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PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

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House of Representatives

The House met at 11 a.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We are grateful, O God, for all those people who see in their daily tasks the opportunity to serve people in their needs, and by such service are following Your command. As we seek to be faithful with our own responsibilities by being good stewards of the resources of our land, help us to see that we are doing Your will. May Your purposes be accomplished, O God, as we dedicate our abilities to Your service by being faithful in our daily tasks.

In Your name, we pray. 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.

Mr. BONIOR. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

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

Mr. BONIOR. 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. 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 346, nays 69, answered ''present'' 1, not voting 18, as follows:

[Roll No. 100]

YEAS—346

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehner
Bonilla
Bono
Borski
Boucher
Brewster
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clayton
Clement
Clinger
Coble
Coburn
Collins (GA)
Collins (IL)
Combest
Condit
Conyers
Cooley
Cox
Coyne
Cramer
Crapo
Cremeans
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Dellums
Diaz-Balart
Dickey
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Engel
English
Ensign
Eshoo
Everett
Ewing
Farr
Fattah
Fawell
Fields (LA)
Fields (TX)
Flake
Flanagan
Foley
Forbes
Ford
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Jones
Kanjorski
Kelly
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Meehan
Meek
Metcalf
Meyers
Mica
Miller (FL)
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nadler
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Oxley
Packard
Parker
Pastor
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Porter
Portman
Poshard
Pryce
Quillen
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula
Richardson
Riggs
Rivers
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Roybal-Allard
Royce
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schumer
Scott
Seastrand
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stokes
Studds
Stump
Talent
Tanner
Tate
Tauzin
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Tucker
Upton
Velazquez
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—69

Abercrombie
Ackerman
Becerra
Boehlert
Bonior
Browder
Brown (CA)
Chapman
Clay
Clyburn
Coleman
Costello
Crane
Deutsch
Dicks
Evans
Fazio
Filner
Foglietta
Frank (MA)
Gutierrez

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

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Hall (OH)	McKinney	Sabo
Harman	Menendez	Schroeder
Hastings (FL)	Mfume	Skaggs
Hefley	Miller (CA)	Stark
Hefner	Mineta	Taylor (MS)
Hilliard	Neal	Taylor (NC)
Hinchey	Ortiz	Tejeda
Jacobs	Owens	Thompson
Jefferson	Pallone	Towns
Kaptur	Payne (NJ)	Traficant
Kennedy (MA)	Pelosi	Vento
Klink	Pickett	Visclosky
LaFalce	Pombo	Volkmer
Lantos	Pomeroy	Waters
Lewis (GA)	Roemer	Wolf
Lipinski	Rush	Yates

ANSWERED ''PRESENT''—1

Goodling

NOT VOTING—18

Andrews	Furse	Quinn
Collins (MI)	Houghton	Reynolds
Cubin	Kasich	Smith (NJ)
Durbin	Kennedy (RI)	Stockman
Emerson	Minge	Stupak
Frost	Orton	Torricelli

□ 1122

Mr. HILLIARD changed his vote from ''yea'' to ''nay.''

Mr. LOBIONDO, Ms. SLAUGHTER, and Messrs. BARCIA, WISE, and SERRANO changed their vote from ''nay'' to ''yea.''

So the Journal was approved.

The result of the vote was announced as above recorded.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore (Mr. LAZIO of New York). Will the gentleman from Washington [Mr. WHITE] come forward and lead the House in the Pledge of Allegiance.

Mr. WHITE 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.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain 10 1-minutes on each side. Further 1-minutes will be entertained after the end of the legislative business tonight.

REPUBLICAN CONTRACT WITH AMERICA

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

Mr. BOEHNER. Mr. Speaker, our Contract With America states the following: That on the first day of Congress a Republican House will force Congress to live under the laws as everyone else, that we will cut committee staff by one-third and cut the congressional budget. And we have done this, and much, much more.

It goes on to state that in the first 100 days we will vote on the following items: A balanced budget amendment, and we have done this; unfunded mandates legislation, and we have done this; line-item veto legislation, and we have also done this; a new crime package to stop violent criminals that we are in the process of now; welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for families to lift Government's burden from middle-income Americans; national security restoration to protect our freedoms; Senior Citizens Equity Act to allow our seniors to work without Government penalty; Government regulatory reform; commonsense legal reform to end frivolous lawsuits; and congressional term limits to make Congress a citizen legislature once again.

