpus reform. The issue before us in this instance is going to be one of whether or not we clearly pass a provision that the law enforcement community of this Nation wants and say is absolutely necessary to stop these endless appeals or we are not going to do that.

There is no reason why we should not adopt the Hyde amendment which essentially incorporates what we have been debating in this body for a number of years now, but never have gotten it finally to the President for signature. It is a good solid amendment that is supported by all the law enforcement associations around the Nation that I am familiar with; the Attorneys' General Association, the Association of District Attorneys, the association of all kinds of police organizations. The reason why they support this particular version is because they understand that what is in the bill that is there now, if we do not take it out and adopt the Hyde proposal, will actually in the name of doing good do harm, will actually provide more hoops that will have to be followed, will provide more opportunities for delay in the carrying out of the death penalty sentences in particular, and do the things that we need to do in order to balance this program effectively. So that is No. 1, a very crucial amendment, up early in the session tomorrow and the one I urge my colleagues to support strongly because it is what we did before. It is what we should do again in this body.

The second amendment I think of very grave importance that is going to be up tomorrow is one I will offer on the exclusionary rule. It passed this body overwhelmingly in the last Congress. It has failed to pass the Senate a number of times, and I do not know why it has not passed the other body, but in our House what we are going to be considering is a very simple thing. The present law that the Supreme Court has laid out, and it is really a rule of evidence, it is not a law in a sense, says that evidence that is seized by police officers in a violation of your constitutional rights against search and seizure may not be admitted into court unless there are certain exceptions to that, unless this, that, or the other. The basic thrust of it is that in cases where there is a search warrant, the court has ruled that if you have a search warrant and there is a reasonably objective belief by the police officer that he is performing his duties not in violation, but in conformity with the constitutional requirements, then the evidence should be allowed in for the very simple reason, the only reason the rule is there, is to deter police from unconstitutional searches and seizures.

Now, two circuit courts, the Supreme Court has never had a chance to rule on this, but two circuit courts, the 5th and the 11th, have already ruled the same standard ought to be applied to searches where there are no warrants, which we normally allow to happen, like consent searches where you knock on someone's door and you ask them to come in and search because you have probable cause or you believe that something has happened on their premises and that sort of thing.

There is no reason why the standard should be different between the two types of otherwise legal searches. We do not need to have evidence thrown out in technicalities, as it is now being thrown out, when we have so much violent crime and drug-related crime in America.

So I urge my colleagues to adopt the McCollum exclusionary rule amendment, as we did in the last Congress last year, tomorrow when we debate it and put the uniformity in throughout the Nation between the jurisdictions of the Federal circuits and with the Supreme Court for both normally legal searches with and without warrants, make the same basic rules apply.

Now, the third and I think very critical amendment I would like to call to your attention is one which I also will offer tomorrow striking a provision from this bill known as the Fairness In Sentencing Act, or in the last Congress known as the Racial Justice Act, and substituting what we call the Equal Justice Act.

Nobody believes in race bias in sentencing, especially in the death penalty area. We all oppose that, and what my amendment does is offer the kind of restraints that will keep us before the fact from having courts sentence on the basis of race in any way, shape, or form. It will be against the law. The amendment provides protection on voir dire questioning, in being able to change venue and providing the basis for certification by jurors after the court has given them instructions not to consider racial matters, that they did not and will not consider them. It goes through a whole litany to make sure that race is not included in any way, shape, or form, in death penalty sentencing matters.

But what it also does is to strike a provision in this bill that is there in the name of fairness in race matters, but which instead is a sneaky backdoor way to end the death penalty, because what it does in the present form unamended is set up a structure whereby you create an inference through statistics that you have racial bias without considering any individual case, without considering whether it was discrimination or not in that case, and just on the basis of a State or Federal jurisdiction having a statistical imbalance between those who are eligible to receive the death penalty and those who historically have received it, that inference can only be rebutted by other statistics.

Now, I do not know how you do that, nor do the prosecutors around the country.

The bottom line is that there is no way to rebut it, because you cannot rebut it by aggravating circumstances or otherwise.

So I urge the adoption of the McCollum equal justice amendment in lieu of the amendment in the bill called fair sentencing tomorrow. If we adopt those three amendments, we will have gone a long way to making a truly tough criminal violent crime bill that we can be proud of and have adopted what the President has proposed in his proposals to us for several years and get on with the debate with the Senate and get on with what we need to do to have a tough criminal law.

FAIR TRADE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi [Mr. TAYLOR] is recognized for 5 minutes.

Mr. TAYLOR of Mississippi. Mr. Speaker, 3 weeks ago today the fair trade caucus met with Ms. Carla Hills, America's representative on the Mexican Free-Trade Agreement and the GATT talks. At that time I must admit I was disturbed by Ms. Hill's remarks, in particular when she failed to answer the question of how much it was going to cost the United States of America if free trade was enacted. Only after being informed by a staffer did she actually realize that we were going to lose $1 billion in revenues that are coming from tariffs, revenues that will have to be made up at the expense of the American taxpayer, even to cut vital programs like Medicaid and veterans' benefits or new taxes on the American taxpayer.

But something I find equally disturbing is at that time I asked Ms. Hills to supply the names of herself and her

staff members involved in these talks and made a very simple request, and that is I wanted to know if any of these people involved in the negotiations had a family member, an immediate family member who was on the payroll of a foreign nation, a foreign corporation, or foreign financial interest.

□ 1940

You see, my constituents are often disturbed at some of the negotiations that take place on some of the trade-offs that have been made and often question why these things are taking place.

Again, it has been 3 weeks since I made this request of Ms. Hills. If there is no one on her staff who has a family member who is on the payroll of one of these corporations, I think that is sufficient time for her to write me and tell me so.

We have the frank, that is one of the privileges of this office. Rather than just buying stamps and having it float through our budgets, we are able to send letters by just signing our name in the top right-hand corner.

I would like to put Ms. Hills on notice, since I have the frank and since I have what I feel is a very efficient staff, that she will be getting a letter from me every day until I get a response and that she could save the taxpayers a great deal of money and certainly us a great deal of time if she would respond to my inquiry.

DISCUSSION ON MOTION TO INSTRUCT CONFEREES ON H.R. 2686, INTERIOR APPROPRIATIONS, FISCAL YEAR 1992

The SPEAKER pro tempore (Mr. HATCHER). Under a previous order of the House, the gentleman from California [Mr. DANNEMEYER] is recognized for 5 minutes.

Mr. DANNEMEYER. Mr. Speaker and Members, today the House voted 286 to 135 to instruct conferees on H.R. 2686, the Interior appropriations for fiscal year 1992. This was the instruction to adopt the Helms language that the Senate adopted overwhelmingly earlier this year. And in effect it was designed to give instructions to the National Endowment for the Arts that Congress means business, that American taxpayers no longer want to see our tax dollars used to produce pornographic literature.

Mr. Speaker, I take this time to advise my colleagues that even though within the past few hours the House voted overwhelmingly to adopt the language that I have described, I am advised in the last half hour or so the conferees have met and they have struck out this language to which I am referring.

Now, this is arrogance of the worst order. I do not know what is going on in the minds of these conferees. I do not know how we can get their attention any more, because candidly a vote of 286 to 135 is better than a 2-to-1 margin.

How much more indication do we need to give to these people?

I think what is going on here is just another example of the arrogance of this institution, which can only be defined as an imperial Congress. It has almost reached the point where Congress, as an institution, says to the people of this country, "Don't call us, we'll call you. Just send your tax dollars here. By the way, make sure that when the IRS calls, you be courteous to them because if you are not courteous you might find yourself on the short end of the stick."

This arrogance by liberal Democrats who control this place has just got to stop. How much longer are the American public going to be faced with a reality that when the House votes up or down to instruct conferees, that they do what they have done now?

I am advised my colleague from Oklahoma, Mr. SYNAR, is also a little bit displeased with the work of the conferees because, if I understand correctly, he got the House to adopt an amendment relating to adjusting grazing fees. So there were people in the conference committee who wanted to get rid of that increase on grazing fees and also in this instance on the use of taxpayers' money to fund pornographic material, and so I guess there was a swap here of some accommodation of corn for porn. I am not sure of the relationship, but that seems to be the relation between those two interesting coexisting ideas.

Mr. Speaker, I have taken the time earlier today in this proceeding to advise the House that tomorrow I will again seek recognition under a privileged motion to instruct conferees on the same motion that the House voted on today. It is my hope and desire that the House will vote consistently tomorrow on this same motion. Under the rules of the House, I am required to give notice of my intention to make this motion to instruct conferees. And perhaps somewhere along the line the conferees will get the idea that the House is serious about wanting to make sure, as we can, that taxpayers' money is not going to produce pornographic material under the aegis of the National Endowment for the Arts.

I might also add that we will have another chance at the conference report itself when it comes to the floor of the House. But no one knows when that event will take place. We are about a month away from adjournment for the year. Those of us who have been here for a while know the game that is played very well; the managers of the bill, the conferees, may very well decide that they will wait to bring the conference report to the floor of the House until the closing hours of the session prior to adjournment, when Members want to go home to be with members of their families and are no longer interested in listening to those of us who claim that there is something in the conference report that should be there that is not there. I do not know when they will bring this conference report to the floor of the House. The past pattern is what I have observed around here over the past few years, and it seems that is the way the railroad is run.

I am saying to my liberal Democrat friends, "Cut it out," the American people have had enough of this use of taxpayers' funds to produce pornographic material, and I hope to get the attention of the body tomorrow and, hopefully, by the same margin of 286 to 135 we can again get the attention of the conferees as to how they should proceed with this issue.