My colleagues, this is our Contract With America.

BASEBALL IS NOT JUST A GAME

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

Mr. BONIOR. Mr. Speaker, baseball is not just a game of Mantle and Ruth and DiMaggio.

Baseball is a game of that working mother who sells peanuts outside Camden Yards.

It is a game of that father who ushers people to their seats at Tiger Stadium.

Baseball is a game of tens of thousands of working men and women like them who clean the seats and drive the buses and work in the restaurants and hotels outside the stadium, often for very little pay.

And today, as we watch millionaires fight with billionaires to come to an agreement, it is those average Joes who are being hurt most by this strike.

Mr. Speaker, baseball is not a small industry.

It is part of the rhythm of America.

It brings balance to a time of chaos and change.

Today, America is not turning its lonely eyes to Joe DiMaggio.

It is turning its eyes to us.

And it is time we join the President, step up to the plate, and help put an end to this baseball strike.

AFTER THE CONTRACT

(Mrs. SMITH of Washington asked and was given permission to address the House for 1 minute.)

Mrs. SMITH of Washington. Mr. Speaker, this has been a dynamic month as a freshman. It is just a little over a month ago that we came with a lot of promises to the American people. We promised a balanced budget amendment, line-item veto, and we are marching on.

I was just interviewed by a newspaper and asked, ''What do you think?''

I said, ''Well, I said I would never run because this Congress will never do anything, and just 6 months ago I was a write-in candidate, and I was recruited, and I said, 'O.K., I'll go for 2 years.'''

I have to stand before my colleagues today and say, ''This Congress has done more than I have seen any Congress do in 2 years.''

After the contract, Mr. Speaker, we are going to do more, and we are going to take up some of the tough issues.

Today we have introduced a bill, a group of freshmen, that will eliminate gifts and trips. This will be a tough one to take on, but both our leadership, the committee chairs, and all of us believe that it is time that we take on this issue. It will be heard right after the contract. It is something very, very important that we do.

This Congress is not only good, but we also have a high integrity, and we are going to make sure that the American people understand that.

MR. ARMEY'S WARDROBE AND THE MINIMUM WAGE

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

Mr. GUTIERREZ. Mr. Speaker, I do not mean to harangue the distinguished major leader. However, I heard Mr. ARMEY say that he would fight an increase in the minimum wage with ''every fiber in his body.''

Well, I want him also to consider the fibers on his body: the fibers that make up his shirt, his suit, his socks, his tie.

If his clothes were made here in USA, then I would bet that some of those fibers were sewn together—by workers earning the minimum wage.

As public servants, we should be willing to give our constituents the shirts off our back.

Instead, in Mr. ARMEY's world, we take the shirts that they make for us, put them on our backs, and then tell them that they are not even worth the $4.25 an hour that they got making that shirt. Mr. ARMEY may be the majority leader in this House, but he does not speak for the majority of Americans, most of whom want us to honor our workers with a decent, liable wage.

We have all heard the story of the ''Emperor who had no clothes.'' Well, if it were not for minimum wage employees, we would hear the story—the true story—of the majority leader who had no clothes.

Let us keep that in mind as we debate the minimum wage.

□ 1130

INTRODUCTION OF TRAVEL AND TOURISM LEGISLATION TO BE FORTHCOMING

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

Mr. ROTH. Mr. Speaker, we in Congress need to give additional attention to the American travel and tourism industry. Do Members know that travel

and tourism creates a $63 billion business, and that it is the Nation's second largest employer?

Last year in Wisconsin, for example, tourism brought in some $6 billion. That is more than $17 million a day, and it creates jobs for some 128,000 workers. In my district, people vacationing or traveling for business spent $700 million and created 18,000 new jobs. And that is true of just about every single congressional district in America.

Restaurants, hotels, service stations, gift shops, rental services, and taverns all rely on the tourism dollar. We in Congress need to recognize this industry for the jobs and prosperity it creates.

Mr. Speaker, I ask the Members to call my office to sign on as original cosponsors on far-reaching travel and tourism legislation that I will be introducing.

U.S. TRADE POLICY SEES NO CHANGE, AMERICAN JOBS STILL THREATENED

(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, everybody was cheering because the Trade Representative finally stood up to those Chinese dictators. Not for long. At this moment they are negotiating a $8 billion energy deal with China. Beam me up. John Wayne is rolling over in his grave.

When will we learn, Congress, that from Nixon to Clinton this policy of engagement is nothing more than a policy of surrender that is killing the American workers. I say enough is enough. No more wimp-outs, no more deals, no more promises. Congress should strip China of its most-favored-nation trade status or Congress has no anatomy at all.

Mr. Speaker, the last I heard, it was still Uncle Sam. Let us not treat him like Uncle Sucker anymore.

THE ONGOING RECORD OF THE 104TH CONGRESS

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

Mr. BALLENGER. Mr. Speaker, I hope the American people listening note the contrast between what the Democrats are talking—trivial, mean-spirited nonsense—and what we are talking about—the important issues facing America. It is a pity that they have nothing worthwhile to say.

If there is one thing the American people appreciate is hard work. After all, we are a nation built on hard work.

Well, Mr. Speaker, I am proud to report that the statistics are in, and this January was the most productive since before 1981. Let's compare some average numbers for the first January in each Congress from 1981 to 1993 with the January just ended.

Number of hours in session—1981–93: 28. This Congress: 115.

Number of votes—1981–93: 9.3. This Congress: 79.

Number of committee/subcommittee sessions—1981–93: 25.4. This Congress: 155.

Number of measures reported out of committee—1981–93: 1.6. This Congress: 14.

Mr. Speaker, the numbers speak for themselves. This has been the most productive Congress in recent history.

SUPPORT URGED FOR RAISING THE MINIMUM HOURLY WAGE

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

Mr. FIELDS of Louisiana. Mr. Speaker, I rise today to commend the President on recommending a minimum wage increase for the hard-working people of this country.

There are people who wake up every single morning in this country, go to work every day, and at the end of the day they are still poor, not because they are lazy but because we need to raise the minimum wage.

It is an absolute shame, Mr. Speaker, that there are people who walk into this Chamber making $550 a day and tell people who are making a mere $680 a month that they are not entitled to a cost-of-living adjustment. I find that to be absolutely outrageous at best.

Mr. Speaker, we have not raised the minimum wage since April 1991; according to the Bureau of Labor Statistics, there are an estimated 11 million workers who earn the minimum wage, two-thirds of which are adults.

Sixty percent are women, many are heads of the households.

Finally, Mr. Speaker, what better way to get people off of the welfare rolls, than by giving them a chance to be on a payroll that pays a decent wage.

Mr. Speaker, I urge my colleagues to stand up for the working people in the country and vote ''yes'' to a minimum wage increase, so that people can get paid for the hard work that they do every single day of their life.

THE HOUSE SETS A NEW RECORD FOR PRODUCTIVITY

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

Mr. MARTINI. Mr. Speaker, correct me if I am wrong, but was it not Casey Stengel who often said, ''You could look it up''?

Well, you could look it up, Mr. Speaker. When we have our 100th vote sometime today, we will have set a new record for productivity. Not only have we had 100 votes earlier than any other Congress in the last 15 years, but we have also had more votes.

Yes, Mr. Speaker, it has been hard work. But look at what we have to show: A balanced budget amendment, a line-item veto, an unfunded mandates bill, and maybe most important, a reformed Congress that is restoring the faith of the American people in their Government. After 40 years of one-party rule, this is no small achievement. It comes from working hard and keeping promises.

Today we will keep another promise when we continue work on the crime package. So far we have provided restitution for victims of crime. By the close of business today, we will have put an end to technical loopholes and established an effective death penalty.

Mr. Speaker, it is all part of the real change America wants.

MANDATORY BINDING ARBITRATION RECOMMENDED TO SETTLE THE BASEBALL STRIKE

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

Mr. WILLIAMS. Mr. Speaker, big league ball players, managers, league owners, play ball.

In the last Congress, last September, I introduced a mandatory binding arbitration bill to try to save this year's season for the national pastime. I reintroduced that bill in this Congress last month.

I have been working with the President and the Secretary of Labor, and the President is writing and will send up this week his preference for binding arbitration, and I will be introducing that. Let us hope that the leadership of this House will play ball with the President. Let us save the 1995 baseball season.