THE 1992 YEAR OF THE WETLANDS RESOLUTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Louisiana [Mr. JEFFERSON] is recognized for 5 minutes.

Mr. JEFFERSON. Mr. Speaker, I rise today to introduce legislation to proclaim the year 1992, "Year of the Wetlands."

Lately, the issue of wetlands conservation has become so politically charged that even attempts to define the term "wetlands" generate considerable controversy. Vice President DAN QUAYLE offers the following wetlands test: "When it's wet, it's wet."

But amidst the debate and confusion, there remain two overriding facts: First, wetlands are an invaluable economic and environmental resource of this country—a part of every American's national heritage. And second, this Nation's wetlands have disappeared and continue to disappear at an alarming rate.

The year of the wetlands resolution, I am introducing today aims to promote the conservation of our Nation's wetlands by heightening public awareness of wetlands' great value and diversity and fostering public and private involvement in conservation initiatives.

Wetlands are truly a national resource; they can be found in every county of every State in the Union. Depending on where you are from, they are variously called swamps, marshes, bogs, fens, peatlands, bottomlands, wet meadows, sloughs, and potholes.

And wetlands' functions and values are as diverse as their names: They are critical habitat to fish and wildlife, including many rare and endangered species; they convey flood waters, thereby reducing flood damage to nearby communities, they filter out pollutants and help prevent soil erosion; and they provide recreational, educational, and research opportunities for millions of Americans.

However, wetlands are not solely an environmental resource, but an important economic resource as well. In fact, our Nation's fishing and shellfishing industries depend, too large degree, on the harvest of wetlands-dependents species. In the Southeast, for example 96 percent of the commercial catch and over 50 percent of the recreational harvest are fish and shellfish that depend on the estuary-coastal wetlands system. The U.S. commercial fisheries harvest alone is valued at more than $10 billion per year. In addition, waterfowl hunters spend over $300 million annually to harvest wetlands-dependent birds. Wetlands also sustain furbearers like muskrat, beaver, and mink, supporting a fur harvest worth $300 to $400 million per year. Finally, they provide fertile ground for the cultivation of timber and food products.

Yet for many years, wetlands were viewed as wastelands: fetid, insect-infested swamps that should be eliminated. And eliminated they were: more than one-half of America's original wetlands have been destroyed—over 100 million acres. They have been drained and converted for agricultural uses, filled for residential and industrial development, and used as dumping grounds for household and industrial wastes.

Even with out present knowledge of wetlands' economic and environmental importance, wetlands continue to disappear steadily. According to the U.S. Fish and Wildlife Service's most recent national survey, the Nation lost an average of 460,000 million acres of wetlands annually during the period between 1954–74.

The loss of wetlands means not only foregone benefits, but actual economic and environmental costs. In my State of Louisiana, wetlands serve as the incubator for 90 percent of the commercial fish and 42 percent of the recreational fish that are landed in the Gulf of Mexico. Yet we are losing between 40 and 70 square miles of our State's coastal wetlands each year, a loss that jeopardizes a multibillion-dollar fishery. Wetlands loss has also meant the destruction of an important flood conveyance mechanism in our State; a significant loss given the degree of flooding we have experienced in recent years.

The destruction of this important economic and natural resource can be stopped. But public education and outreach is essential. This conclusion was borne out by the National Wetlands Policy Forum in its final 1988 report, "Protecting America's Wetlands: An Action Agenda." The forum found that much of the public, including many landowners, lacked information and understanding of the functions and values of wetlands and the appropriate techniques for protecting and managing them. The report recommended substantial research and outreach by both the public and private sectors to fill these information gaps.

Given the fact that three-fourths of wetlands in the continental United States are privately owned, public outreach and public-private involvement in wetlands conservation is essential.

One outstanding example of this kind of public-private initiative is the Society for Environmental Education formerly known as the Louisiana Nature and Science Center. The Society for Environmental Education is proposing the establishment of a Natural Center for Wetlands Education: A center for environmental education and research located adjacent to the Bayou Sauvage Urban National Wildlife Refuge. In partnership with government, business, universities, and citizens organizations, the National Center for Wetlands Education will serve as a leader and a model for public-private initiatives to foster public awareness stewardship of this important natural resource.

I believe that the year of the wetlands resolution will provide a propitious context for the growth of such public-private initiatives and will serve as a spark to galvanize public awareness and heighten involvement in wetlands conservation.

But let us not delay. Even as I speak, this Nation continues to lose valuable wetlands. In fact, since the beginning of this 102d Congress, nearly 225,000 acres of wetlands have disappeared. We must act now to enlist the support and participation of the American people to stem this tragic loss and to truly conserve this vital national resource.

SOVIETS ARE READY TO AMEND THE ABM TREATY TO ALLOW SDI

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. KYL] is recognized for 5 minutes.

Mr. KYL. Mr. Speaker, in the October 14 to 20 issue of Space News there is a very interesting headline that reads: "Soviets Warm to Joint Missile Defenses." It is a very important story because up to now one of the primary objections to the United States proceeding with the strategic defense initiative has been the possibility that the Soviets and the United States could not agree upon changes to the ABM Treaty of 1972, with the result that if the United States intended to proceed with the SDI Program, we would have to unilaterally leave the ABM Treaty in order to deploy those defenses, and we have wanted to negotiate with the Soviets over the issue rather than take unilateral action, if possible.

Mr. Speaker, the Space News article points out the fact that the Soviets have warmed to the idea of negotiating treaty changes, or even a new treaty with the United States, to permit the deployment by both countries of a strategic defense kind of system including both ground-based and space-based assets. This is primarily as a result of the invitation of President Bush to the Soviets to begin such negotiations and the response by President Gorbachev, who said—and I am quoting now—that "the Soviet Union is prepared to consider proposals from the United States on nonnuclear antimissile defense systems," the first time that the Soviet Union has taken the position that they are prepared to talk with us about amending the ABM Treaty to allow the deployment of antimissile defenses.

Gorbachev's statement, incidentally, was reiterated by the Deputy Chairman of the State Committee on Defense of the Russian Federation, Maj. Gen. Viktor Samoilov, who said recently—and again I am quoting:

> I think this ABM project is realistic. This is a practical proposal; it is not nearly a political theoretical one whereby we can creatively work together. An integration of joint efforts towards an ABM agreement is both full of promise and full of interest for us.

Mr. Speaker, I recently received a briefing from the officials, the U.S. officials, that made up the Bartholomew trip to Moscow. They confirmed to me that the leader of the Central Government of the Soviet Union, as well as key republics, are very interested in strategic defense, and I may add not just ground-based defenses, but space-based as well. As I said, this is very important because it represents the first time that the Soviets have expressed a willingness to renegotiate the ABM Treaty to allow a strategic defense system, but it comes at a very important time for the U.S. Congress because, Mr. Speaker, as you are aware, we are currently in conference on the defense authorization bill.

One of the critical issues for us to determine is how much we are going to fund the SDI Program of the President this year. The President has requested a program of over $5 billion. The Senate has indicated that they are willing to fund the program at a level of about $4.6 billion, and the House conferees have responded to the Senate's offer with a fair proposal, except in one regard, which I think can get us to an agreement in the conference, and, therefore, present the President with a bill on SDI that he can sign. The only thing that is short in this agreement right now is a provision for adequate funding for Brilliant Pebbles.

Mr. Speaker, as my colleagues know, brilliant pebbles is the spaced-based component, the space-based interceptor component of our SDI Program, and I take just a moment to note that the President's program is now called by the acronym of GPALS, which stands for global protection against limited strikes. The idea of global protection requires a series of satellites, these space-based interceptors, in order

to make the SDI system work. So, with the exception of providing adequate funding for the space-based interceptor part of the program, I believe that we are almost together on the appropriate kind of language and funding for the United States to go forward with the SDI Program this year.

Given the fact that the Soviets have now indicated a willingness to negotiate, the United States has already put a program on the table in Geneva in the last week; it was in the papers this morning, a program which would provide limits on the time, and the space, and the type of development of such a program. It would clearly provide the Soviets with protection against their deterrent. In other words, this system is not robust enough to prevent the Soviets from succeeding should they decide to throw everything they have at us.

That is not the idea of GPALS. GPALS is there primarily to protect against accidental launch or the launch, for example, of a Third World country such as Iraq.

Mr. Speaker, I would close by noting that the Soviets recognize the threat from Third World countries just as much as the United States does. Again quoting from Maj. Gen. Viktor Samoilov when he recently said, and I quote:

> We realistically appraise that by the year 2000, about 15 to 20 more governments and states will have missiles with more than a 5,000, or up to a 5,000-mile range. I think this is a very serious source of threat in the future.

Mr. Speaker, I might add that Secretary Cheney and the President agree with that assessment, as does CIA Director Webster. Those Third World countries are going to pose a threat to the United States in the future, and that is why it is important for us this year to proceed with the development of the strategic defense initiative.

DOBROSLAV PARAGA: PARAGON OF VIRTUE IN THE NEW CROATIA?

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Maryland [Mrs. BENTLEY] is recognized for 60 minutes.

Mrs. BENTLEY. Mr. Speaker, the conflict in Yugoslavia now has dragged beyond the 100th days and 1,000th death mark, and as optimistic as one wishes to be, the light at the end of the tunnel is very dim and threatened by nationalistic winds that now are reaching gale force levels.

The Republics involved are becoming more alienated, and extremist splinter groups in both the Republic of Croatia and the Republic of Serbia are on the upsurge as a rational end to the bloodshed seems less and less attainable.