SUPPORT URGED FOR BILL TO LIMIT FEDERAL APPEALS FOR CONVICTED FELONS

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

Mr. WHITE. Mr. Speaker, in 1982, in my district, a man named Charles Campbell slit the throat of an 8-year-old girl, her mother, and a next-door neighbor. He was convicted by a county jury, and under elaborate procedures designed to give him every benefit of the doubt, he was sentenced to the death penalty by a separate jury. Yet last April, 12 years after his sentence, the sentence had still not been carried out.

Why? He had spent his time in five separate appeals, three Federal appeals, trying to evade his sentence. None of the appeals had any merit, and he was finally executed last May.

Mr. Speaker, none of us is happy when a criminal has to be executed, but the present system makes a mockery not only of the death penalty but

of our entire system of criminal justice. We have to be clear that when we impose a sentence, we are going to carry it out, and that is why I hope every Member of this House will give serious consideration to the bill we will consider this afternoon that will limit the number of Federal appeals for convicted criminals.

RAISE THE MINIMUM WAGE

(Mrs. MALONEY asked and was given permission to address the House for 1 minute.)

Mrs. MALONEY. Mr. Speaker, there has been much rhetoric in this House about helping working families. Yet that rhetoric rings hollow when there is vocal opposition to raising the minimum wage.

Where I come from, if you work full time making only $4.25 an hour, you are living in poverty. The current minimum wage offers little incentive to go off welfare and find a job.

Some say that increasing the minimum wage will cost jobs, but study after study shows that is just not true. The minimum wage is at its lowest real level in 40 years. But some in the majority seem out of touch with just how little the minimum wage buys.

If I were to propose that Members of Congress make only $4.25 an hour, people would call that proposal ridiculous. It is ridiculous. Members of Congress cannot live on $4.25 an hour, and neither can anyone else.

Have a heart, raise the minimum wage.

□ 1140

SUPPORT H.R. 729

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

Mr. JONES. Mr. Speaker, last week the State of North Carolina executed Kermit Smith for the brutal kidnaping, rape, and murder of a college cheerleader in 1980. Because of the burdensome appeals process, the case dragged on for 14 years, going before 46 judges and the U.S. Supreme Court 5 times. The victim's family suffered each and every time the case was brought up for review.

Why must we penalize the victims and their families? Haven't they gone through enough. Honest taxpaying citizens question why criminals spend an average of 15 years on death row appealing their cases. They question the enormous cost of the appeals process. They question the amount of time courts spend hearing these cases, while in turn ignoring other pressing matters.

We, as Members of Congress, have the obligation and responsibility to streamline this process for the victims' families and the law-abiding citizen. The Effective Death Penalty Act is a step in the right direction. It sets time limits for the appeals process. We must support H.R. 729.

TRUTH NEEDED ABOUT SURGEON GENERAL NOMINEE

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

Mr. MCINNIS. Mr. Speaker, well, we have another issue boiling out there. It is the issue of the appointment of the Surgeon General, and this issue is about credibility, credibility, credibility, credibility.

This is how the story goes so far. The Surgeon General has the administration supply information to the chairwoman of the Senate committee which will hear the confirmation. That information is that he had only performed one abortion.

Later in the day that is revised by the nominee, who says, ''Well, it was not really one. I think it was less than a dozen.''

Now all of a sudden out there it was not one, it was not a dozen, it is 700.

What is the truth? I am very concerned that we will get a Surgeon General nominee out there who is going to draw away and distract from the real issues of health care in this country and make the focus his credibility. If he is not telling the truth, if the administration is not giving us the truth, he ought to step out and let somebody else in.

APPOINT OUTSIDE COUNSEL TO INVESTIGATE GOPAC

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

Ms. ESHOO. Mr. Speaker, according to the Los Angeles Times a Wisconsin couple gave $700,000 to GOPAC between 1985 and 1993. That is a lot of money.

The cornerstone of Federal election law is disclosure, full disclosure. Within the past 5 years, GOPAC has raised more than $7 million. The American people should know where this money came from, did these donors get anything in return, and are there any conflicts of interest?

Mr. Speaker, these are important questions, but we cannot get answers because GOPAC refuses to provide a list of its past contributors and how much they contributed. What we know is that many of GOPAC's current donors have issues pending before the Congress. In light of these potential conflicts of interest, an outside counsel should be appointed to investigate these matters.