Mr. Speaker, I rise before you today to speak of one such splinter group that has garnered more than its fair share of press over the last few months, the Croatian Party of Rights [HSP], and its leader, Dobroslav Paraga.

As you can recall, Mr. Speaker, Dobroslav Paraga was honored for his human rights initiatives in Yugoslavia in the 101st Congress via Senate Resolution 169.

What I find of interest, Mr. Speaker, though, are his current activities as the head of the HSP, an ultranationalist movement in Croatia which claims to have more than 10,000 soldiers in its paramilitary wing, the Croatian Defense Force [HOS], and which boasts that it models itself after the Ustachi movement in the Second World War.

The Ustachi were responsible for the deaths of hundreds of thousands of Serbians, Jews, and gypsies, and were even viewed in disgust by Hitler's SS forces as being too savage in the carrying out of their duties. In fact, Mr. Speaker, more people were killed per capita population in Yugoslavia through the genocidal actions of the Ustachi than in any other area during the Second World War, even Germany and Poland.

I have seen many articles in the several newspapers that I read every day of the reemergence of nazism in various areas of the world.

The newly united Germany is experiencing a larger and larger problem with its skinhead neo-Nazi movement, which as recent articles state, is showing a growing intolerance for foreign workers—or Gast Arbeiters. This extremism has included attacks on foreigners, and the provision of emergency sanctuary by the German Government in order to provide full protection for these people in this growing environment of intolerance.

I have also read of the rise of the neo-Nazi movement in South Africa. The forces who support the continuation of apartheid have embraced the neo-Nazi movement as the vehicle by which they physically and verbally express their views. Once again, the insidious history of the Nazi menace has, as in Germany, led to attacks and physical harassment of not just blacks, but also South African Government forces.

The neo-Nazi movement in the United States is also of great concern. The actions of these groups within our own country, while protected under the Constitution, have also led to human rights violations on other citizens of our great Nation.

Mr. Speaker, these are serious problems. However, I believe that given the history of genocide in Yugoslavia, and given the current state of instability in that country, the neo-Nazi movement in Croatia poses the greatest threat of all.

The HSP maintains the view that the President of the Republic of Croatia, Franjo Tudjman, a verdant nationalist himself, and his government are corrupt and incompetent. In addition, the HSP believes that the current regime in Croatia has not done enough to press Croatia's demands for independence, and has branded Tudjman a traitor.

This in and of itself does not seem to be that great a threat, but since Croatia's attempt at independence has become stalled in the current conflict, Paraga's party is gaining more and more converts, and more than one source has indicated that the HSP poses a very real threat to Tudjman. Whether this is done legally through an electoral process, or more than likely through an assassination and coup attempt, it only would serve to exacerbate the already serious situation in Yugoslavia, and, in addition, virtually guarantee the violation of the human rights of the Serbian minority within Croatia.

Last Thursday, Blaine Harden, of the Washington Post, wrote of Mr. Paraga's party, and of its policies and rise of popularity within Croatia. While I will be quoting from this article, Mr. Speaker, I also ask that the entire article be included in the RECORD at the end of my text, and also that all subsequent material that I use be included in the same manner.

Mr. Paraga denies that the neo-Nazi HSP is a reincarnation of the Nazi-backed Ustachi of the Second World War. I beg to differ and quote from Harden's article.

At the beginning of the article, Mr. Harden writes of the HSP:

> On the wooden stocks of their automatic weapons, some fighters have carved out the U symbol of Croatia's notorious government, that in 1941–45 collaborated with Adolf Hitler and forcibly converted Eastern Orthodox Serbs to Catholicism. Hundreds of thousands of Serbs not converted were expelled from the fascist state or murdered in death camps.

Mr. Harden continues a few paragraphs later:

> As the war intensified, the initials of the wartime Ustachi regime were scrawled on more and more buildings across Zagreb.
>
> At a posh hotel wedding reception here on Saturday night, at about the time Croatia's president was ordering a mobilization of all Croats to fight the "Serbo-Communist hordes, two young men stood at a large table and raised their stiff right arms in the "Sieg Heil" salute of Nazi Germany.

But, Mr. Speaker, perhaps the most enlightening probe into the psyche of the Serbian minority within Croatia comes in Mr. Harden's final paragraph:

> The symbols, rhetoric and territorial ambitions of the Party of Rights provide ample reasons for Serbian concern.

Mr. Speaker, the second article from which I will quote was run on the Reuters newswire last Friday. The reporter, Andrej Gustincic, reports from Zagreb regarding Paraga's party:

> His Party wants an independent state of Croatia whose borders would include the neighboring republic of Bosnia-Herzegovina.
>
> Its borders would coincide with those of a nazi-puppet state during World War II run by fanatical Croatian fascists called "Ustache," who killed hundreds of thousands of Serbs, Jews, and gypsies.

Mr. Gustincic then quotes Mr. Paraga:

We recognize the validity of the wartime Croatian state but reject its regime. We are not Ustache. We do not have the Ustache ideology and we don't sing Ustashe songs.

Gustincic continues:

But HOS uniforms bear the Ustashe motto "Za Dom Spremni" (Ready to Serve the Homeland) and some of the soldiers wear badges saying "Ustashe renaissance."

I will add, Mr. Speaker, that "Za Dom Spremni" is the Serbo-Croatian equivalent of "Sieg Heil."

The next article from which I quote was written by Paul Koring in the September 25 Toronto Globe and Mail:

Although the Party of Rights rejects allegations that it is a reincarnation of the Nazi-backed Croatian nationalist movement known as Ustasha, at least some of its red bereted members—festooned with grenades and wielding submachineguns outside the party headquarters—freely, and with apparent pride, claim to be Ustashe.

They also wear, and the party has as its emblem, a version of the red and white checkerboard crest used by the Ustasha, which killed thousands of Jews and Serbs during the Second World War.

In an October 7 article in the Chicago Tribune, reporter Ray Moseley also reports on Mr. Paraga's Croatian Party of Rights:

Western Diplomats and the Croatian Government view his activities with distaste. Diplomats said his army, which he calls the Croatian Defense Forces, sabotaged a ceasefire more than a week ago by capturing an army barracks at Bjelovar. That prompted the army to renew its offensive against Croatia.

The Defense Forces sometimes fight alongside the Croatian National Guard, Paraga said. But diplomats said that they also pursue objectives contrary to government policy.

Mr. Moseley continues:

Paraga says President Tudjman is guilty of "high treason" for having agreed to ceasefires. He says there can be no truce until all of Croatia is liberated.

Despite such statements, the government tolerates his activities. It would appear to have little choice, because any attempt to bring the Defense Forces under government control probably would touch off a war among Croatians.

Mr. Speaker, this alone is of great concern, but as the article continues, Mr. Moseley helps put the HSP in context to other neo-Nazi movements on an international scale:

He [Paraga] said there are party branches in several U.S. cities, including Chicago, and in Canada and Australia. In Croatia itself, he said, the party has more than 100,000 members.

Critics say the party is descended from the fascist Ustashi movement that governed Croatia as a Nazi-puppet state in World War II. The party's last prewar secretary, Ante Pavelic, founded the Ustashi and served as Croatian president during the war.

Paraga denies that the Ustashi were fascists or even under the control of Nazi Germany. He does admit that the Ustashi espoused racial policies and sent many Jews to their deaths, but says his party does not share such racial views, nor does it consider itself as a successor movement.

Mr. Speaker, the rise of a neo-Nazi movement on this scale, and in a country as unstable as Yugoslavia can only spell trouble. Is it any wonder that the Serbian minority within Croatia is fighting for its rights? Given the past history of the Ustashi, the specter of a popular movement on this scale is more than enough motivation for the Serbian minority in Croatia to demand its autonomy.

Just as a comparison, Mr. Speaker, if you took the claimed size of Mr. Paraga's party, it makes up about 2 percent of the Croatian population, and is growing. In a country the size of the United States, this would be a party of over 5 million people.

On another scale, I doubt any other neo-Nazi movement in the world can claim the size of Mr. Paraga's.

Mr. Speaker, back in September, the Croatian Government was accused of assassinating the HSP's second in command, Ante Paradzik. This served to exacerbate the tensions between the current regime and Mr. Paraga's Party of Rights.

Last week, there was an alleged bombing attempt on President Tudjman's palace. Having heard this, I contacted various members of the administration, and asked that a United States military investigative group determine on whose shoulders the blame fell, whether it was a Serbian, federal army, or Croatian attempt at Mr. Tudjman's life.

Mr. Speaker, the rise of Mr. Paraga's party adds another element to the already complicated situation in Yugoslavia. If such a party were to gain more power, and as I have stated, this is not an impossibility, I shudder to think of the deaths and destruction that would occur.

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I would like to think that we, in this day and age, have left the heinous legacy of the Second World War and of the Nazi Party behind. However, this legacy appears to be alive and thriving in the Republic of Croatia under the leadership of Dobroslav Paraga, once champion of human rights, now champion of the neo-Nazi Ustache movement in Croatia, and a man who was recognized and honored by Senate Resolution 169 of the 101st Congress.

Mr. Speaker, we need to look at this whole picture with a great deal of real concern.

MICROENTERPRISE, SELF-EMPLOYMENT AND ASSETS ACCUMULATION AS A POLICY OPTION

The SPEAKER pro tempore. (Mr. HATCHER). Under a previous order of the House, the gentleman from Mississippi [Mr. ESPY], is recognized for 60 minutes.

Mr. ESPY. Mr. Speaker, I have come to the floor today to talk about a much needed new direction in social welfare policy. In particular, I want to talk about microenterprise development, self-employment programs, individual development accounts, employee stock ownership plans, HOPE 1, and other initiatives which represent a new approach to helping those who are still left out of our Nation's economic mainstream.

In these days of legitimate budget constraints, in these days of stressful economic situations, in these days of growing demands on current programs, new initiatives tend to be buried before they are born—they are left on the cutting room floor before the movie ever comes to the screen for a preview showing.

New initiatives do not have an advocacy group ready at a moments notice to spring into action in support of the effort; new initiatives do not have a constituency forming a solid base of support; new initiatives must struggle to be heard over the hue and cry of existing programs that are desperately underfunded, underutilized or undermined by opponents.

I have taken the time for this special order to speak on issues about which I have very strong feelings. I come to the floor to speak on issues close to my heart. I strongly believe that we need new approaches to helping those who are poor in our country because the old ways simply don't work.

Despite the billions of dollars we spend, more Americans than ever remain stuck on welfare. Despite the billions that we spend on food stamps—one in eight American children are hungry. Despite the money we spend on antipoverty programs—33 million Americans remain in poverty. One in every five children in America is in poverty.

Generation after generation of Americans live permanently on welfare—given up on by our society, and many giving up on themselves. Mr. Speaker, I say again, it's time we looked seriously at new approaches to our welfare policies, because the current policies don't work.

A few days ago, the State of Michigan announced that it was ending its general assistance welfare program to poor, able bodied adults without children. The State of Maryland is eliminating 24,000 adults from its general assistance program. And other States are doing the same thing. The recipients are usually too young for social security, and too healthy to receive disability.

But most of them are able-bodied, men and women. Most of them could work, and would work, if given the opportunity. But in this economy, work is hard to find. So what are they going to do? What are we going to do?

I believe it's time we adopted policies which help the poor move from depend-

ency—to independence. It's time we adopted programs which help them move from subsistence—to self-sufficiency. It's time we stopped merely giving people fish, and taught them how to fish, and helped them get a rod and a reel. And that's what I want to talk about during this special order.

BUDGET COMMITTEE/HUNGER COMMITTEE

I come to the floor as a member of the Budget Committee and as a member of the Select Committee on Hunger. The Budget Committee expends considerable energy reviewing, analyzing, debating, and projecting Federal spending—or nonspending—options. We are all looking for options that will reduce the Federal deficit, strengthen the U.S. economy, enhance U.S. competitiveness abroad, and improve the quality of life at home.

The Hunger Committee is involved in reviewing all aspects of food and financial assistance programs for low-income persons in our society. As Chairman of the Domestic Task Force of the Select Committee on Hunger, I have held hearings on various social policies issues. In those hearings we have heard numerous proposals for reforming the current welfare programs.

Recently, in both the Budget Committee and Hunger Committee settings, I have heard testimony about microenterprise development, self-employment programs, and asset-accumulation policy. What excites me greatly about the testimony on these concepts, besides the sincerity and dedication of the persons testifying, is the way in which these concepts combine economic and social issues.

From a social policy standpoint, microenterprise development has been recognized and supported for some time by the Select Committee on Hunger, of which I am also a member. Representative TONY HALL, chairman of the Select Committee on Hunger, is the primary sponsor of the microenterprise provisions in H.R. 2850, the Freedom From Want Act. In addition, Representative HALL, Representative FRED GRANDY, Representative BILL EMERSON, and myself are sponsoring H.R. 3450, a bill to help microenterprise development.

From an economic standpoint, I became convinced during Budget Committee hearings that microenterprises have a significant role to play any future economic development strategy for small towns and urban neighborhoods throughout America. During this past summer, as chairman of the Budget Committee Task Force on Economic Development and Natural Resources, I have conducted a series of hearings on "Investments in America's Hometowns." Testimony received by my task force covered all aspects of economic development—infrastructure investments, capital budgeting, revolving loan funds, and microbusiness or microenterprise programs.

MICROENTERPRISES

Microenterprise development or self-employment programs struck me as some of the most exciting proposals. Yet, microenterprise or self-employment proposals seemed to be the economic development proposals that were least well-known among my congressional colleagues.

So, what are we talking about? Why am I excited?

When we talk about microenterprises, self-employment projects, or assets accumulation welfare policies, we are talking about promoting self-sufficiency, building self-esteem, and encouraging the work ethic.

We are talking about bringing economic strength to the lower income levels of the population.

We are talking about encouraging the very American entrepreneurial culture.

We are talking about breaking the cycle of poverty that is growing ever wider, is acting as a drag on the whole economy, and is drawing into its grips more and more of America's productive capacity.

To be specific, we are talking about giving low-income persons a chance to start their own business to be self-employed.

That's just common sense. Yet, current policies in income maintenance programs work just the opposite. Current programs prohibit the accumulation of assets above very limited levels—such as $1,000. Current programs do not recognize self-employment, nor do they encourage self-employment as an employment option that will allow compliance with job requirements. Current programs do not offer business training or technical assistance as a part the jobs programs offered to recipients.

It is time we realize—that while income assistance is essential to maintain a family, we must provide families with more than maintenance. America has long been known as the land of opportunity—we must make as many opportunities as possible available to all Americans.

Microenterprise development is one opportunity, one option that should be made available to all Americans who want to pull themselves up by their own bootstraps. But first, we have to make sure that everyone has some boots.

What is a microenterprise? The definition of a microenterprise is not set in concrete, the term is evolving as groups begin to implement projects, conduct research on the topic, perform evaluations of programs, and propose legislative amendments to support microenterprise efforts. Generally speaking the term "microenterprise" refers to a business which employees five or less persons—one of whom is the owner. Further, the business is usually capitalized with less than $5,000.

What kind of businesses make successful microenterprises? Microenterprises are primarily retail or service businesses. For example, a microenterprise may be involved in dressmaking, auto repair, auto detailing, word processing, computerized billing services, messenger service, shoe repair, cleaning, or maintenance operations.

What is involved in microenterprise development programs? Over 100 community based organizations began developing microenterprise projects during the 1980's. In most cases, the projects involve entrepreneurship training, the provision of technical assistance in the development of business plans, and the establishment of a revolving loan fund to provide capital for business startup.

What sources of funding are available for microprograms? Currently operating microenterprise development of self-employment programs are funded or supported through a variety of sources. Foundation grants, nonprofit organization funding, State funds, and local community funds support current programs.

The Community Reinvestment Act requirements of the banking legislation has led to bank investments in microenterprise programs. Although there is not a specific Federal program funded a microenterprise development, funding from a number of Federal programs can be used to implement and operate a microenterprise or self-employment programs. Federal sources of funding include community development block grant moneys, Job Training Partnership Act moneys, and rural development loan fund moneys.

But these Federal efforts are not nearly enough—and they are often offset by regulations in current programs which penalize the poor for the very activities we need to encourage.

Asset limitations in the current income maintenance programs are a prime example of policies which discourages participant initiative to move out of poverty.

By now, many of my colleagues have heard the story about an unmarried 36-year-old Milwaukee mother who managed to put aside enough nickels, dimes, and dollars from her monthly welfare checks to accumulate more than $3,000 in savings over 4 years. She wanted to send her daughter to college. Because welfare rules prohibit continued receipt of assistance if the family has assets in excess of $1,000, the Milwaukee mother was convicted of welfare fraud and was asked to repay the Government $15,000.

That is ridiculous. It is backward. And it is wrong. That's a perfect example of why our welfare policies work to keep people on welfare, rather than help to get them off—and this Congress needs to do something about it.

Why is asset-accumulation policy important? As Dr. Michael Sherraden so

eloquently stated in his book "Assets and the Poor": "* * * income only maintains consumption, but assets change the way people think and interact with the world." An example, of changing the way a person "interacts with the world" was has been reported by Ms. Kathryn Keeley, president of WomenVenture—an organization that administers a microenterprise program. In testimony before a Joint Budget Committee and Hunger Committee hearing, which I was chairing, Ms. Keely said, "* * * when you get a welfare Mom to go into a school and say I am a business owner, as opposed to I am a welfare Mom, it changes everybody's headset about her."

In my district, I recently met a young woman named Robbie Rabun. She is a perfect example of what can be accomplished with microenterprise programs. One year ago, Ms. Rabun was a welfare mother struggling to raise two sons on $441 per month. Today, because of a microenterprise program which gave her $5,000 seed capital, technical assistance, and a raised level of self-esteem, Ms. Rabun is off welfare. She owns her own car detailing business and earns about $1,800 per month. She is proud, and most of all she is independent. Her business is an asset, and now she has something to leave her children.

There are many more potential Robbie Rabuns in our society. But, the microenterprise program which helped Robbie Rabun was operating under waivers from current welfare program policies. A permanent change in policy is needed to foster more Robbie Rabuns.

On October 9, 1991, at a Select Committee on Hunger hearing, I heard the testimony of two women who are ready to begin their own businesses but are being held back because of current welfare program policies. Both women have been involved in a self-employment investment demonstration [SEID] project. Both have completed a business training program, have developed approved business plans and have arranged for loan financing to start their business.

One of the women that testified, Melody Boatner—a recipient of welfare for 1½ years—plans to start an upholstery business. She needs to acquire a $1,500 sewing machine and a reliable truck; but, these items would place her above the $1,000 asset limit in AFDC. Although she clearly expects her business to be successful and to provide enough profits to support her and her child, she cannot afford to start up the business without welfare assistance during some transition period.

Mary Johnson, the other witness at the Hunger Committee hearing—a welfare recipient for 2 years—testified about her plans to start a computerized medical billing service. The acquisition of the computer equipment and a reliable automobile necessary to operate her business would place her above the $1,000 asset limit in AFDC. Because she has three children and an aged mother for which to care, Ms. Johnson cannot afford to start up her business without welfare assistance during some transition period.