The time has come for the House of Representatives, especially the new majority, to live up to their own rhetoric and call for an outside counsel to investigate where GOPAC's money has come from and how it has been used. The American people deserve to know.

A NEW CONGRESS

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

Mr. GANSKE. Mr. Speaker, the eyes of the American people are on the House of Representatives, and for a change they like what they are seeking. Recent polls show that the job approval rating for Congress has more than doubled since we began work in January, and the operative word is ''work.''

The 104th Congress is working hard, keeping its promises, and making real changes. Congress matters again. The House of the people is getting on with the business of the people at a pace unprecedented in modern history.

But make no mistake, we are not confusing effort with results. Here are some of the things we have done: We have reformed the rules of Congress; we passed a balanced budget amendment; we passed the line-item veto; we passed the unfunded mandates restriction; and we are well on the way to passage of a vastly improved crime bill.

This is a new Congress, Mr. Speaker, a can-do Congress that is worthy of the people that we were sent here to serve.

MINIMUM WAGE NOT TIED TO MEXICO

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

Mr. FRANK of Massachusetts. Mr. Speaker, I am glad to hear the Republicans talk about how they want us to be able to work, because I take that to mean that they will not try to bottle up the President's thoughtful, compassionate proposal to raise the minimum wage.

Now, I was a little concerned when I read the Speaker's opposition to it. I was especially puzzled when I saw that he said that one reason we could not afford to raise the minimum wage of American workers to a living wage, and it is well below that now, is that wages are so low in Mexico.

I am puzzled because when we were dealing with the question of an American guarantee for Mexican loans, many of us on the Democratic side felt that we should address in that context wages in Mexico, and we made the point that we wanted to insist on mechanisms in Mexico that would no longer arbitrarily depress the wages of Mexican workers, but allow them to rise. We were told that that was really none of our business.

But now the Speaker tells us that precisely because Mexican wages are so low, he cannot support giving American workers $5.15 an hour. This is validation of the point we made with regard to Mexico, and it is further argument for raising the American minimum wage.

MAKE WELFARE A CASHLESS SYSTEM

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

Mr. FRANKS of Connecticut. Mr. Speaker, we must take cash out of our current welfare system and replace it with a debit card. Welfare dollars are taxpayers' dollars, and we need and deserve to have a proper accounting of these funds.

A Columbia University study claimed that 25 percent of welfare recipients are drug abusers. If you have high unemployment, high drug trafficking, and high welfare use in our cities, where is the money coming from? It is obvious that we, as taxpayers, are inadvertently fueling our criminal drug industry by welfare.

A picture debit card system will help solve this problem, since drug dealers do not take American Express or any other form of plastic. The proper dispensing of welfare funds by electronic transfer will improve our housing stock in our cities, lower our utility bills for our elderly, help make the banking industry more efficient, and, most importantly, allow our children to receive their due assistance. This could be the best form of eradicating welfare fraud.

INSTITUTIONAL AND POLITICAL DISCRIMINATION ALIVE AND WELL IN BUTLER, GA

(Ms. MCKINNEY asked and was given permission to address the House for 1 minute.)

Ms. MCKINNEY. Mr. Speaker, while many people in this House feel that institutional and political discrimination are a thing of the past, I would like to draw their attention to the tiny town of Butler, GA. After 10 years of no elections, the town of Butler will finally have free and fair elections which do not exclude its 46 percent black population from being represented.

The Eleventh U.S. Circuit Court of Appeals had to order the town's all-white council to open its polls and put an end to rigging elections that kept African-Americans off the town council.

To my Republican colleagues who are anxious to repeal motor-voter, the Americans With Disabilities Act, and the voting rights acts, I say beware. We spend billions of dollars every year to protect and promote democracy abroad, and you want to spend billions more for a star wars defense of democracy at home.

Mr. Speaker, the bottom line is that we are yet to achieve democracy and equality right here at home, and the last thing we need is a bunch of politicians saying that inequality and injustice at home are all right with them.

□ 1150

REQUEST FOR ESTABLISHMENT OF PROCEDURES FOR CONSIDERATION OF A CERTAIN AMENDMENT TO H.R. 666, EXCLUSIONARY RULE REFORM ACT OF 1995

Mr. VOLKMER. Mr. Speaker, I ask unanimous consent that when the House resolves itself into the Committee of the Whole and takes up H.R. 666, there be a time limitation on my amendment of 50 minutes, divided equally between myself and an opponent to the amendment, and that no amendments be permitted to my amendment.