MICROENTERPRISE LEGISLATIVE PROPOSALS

As I mentioned earlier, two major pieces of legislation pending are H.R. 2258, the Freedom from Want Act and H.R. 3450, a bill to amend current AFDC law to help microenterprises. These bills, and others, would change Federal policy so that Mary Johnson, Melody Boatner, and thousands like them will be helped, rather than held back.

Among other things, these bills propose that up to $10,000 in net worth of a microenterprise be excluded for asset eligibility determinations. The bills also propose that only the net profits of a microenterprise be counted as household income. Further, the bills would encourage or, in some cases, require States to include microenterprise training as a part of its JOBS Program.

Another important piece of legislation, H.R. 288, the Act for Microenterprise introduced by Representative CARDISS COLLINS, would create a Micro-Enterprise Technical and Operations Office in Federal banking agencies to serve as a clearinghouse and to encourage banks to lend to microenterprises. Representative COLLINS' legislation would also ensure that a microenterprise loan recipient may remain in either the welfare or unemployment insurance programs for a 1-year transition period, instead of being terminated from the programs immediately.

Thanks to the leadership of Chairman TONY HALL of the Hunger Committee, some important microenterprise provisions were incorporated in the recently passed job training reform amendments—H.R. 3033. In addition, microenterprise or self-employment opportunity amendments to the Food Stamp Program were a part of the Mickey Leland amendments enacted in the Food, Agriculture, Conservation and Trade Act of 1990.

CONCLUSION ON MICROENTERPRISES

Microenterprises or self-employment programs have positive social policy implications—they encourage the work ethic; they help reduce welfare dependency; and they help individuals who participate improve their self-esteem.

Microenterprises or self-employment programs also have positive economic policy implications—they stimulate economic activity, help produce a better educated and more productive workforce, and have the potential of helping to reduce welfare program costs. While we may risk spending $5,000 or $10,000 to help a welfare recipient start a microenterprise, we will spend many times that keeping them, and their children, on welfare.

Evaluations of the current microenterprise demonstration projects indicate persons which choose to participate in the programs generally have a higher than average education level and have been on welfare for more than 2 years. This tells me we are dealing with a select group of persons; but, also we are dealing with a group whose departure from the welfare rolls could have an effect on the reduction of welfare costs which is greater than the portion of welfare rolls which they represent.

Moreover, the influence of this small group of microenterprise program participants will have an ever-widening influence as the participants become models for their dependents and/or other welfare recipients.

From an economic standpoint, it has been documented often that small businesses—microenterprises have a positive affect in stimulating the economy. A study between 1981 and 1986 conducted by small business consultant, David Birch, found that firms with fewer than 20 employees created 88 percent of the new jobs in the United States Rural or inner city urban neighborhoods which have few formal job opportunities are prime areas for microenterprise development.

Self-employment can be an attractive option for low-paid workers, unemployed individuals, welfare recipients, persons suffering job displacement because of base-closings and other defense force or production reductions and persons caught up in the transition of the Nation's agriculture economy.

I am convinced that microenterprises can be a key component of a new welfare strategy in this country—and we will measure its success by how many people are helped off of welfare.

HOPE 1

There are other kinds of assets that the poor need to escape poverty.

That is especially true now, at a time when the disparity between the rich and poor is growing wider each year. Data compiled for Budget Committee members indicates the real income of low income single mothers with children declined substantially between 1979 and 1989 while the real income levels of families in the top 1 percent of the Nation's income levels increased by 95.3 percent.

But wealth is more accurately measured in terms of assets. In the area of assets the disparity between rich and poor is even worse. According to a Federal Reserve report, the top 20 percent of Americans—based on assets accumulation—own almost 80 percent of the wealth in the Nation. At the same time the bottom 40 percent own almost no wealth. They have income but no assets.

And among those Americans with assets, most of them have assets in their home.

That's why I strongly support HOPE 1 [Housing Opportunities for People Ev-

erywhere] and why I hope many more of my colleagues, especially on the Democratic side, will take a second look at this program.

HOPE 1 is designed to help low-income residents of public housing become home owners. It's designed to help them accumulate some housing assets of their own—rather than simply live in a house owned by the Government.

I'm from Mississippi. On the New York Times best seller list, there is a book that chronicles the movement of African-American people from Mississippi and other Southern States in the 1940's and 1950's. During that time, African-Americans began to move off the plantation and into other areas across this country.

Bitter experience taught them that the person who controls where you live, controls your life. They knew that new hardships would come with leaving the plantation—but the hardships of staying were worse.

I support HOPE 1, because I believe that many low-income Americans who live in public housing are worse off than people who were stuck on the plantation. They are effectively trapped into transitional housing, which in many cases is not fit for human beings to live in. But most of all, they are trapped in a cycle of poverty.

The HOPE Program, which we have debated here before, is not for every tenant of public housing. It is not for every public housing project.

But for those who are willing and able to own their own homes, shouldn't we provide some assistance to help them repair the units? Shouldn't we provide some economic development assistance? Shouldn't we teach residents of public housing how to own and manage their own units, rather than just continuing to try and do it for them?

I believe that we should—and I believe that we should give HOPE 1 a chance.

This year, we will provide $60 billion in tax deductions to help middle-income and upper-income homeowners own their own homes. I support that policy, because it helps them accumulate assets. And we need to do the exact same thing for residents of public housing. We need to help them become homeowners as well—and accumulate some housing assets.

INDIVIDUAL DEVELOPMENT ACCOUNTS

Mr. Speaker, we also spend $40 billion a year helping middle income and working Americans accumulate retirement assets. We give special tax benefits to individual retirement accounts, pension plans, and other vehicles to help Americans accumulate the assets they will need for retirement.

So I want to call my colleagues' attention to provisions in the Freedom From Want Act, introduced by my colleague TONY HALL which will do the same thing for the poor.

Like we have individual retirement accounts [IRA's] to help middle-income Americans accumulate assets—we need individual development accounts [IDA's] to help low-income Americans accumulate assets.

IDA's work the same way as IRA's. They would allow the poor to save money for designated purposes—for housing, for education, to start a small business, or for retirement. The government would provide matching grants as incentives to the poor to save—and we will start to help the poor accumulate the assets they need to escape poverty.

With IDA's, the Milwaukee mother who is now convicted of welfare fraud for saving for her child's education will be given a matching grant and encouraged to save even more. That way, she can accumulate funds for her child's education, so that the likelihood of her child living on welfare is decreased. That way, we break the cycle of dependency.

With IDA's the welfare recipient who is now encouraged to spend every dime she receives on consumption today will be encouraged to save for the future. With IDA's, our policy will recognize that economic well-being does not come through spending, but rather that it is achieved through saving, through investment, and through accumulation of assets.

IDA's would be optional, interest-bearing accounts in the name of one person. They would be held in federally insured financial institutions. Money could be withdrawn only for specific purposes.

Most of all, persons would receive matching grants, based on their overall income, to encourage them to save.

For example, under the IDA demonstration project in the Freedom From Want Act, persons whose income is less than half of the poverty level would receive a 9-to-1 match. For every $100 they managed to save, the Federal Government would match it with $900—up to a maximum of $1,800.

Just as we now encourage Federal employees to save by providing matching contributions, we should do the same thing for those Americans who need to save the most.

That's what IDA's will do. Like microenterprises, and HOPE 1, IDA's will help the poor accumulate the assets they need to break the cycle of poverty.

ESOP'S AND GUARANTEED WORKING WAGE

Mr. Speaker, I want to mention just one more asset based initiative which I believe we need to seriously look at in this Congress—one to help those Americans who are already at work—who work hard—but who still don't have enough income to save and accumulate the assets they need to build a firmer economic foundation.

The first idea is for a guaranteed working wage. The guaranteed working wage is based on a simple, but profound principle—Americans who work, and who work hard, should be rewarded with an income that allows them to live above the poverty level.

Currently, the work ethic doesn't work for nearly 11 million Americans who live in families where someone works during the year—but where they don't earn enough to escape poverty. The guaranteed working wage would redesign and expand a tax credit which is already very popular in the Congress—the earned income tax credit.

A guaranteed working wage would guarantee every full time, year round worker a working wage sufficient, along with existing benefits under the food stamp program, to support his or her family above the poverty line.

A guaranteed working wage would benefit those Americans who work hard every day, who earn too much to qualify them for assistance programs, but not enough to get their families out of poverty.

A guaranteed working wage would end the perversity where some people are actually better off by not working. It would end the idea many people have, which is true, that it's often more beneficial to stay on welfare than to go to work.

Like the present earned income tax credit, a guaranteed working wage would provide a wage supplement for every hour a poor person works—but the size of the supplement should also increase with the size of the family being supported. The maximum supplement should be enough to close the gap between the poverty level and what the family could earn by working full-time, all year at the minimum wage, plus food stamp benefits.

By ensuring that every American who works full-time has an income sufficient to pull his or her family out of poverty, we will be making real the promise that America is a country where hard work leads to success. By implementing a guaranteed working wage, we will help millions of working Americans move above more subsistence, and we will help them be more able to accumulate the assets they need to move up the economic ladder.

ESOP'S

The last initiative I want to talk about is also for those Americans who work. It's also about promoting the work ethic, and about helping more people in our country accumulate assets so that they can have a real piece of the economic pie. I'm referring to an idea which has been around for a few years, but whose promise and potential we have yet to realize—employee stock ownership plans.

Today I added my name to the list of cosponsors of H.R. 2410, an important bill introduced by my colleagues BERYL ANTHONY, CASS BALLENGER, and DANA ROHRABACHER.

This legislation would enhance ESOP's in our country, by opening up the possibility of employee ownership to employees of one-third of the corporations in America that are now unable to participate because they are subchapter S corporations. It would eliminate the tax on early distributions from ESOP's; allow double contributions to accounts of low-paid ESOP participants; and encourage the transfer of closely held small company stock to an ESOP from an estate. It would also allow American workers the opportunity to bid equally with foreign interests trying to acquire U.S. corporations.

I'm proud to add my name as a cosponsor of this legislation. More workers need to own stock in the companies where they work.

When they own stock, workers have a greater stake in the future of the company.

When they own stock, workers work harder, and pay more attention to quality.

When they own stock, workers realize that they, too, will share more in the fruits of their labor. There is more in it for them than just a paycheck.

When they own stock, workers start to think more like owners, and the result is often more efficient companies, with better motivated workers, and a more equitable distribution of profits.

There is a growing list of companies which have compiled impressive records of growth since implementing ESOP's, partly due to encouragement by the Congress in the mid-1980's. But I believe that now is the time for Congress to do more.

Last year, there were 9,000 ESOP's in the country. In many, employees are involved in the decision making of the company. By purchasing stock in their companies, workers have assumed more of the risk—and they are entitled to receive more of the reward.

With ESOP's, workers acquire business assets. They don't just work for a weekly income, they work for the long term growth of the company, and their own assets.

In conclusion, with ESOP's, with the guaranteed working wage with IDA's, Microenterprises, and HOPE 1, working and low income Americans can accumulate assets.

With asset based programs, they can join the ranks of the haves, and leave the ranks of the have-nots.

With asset based programs—those who are often left out and stuck on the river bottom are given the opportunities they need to realize their own potential, and move into the economic mainstream.

With asset based programs, the poor and low-income Americans are not a permanent drain on the financial resources of middle income Americans—rather they are helped to join the ranks of middle income Americans.

With asset based programs, those who are stuck on the river bottom are not just given an inadequate, meager, and stigmatized hand out—they are given a hand up.

So I want to urge the Congress to offer equal economic opportunity to all Americans. I want to urge all of my colleagues to take a fresh look at asset based welfare policies, where success is not measured by how many people we feed—but by how many people we help acquire the means to feed themselves.

It is time for the United States to rebuild its economic strength at home. And I believe we can best do that by promoting what makes America great—the work ethic, savings, investments, and the accumulation of assets.

In the end, I believe that we need to realize that Americans who are in poverty, who are on welfare, who work hard but still can't make ends meet are just like other Americans. They don't deserve our scorn, they deserve our assistance.

We spend billions of dollars each year helping better off Americans accumulate assets. Now it is time we turned our attention to helping those on the bottom accumulate the assets they need to pick themselves up. It's time we stopped just giving poor people fish—but start teaching them how to fish and help them to acquire a rod and a reel.

Nobody can ever spend their way out of poverty. Just like our country can never borrow its way out of debt. To get out of poverty, the poor need savings, they need investments, they need assets. But most of all, they need a government willing to rethink old policies, throw out those that don't work, and try something new.

I am convinced that we can solve the problems facing our country. We can rebuild our economy. We can significantly reduce the number of Americans who live in poverty. But we have to be willing to change our attitudes towards those who need help. Americans don't want a hand out. They want a hand up. Asset based welfare policies are the way to go. I look forward to working with all of my colleagues on these programs in the days and months to come.

□ 2050

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. BOEHNER) to revise and extend their remarks and include extraneous material:)

Mrs. BENTLEY, for 60 minutes each day, on October 29, 30, 31, and November 5, 6, 7, 12, 13, and 14.

Mr. MCCOLLUM, for 5 minutes, today.

Mr. DANNEMEYER, for 5 minutes, today.

(The following Members (at the request of Mr. SCHUMER) to revise and extend their remarks and include extraneous material:)

Mr. TAYLOR of Mississippi, for 5 minutes, today.

Mr. JEFFERSON, for 5 minutes, today.

Mrs. LOWEY of New York, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. OWENS of New York, for 60 minutes each day, on November 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, and 29.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. BOEHNER) and to include extraneous matter:)

Mr. BROOMFIELD in two instances.
Mr. DICKINSON.
Mr. DUNCAN in two instances.
Ms. SNOWE.
Mr. MCEWEN.
Mr. BURTON of Indiana.
Mr. MACHTLEY.
Mr. GEKAS.
Mr. KYL in two instances.
Ms. ROS-LEHTINEN.
Mr. GREEN of New York.

(The following Members (at the request of Mr. SCHUMER) and to include extraneous matter:)

Mr. MCMILLEN of Maryland.
Mr. PEASE.
Mr. MILLER of California.
Mr. MURTHA.
Mr. LANTOS.
Mr. LEHMAN of Florida.
Mr. AUCOIN.
Mr. KOSTMAYER.
Mr. HAMILTON.
Mr. KOLTER.
Mr. SISISKY.
Mr. ROWLAND.
Mr. FEIGHAN.
Mr. SERRANO in two instances.
Mr. DINGELL.
Mr. ROSTENKOWSKI.
Mr. ECKART.
Mr. TORRES in three instances.
Mrs. SCHROEDER in two instances.
Mr. TOWNS.
Mr. TORRICELLI.

ENROLLED BILLS SIGNED

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 1415. An act to authorize appropriations for fiscal years 1992 and 1993 for the Department of State, and for other purposes;

H.R. 2608. An act making appropriations for the Departments of Commerce, Justice, and State, the judicary, and related agencies for the fiscal year ending September 30, 1992, and for other purposes; and

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H.R. 3280. An act to provide for a study, to be conducted by the National Academy of Sciences, on how the Government can improve the decennial census of population, and on related matters.

SENATE ENROLLED JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to an enrolled joint resolution of the Senate of the following title:

S.J. Res. 107. Joint resolution to designate October 15, 1991, as "National Law Enforcement Memorial Dedication Day."

A BILL AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

Mr. ROSE, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, a bill and joint resolutions of the House of the following titles:

H.J. Res. 230. Joint resolution designating October 16, 1991, and October 16, 1992, each as "World Food Day";

H.J. Res. 303. Joint resolution to designate October 1991 as "Crime Prevention Month"; and

H.R. 2519. An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, et cetera, for the fiscal year ending September 30, 1992, and for other purposes.

ADJOURNMENT

Mr. ESPY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 59 minutes p.m.), the House adjourned until tomorrow, Thursday, October 17, 1991, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the speaker's table and referred as follows:

2210. A letter from the Comptroller General, the General Accounting Office, transmitting the status of budget authority that was proposed for rescission by the President in his fifth special impoundment message for fiscal year 1991, dated June 28, 1991, pursuant to 2 U.S.C. 685 (H. Doc. No. 102-152); to the Committee on Appropriations and ordered to be printed.

2211. A letter from the Secretary of Health and Human Services, transmitting the Department's annual report on the status and accomplishments of the runaway and homeless youth centers for fiscal year 1990, pursuant to 42 U.S.C. 5715(a); to the Committee on Education and Labor.

2212. A letter from the Administrator, General Services Administration, transmitting the annual report of personal property furnished to non-Federal recipients for fiscal year 1990, pursuant to 40 U.S.C. 483(c); to the Committee on Government Operations.

2213. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2214. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2215. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2216. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2217. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

2218. A letter from the Secretary of the Interior, transmitting a report entitled "Wetlands: Status and Trends"; to the Committee on Merchant Marine and Fisheries.

2219. A letter from the General Counsel, Department of the Treasury, transmitting a draft of proposed legislation to amend sections 5315 and 5316 of title 5, United States Code, to raise the position of Chief Counsel for the Internal Revenue Service, Department of the Treasury, from Level V to Level IV of the Executive Schedule; to the Committee on Post Office and Civil Service.

2220. A letter from the Director, Office of Personnel Management, transmitting the Agency's annual report on drug and alcohol abuse prevention, treatment, and rehabilitation programs and services for Federal civilian employees covering fiscal year 1990, pursuant to 5 U.S.C. 7363; to the Committee on Post Office and Civil Service.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 1885. A bill to amend the Securities and Exchange Act of 1934 to protect investors in limited partnerships in rollup transactions, and for other purposes; with an amendment (Rept. 102-254). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. MINETA (for himself, Mr. ROE, Mr. HAMMERSCHMIDT, and Mr. SHUSTER):

H.R. 3566. A bill to develop a national intermodal surface transportation system, to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes; jointly, to the Committees on Public Works and Transportation and Ways and Means.

By Mr. ERDREICH:

H.R. 3567. A bill to amend the Public Health Service Act to provide grants for the purpose of funding certain biomedical training and research exchange programs; to the Committee on Energy and Commerce.

By Mr. HOCHBRUECKNER:

H.R. 3568. A bill to amend title 38, United States Code, to revise the formula for payments to States for care furnished to veterans in State homes; to the Committee on Veterans' Affairs.

By Mrs. JOHNSON of Connecticut:

H.R. 3569. A bill to amend the Federal Election Campaign Act of 1971 to reduce multicandidate political committee contributions to congressional candidates, and for other purposes; to the Committee on House Administration.

By Ms. KAPTUR (for herself, Mr. KOLBE, Mr. HOUGHTON, Mr. MINETA, Mrs. JOHNSON of Connecticut, Mr. GUARINI, Mr. MOODY, and Mr. GRANDY):

H.R. 3570. A bill to provide for the issuance of super savings bonds to increase national savings and reduce Federal debt owed to foreign creditors; to the Committee on Ways and Means.

By Mr. VALENTINE (for himself, Mr. APPLEGATE, Mr. BILBRAY, Mr. COSTELLO, Mr. GUARINI, Mr. HUBBARD, Mr. HUCKABY, Mr. HUTTO, Mr. JACOBS, Mr. JOHNSON of South Dakota, Mr. JONTZ, Mr. KOLTER, Mr. LANCASTER, Mr. LAUGHLIN, Mr. LEWIS of Florida, Mrs. LLOYD, Mr. MCMILLAN of North Carolina, Ms. NORTON, Mr. PERKINS, Mr. RAHALL, Mr. ROSE, Mr. SOLOMON, Mr. STENHOLM, and Mr. TRAFICANT):

H.R. 3571. A bill to require the President to submit to the Congress each year an integrated justification for U.S. foreign assistance programs, and for other purposes; jointly, to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, Agriculture, and Rules.

By Mr. BLILEY:

H.R. 3572. A bill to amend chapter 110 of title 18, United States Code, with respect to the sexual exploitation of children; to the Committee on the Judiciary.

By Mr. MCMILLAN of North Carolina:

H.R. 3573. A bill to suspend for a 3-year period the duty on DNCB; to the Committee on Ways and Means.

By Mr. MCMILLEN of Maryland (for himself and Mr. BARNARD):

H.R. 3574. A bill to establish a Real Property Asset Disposition Council, and for other purposes; jointly, to the Committees on Government Operations and Banking, Finance and Urban Affairs.

By Mr. MANTON:

H.J. Res. 350. Joint resolution designating March 1992 as "Irish-American Heritage Month"; to the Committee on Post Office and Civil Service.

By Mr. STARK:

H.J. Res. 351. Joint resolution requiring a report under the Nuclear Non-Proliferation Act of 1978 on United States efforts to strengthen safeguards of the International Atomic Energy Agency; to the Committee on Foreign Affairs.

By Mr. JEFFERSON (for himself, Ms. NORTON, Mr. RAVENEL, Mr. LIVING-

STON, Mr. TOWNS, Mr. RANGEL, Mr. HUGHES, Mr. DWYER of New Jersey, Mrs. MINK, Mr. THOMAS of Georgia, Mr. NEAL of Massachusetts, Mr. SCHEUER, Mr. HUTTO, Mr. LAUGHLIN, and Mr. FOGLIETTA):

H.J. Res. 352. Joint resolution to designate 1992 as the "Year of the Wetlands"; to the Committee on Post Office and Civil Service.

By Ms. SNOWE:

H. Con. Res. 222. Concurrent resolution establishing a commission to study compensation and other personnel policies and practices in the legislative branch; to the Committee on House Administration.

By Mrs. BENTLEY:

H. Res. 248. Resolution expressing the sense of the House of Representatives regarding the use of an ambulance maintained by the government of the District of Columbia for use in life threatening situations at the U.S. Capitol; jointly, to the Committees on House Administration and the District of Columbia.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 23: Mr. KLUG.

H.R. 127: Mr. CAMP, Mr. KOLTER, and Mr. PARKER.

H.R. 179: Mr. ATKINS.

H.R. 187: Mr. MACHTLEY, Mr. CARR, and Mr. PALLONE.

H.R. 303: Mr. FEIGHAN.

H.R. 413: Mrs. BENTLEY, Mr. CUNNINGHAM, Mr. BOUCHER, Mr. RUSSO, Mr. DOOLITTLE, Mr. MCDERMOTT, Ms. DELAURO, and Mr. DUNCAN.

H.R. 423: Mr. STENHOLM.

H.R. 489: Mr. KYL.

H.R. 565: Mr. KOLBE, Mr. BOEHLERT, Mr. PURSELL, Mr. JONTZ, and Ms. LONG.

H.R. 744: Mr. DIXON and Mr. MARKEY.

H.R. 786: Mr. CARPER and Mr. OWENS of Utah.

H.R. 1063: Mr. NOWAK, Mr. NEAL of Massachusetts, Mr. TRAFICANT, Ms. NORTON, and Mr. HORTON.

H.R. 1161: Mr. MINETA, Mr. OLVER, and Mr. DE LUGO.

H.R. 1241: Mr. EVANS, Mr. ENGEL, Mr. SANTORUM, and Mr. DOWNEY.

H.R. 1251: Mr. OWENS of Utah and Mr. MINETA.

H.R. 1252: Mr. OWENS of Utah, Mr. MINETA, and Mr. CONYERS.

H.R. 1253: Mr. OWENS of Utah and Mr. MINETA.

H.R. 1269: Mr. CARPER.

H.R. 1310: Mr. HUTTO and Mr. RIGGS.

H.R. 1311: Mr. DELLUMS, Mrs. LOWEY of New York, Mr. NUSSLE, Mr. LAFALCE, Mr. MFUME, Ms. PELOSI, Mrs. JOHNSON of Connecticut, Mr. MCNULTY, Mr. RIGGS, and Mr. LANCASTER.

H.R. 1312: Mr. DELLUMS, Mr. NUSSLE, Mr. JONTZ, Mr. LAFALCE, Mr. MFUME, Ms. PELOSI, Mr. SANGMEISTER, Mrs. JOHNSON of Connecticut, Mr. MCNULTY, Mr. RIGGS, and Mr. LANCASTER.

H.R. 1322: Mr. MINETA.

H.R. 1527: Mr. WASHINGTON.

H.R. 1628: Mr. GINGRICH, Mr. EMERSON, Mr. TORRICELLI, Mr. HALL of Texas, Mr. WEBER, Mr. GILCHREST, Mr. PALLONE, Mr. DE LUGO, Mr. THOMAS of California, Mr. DICKINSON, and Mr. LIVINGSTON.

H.R. 1675: Mr. DIXON.

H.R. 2083: Mr. MATSUI.

H.R. 2238: Mr. SOLOMON.

H.R. 2303: Mr. JEFFERSON, Ms. PELOSI, and Mr. MCCLOSKEY.

H.R. 2382: Mr. GEPHARDT.

H.R. 2385: Mr. CLINGER, Mr. HYDE, Mr. FISH, Mr. STUMP, and Mr. KYL.

H.R. 2415: Mr. JOHNSTON of Florida.

H.R. 2419: Mr. DEFAZIO.

H.R. 2570: Ms. MOLINARI, Mrs. ROUKEMA, Ms. LONG, Mrs. MINK, Ms. WATERS, Mr. AUCOIN, Mr. HAYES of Illinois, Mr. FAZIO, Mr. MCCLOSKEY, and Mrs. BYRON.

H.R. 2632: Mr. VISCLOSKY, Mr. EVANS, and Mr. HENRY.

H.R. 2727: Mr. DELAY.

H.R. 2766: Mr. HANCOCK.

H.R. 2768: Mr. PACKARD, Mr. GORDON, and Mr. DOOLITTLE.

H.R. 2848: Mrs. JOHNSON of Connecticut.

H.R. 2854: Mr. RANGEL.

H.R. 2867: Mr. KYL.

H.R. 2872: Mr. ZELIFF and Mr. SHAYS.

H.R. 2902: Mr. LAGOMARSINO.

H.R. 2903: Mr. LAGOMARSINO.

H.R. 2904: Mr. LAGOMARSINO.

H.R. 2966: Mr. COBLE, Mr. MONTGOMERY, Mr. STENHOLM, Mr. EMERSON, Mr. COX of Illinois, and Mr. VOLKMER.

H.R. 3070: Mr. VANDER JAGT, Mr. MCCOLLUM, Mr. WILSON, Mr. HEFNER, Mr. ABERCROMBIE, Mr. ALEXANDER, Mr. BACCHUS, Mr. BENNETT, Mr. BOEHNER, Mr. BORSKI, Mr. BROWDER, Mr. DOWNEY, Mr. SKELTON, Mr. ORTON, Mr. NEAL of Massachusetts, Mr. MOLLOHAN, Mr. HAYES of Illinois, Mr. HAMILTON, Mr. POSHARD, Mr. SARPALIUS, Mr. WYDEN, Mr. MILLER of Washington, Mr. BARTON of Texas, Mr. BAKER, and Mr. PRICE.

H.R. 3104: Mr. ENGEL.

H.R. 3133: Mr. DELLUMS, Mr. JONTZ, Mr. JEFFERSON, Ms. NORTON, Mrs. UNSOELD, Mr. SANDERS, Mr. EVANS, and Mr. LIPINSKI.

H.R. 3147: Mr. FOGLIETTA, Mr. FRANK of Massachusetts, Mr. JEFFERSON, Ms. NORTON, Mr. SANDERS, Mr. TOWNS, and Mr. LAFALCE.

H.R. 3164: Ms. SNOWE, Mr. SANDERS, and Mr. JAMES.

H.R. 3172: Mr. LAGOMARSINO and Mr. ECKART.

H.R. 3176: Mr. PETERSON of Minnesota.

H.R. 3209: Mr. FROST, Ms. NORTON, and Mrs. JOHNSON of Connecticut.

H.R. 3221: Mr. HAMILTON, Mr. HOPKINS, Mr. RIGGS, Mr. SHAW, Mr. BUNNING, Mr. GEKAS, Mr. DICKS, and Mr. TORRICELLI.

H.R. 3256: Mr. DELLUMS, Mr. ENGEL, Mr. MRAZEK, Mr. MFUME, Mr. FROST, and Mr. SHAYS.

H.R. 3312: Mr. SMITH of Florida, Mr. MCCRERY, and Mr. BACCHUS.

H.R. 3344: Mr. GILMAN.

H.R. 3354: Mr. FISH and Mr. DYMALLY.

H.R. 3409: Mr. HAMILTON, Mr. YATRON, Mr. SOLARZ, Mr. WOLPE, Mr. GEJDENSON, Mr. LANTOS, Mr. TORRICELLI, Mr. LEVINE of California, Mr. FEIGHAN, Mr. ACKERMAN, Mr. WEISS, Mr. FUSTER, Mr. JOHNSTON of Florida, Mr. FALEOMAVAEGA, Mr. STUDDS, Mr. MURPHY, Mr. KOSTMAYER, Mr. FOGLIETTA, Mr. MCCLOSKEY, Mr. SAWYER, Mr. ORTON, Mr. GILMAN, Mr. LAGOMARSINO, Mr. LEACH, Ms. SNOWE, Mr. HYDE, Mr. BEREUTER, Mr. SMITH of New Jersey, Mr. BURTON of Indiana, Mrs. MEYERS of Kansas, Mr. MILLER of Washington, Mr. BLAZ, Mr. GALLEGLY, Mr. HOUGHTON, Mr. GOSS, and Ms. ROS-LEHTINEN.

H.R. 3462: Ms. PELOSI, Mr. BARNARD, Mr. FASCELL, Mr. GUARINI, Mr. MAZZOLI, Mr. BEREUTER, Mr. CLEMENT, Ms. HORN, Mr. MARKEY, Mr. GORDON, Mr. JONTZ, Ms. KAPTUR, Mr. JEFFERSON, and Mr. OLIVER.

H.R. 3488: Mr. RINALDO.

H.R. 3516: Mr. GUNDERSON.

H.J. Res. 177: Mr. LEHMAN of Florida, Mr. HOCHBRUECKNER, Mr. COLEMAN of Texas, Mr. MAZZOLI, Mr. HAYES of Illinois, Mr. GRANDY, Mr. MCDERMOTT, and Mr. GUNDERSON.

H.J. Res. 198: Mr. TOWNS, Mr. LIVINGSTON, Mr. JENKINS, Mrs. COLLINS of Illinois, Mr. HAYES of Illinois, Ms. SLAUGHTER of New York, Mr. SMITH of New Jersey, Mr. PRICE, Mr. HUCKABY, Ms. SNOWE, and Ms. NORTON.

H.J. Res. 228: Mr. VENTO, Mr. HOUGHTON, Mr. OBERSTAR, Mr. GORDON, Mr. SABO, Mr. FALEOMAVAEGA, Mr. SPRATT, Mr. BREWSTER, Mr. DOWNEY, Mr. SCHEUER, and Mr. MANTON.

H.J. Res. 242: Mr. GILCHREST, Mr. MAVROULES, Mr. SUNDQUIST, Mr. RAHALL, Mr. COLEMAN of Texas, Mr. FORD of Tennessee, Mr. SLATTERY, and Mr. MOORHEAD.

H.J. Res. 261: Mr. FRANKS of Connecticut, Mr. HAMMERSCHMIDT, Mr. OLVER, Mr. OWENS of New York, Mr. NEAL of Massachusetts, Mr. REED, Mr. REGULA, Mr. SAWYER, Mr. SKEEN, Mr. WALSH, and Mr. WHEAT.

H.J. Res. 271: Mr. KLECZKA, Mr. SENSENBRENNER, and Mr. ASPIN.

H.J. Res. 283: Mr. DOWNEY and Mr. KOPETSKI.

H.J. Res. 291: Mr. ASPIN, Mr. ANDREWS of New Jersey, Mr. ANNUNZIO, Mr. ARCHER, Mr. BATEMAN, Mr. BENNETT, Mr. BEVILL, Mr. BLILEY, Mr. BOUCHER, Mrs. BOXER, Mr. BROWN, Mr. BURTON of Indiana, Mr. BUSTAMANTE, Mr. CLEMENT, Mr. CLINGER, Mr. COLEMAN of Texas, Mr. CONYERS, Mr. COSTELLO, Mr. COYNE, Mr. DARDEN, Mr. DE LA GARZA, Mr. DE LUGO, Mr. DIXON, Mr. DONNELLY, Mr. DWYER of New Jersey, Mr. DYMALLY, Mr. EMERSON, Mr. ENGEL, Mr. ERDREICH, Mr. ESPY, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FAWELL, Mr. FAZIO, Mr. FEIGHAN, Mr. FORD of Tennessee, Mr. FROST, Mr. FUSTER, Mr. GAYDOS, Mr. GEPHARDT, Mr. GILMAN, Mr. GONZALEZ, Mr. GRANDY, Mr. GREEN of New York, Mr. GUARINI, Mr. GUNDERSON, Mr. HAMILTON, Mr. HARRIS, Mr. HATCHER, Mr. HAYES of Illinois, Mr. HAYES of Louisiana, Mr. HEFNER, Mr. HORTON, Mr. HUNTER, Mr. HUTTO, Mr. HYDE, Mr. IRELAND, Mr. JEFFERSON, Mr. JONES of North Carolina, Mr. JONTZ, Ms. KAPTUR, Mr. KASICH, Mr. KILDEE, Mr. KOLTER, Mr. LAFALCE, Mr. LANCASTER, Mr. LEHMAN of California, Mr. LEWIS of Florida, Mr. LIPINSKI, Ms. LONG, Mr. MCCLOSKEY, Mr. MCDERMOTT, Mr. MCEWEN, Mr. MCHUGH, Mr. MCMILLAN of North Carolina, Mr. MCNULTY, Mr. MARTINEZ, Mr. MATSUI, Mr. MAVROULES, Mr. MFUME, Mr. MILLER of Ohio, Mr. MINETA, Mrs. MINK, Mr. MOAKLEY, Mrs. MORELLA, Mr. MRAZEK, Mr. MURPHY, Mr. NATCHER, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. NOWAK, Ms. OAKAR, Mr. OLVER, Mr. OWENS of New York, Mr. OWENS of Utah, Mr. PAXON, Mr. PAYNE of New Jersey, Mr. POSHARD, Mr. QUILLEN, Mr. RAHALL, Mr. RANGEL, Mr. RAVENEL, Mr. ROE, Mr. ROGERS, Mr. ROYBAL, Mr. SAWYER, Mr. SCHEUER, Mr. SERRANO, Mr. SHAYS, Mr. SKEEN, Mr. SLATTERY, Ms. SLAUGHTER of New York, Mr. SOLARZ, Mr. SPRATT, Mr. STAGGERS, Mr. STALLINGS, Mr. STOKES, Mr. TALLON, Mr. TAUZIN, Mr. TORRES, Mr. TOWNS, Mr. TRAFICANT, Mr. TRAXLER, Mrs. UNSOELD, Mr. VALENTINE, Mr. VENTO, Mr. WALSH, Mr. WILSON, Mr. WOLPE, Mr. WYLIE, AND Mr. YATRON.

H.J. Res. 326: Mr. DYMALLY, Mr. FROST, Mr. HEFNER, Mrs. PATTERSON, Ms. PELOSI, Mr. PERKINS, Mr. TALLON, Mr. TORRES, Mr. LAGOMARSINO, Mr. ROSE, Mr. NATCHER, and Mr. BROWDER.

H.J. Res. 340: Mr. BRUCE, Mr. JONTZ, Mr. TAUZIN, Mr. PASTOR, Mr. GORDON, Mr. LAGOMARSINO, Mr. MCDADE, Mr. CARPER, Mr. COSTELLO, Mr. SAVAGE, Mr. DORNAN of California, Mr. WYDEN, Mr. SMITH of Florida, Mr. ARCHER, Mr. LANTOS, Mr. MURPHY, Mr. GILMAN, Mr. MOAKLEY, Mrs. MEYERS of Kansas, Mr. MATSUI, Mr. BORSKI, Mr. GALLO, Mr. HUNTER, Mr. MILLER of Washington, Mr. SISISKY, Mr. NATCHER, Mr. CONYERS, Mr. HAYES

of Illinois, Mr. APPLEGATE, Mr. YOUNG of Florida, Mr. ANDERSON, Ms. KAPTUR, Mr. HUGHES, Mr. CALLAHAN, Mr. MCMILLEN of Maryland, Mr. MCEWEN, Mr. DYMALLY, and Mr. BUSTAMANTE.

H. Con. Res. 89: Mr. SANTORUM, Mr. OWENS of Utah, Mr. MINETA, and Mr. CONYERS.

H. Con. Res. 188: Ms. SLAUGHTER of New York, Mr. LEVIN of Michigan, Mr. GEJDENSON, and Mr. FROST.

H. Con. Res. 202: Mr. LEWIS of Florida and Mr. SMITH of Florida.

H. Con. Res. 208: Mr. SANDERS, Mr. STOKES, Mr. PAYNE of Virginia, Ms. KAPTUR, Mr. RAHALL, Mr. EVANS, Mrs. VUCANOVICH, Mr. BORSKI, and Mr. RAMSTAD.

H. Con. Res. 216: Mr. SOLARZ.

H. Res. 233: Mr. PORTER and Mr. STENHOLM.

H. Res. 244: Mr. MACHTLEY, Mr. SHAYS, Ms. MOLINARI, Mr. FRANK of Massachusetts, Mr. GOSS, Mr. PAYNE of Virginia, and Mr. WELDON.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H. Con. Res. 210: Mr. SARPALIUS.

H. Res. 194: Mr. FISH.

PETITIONS, ETC.

Under clause 1 of rule XXII.

125. The SPEAKER presented a petition of the Board of Education, Honolulu, Hawaii, relative to rights of children; which was referred to the Committee on Foreign Affairs.