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

Mr. DELAY. Mr. Speaker, reserving the right to object, and I do intend to object, mainly because I do not mind negotiating on limiting time on an amendment, but I do mind limiting the ability for Members to amend the gentleman's amendment.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from New Mexico [Mr. SCHIFF].

Mr. SCHIFF. Mr. Speaker, I just want to bring up the fact that the gentleman from Missouri has raised two questions: A motion to limit time and a motion to make his own amendment unamendable. I wonder if the gentleman could explain why the second portion of that request is there.

Mr. DELAY. Mr. Speaker, continuing my reservation of objection, I yield to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. Mr. Speaker, I had not planned to. When I first negotiated the time limit, I was going to make it in the Committee of the Whole. And it was only going to be basically on 45 minutes. And then I thought 50 minutes was easier to divide than 45.

But from that side of the aisle I heard that some member of the committee from that side of the aisle may even try to preempt me on this amendment or there may be amendments to my amendment or there may be other things to take away my amendment.

Now, I have worked up this amendment, and I would like to have the opportunity to offer it. I am just trying to preclude that and restate my stand on one issue, and that is the BATF. I would just talk about that and limit the time.

I am willing to limit the time as long as we can do that, but if we are going to be getting into a wrangle on this thing, then I am not going to agree to a time limit.

Does the gentleman understand that? We may be here 3 or 4 hours.

Mr. DELAY. Mr. Speaker, continuing my reservation of objection, I understand the gentleman's concern about the time limit. And I might concur and negotiate with the gentleman over a time limit, but if the gentleman would have consulted with the majority on his amendment, I think the majority could have worked with him.

There are many Members on our side that do not want to be limited in being able to amend the gentleman's amendment or even substitute for the gentleman's amendment, or in some cases members of the committee may want to offer the gentleman's amendment, members who are in agreement with the gentleman.

I think it is the privilege of the majority to ask for cooperation and ask for negotiation on unanimous-consent requests.

Mr. Speaker, continuing my reservation of objection, I yield to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, several things the gentleman said made some sense to me, but then I thought I heard the gentleman say some members of the majority might want to offer the gentleman's amendment. That one seemed a little disturbing. The gentleman from Missouri has been working on this amendment. The gentleman is saying that some members of the majority have plans to sort of show the respect for intellectual property rights of the Chinese Government and steal the gentleman's amendment.

Mr. DELAY. Mr. Speaker, I would not characterize it, in responding to the gentleman, as stealing the gentleman's amendment. There are many on our side of the aisle that feel like they could support the gentleman's amendment if it was changed in certain ways. We want the opportunity to investigate that and to do that. To just arbitrarily say that we cannot amend the gentleman's amendment or substitute for it or do something else with it, we just cannot agree to that.

Mr. FRANK of Massachusetts. Mr. Speaker, if the gentleman will continue to yield, then I misunderstood. There is no effort to try to preempt the gentleman's right to offer that amendment as his amendment since he is the one who came up with it.

Mr. DELAY. Mr. Speaker, I think those Members that are on the Committee on the Judiciary, by the rules and by tradition, have the right to be recognized before the gentleman from Missouri. And whether a Member from that committee offers whatever amendment that may pertain to the substance of the gentleman's amendment, we are not prepared right now to say whether that is going to happen or not.

Mr. FRANK of Massachusetts. So the gentleman would have to satisfy himself with that flattery which imitation is the sincerest form of?

Mr. DELAY. Mr. Speaker, I am not sure I understood the gentleman's question.

Mr. FRANK of Massachusetts. I apologize for being unclear. The gentleman from Missouri, having come up with this, the notion that he has to come up with the amendment, having

put it forward, and then loses it because somebody else decides to put his name on it, seems to me unfortunate. But if the gentleman insists that that is what the rules allow, I suppose that is what happens.

Mr. DELAY. Mr. Speaker, continuing my reservation of objection, I yield to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. Mr. Speaker, I recognize that that is what the rules allow. If the gentleman wishes to object, let him object.

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

Mr. DELAY. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

EXCLUSIONARY RULE REFORM ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 61 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 666.

□ 1156

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 further consideration of the bill (H.R. 666) to control crime by exclusionary rule reform, with Mr. RIGGS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Tuesday, February 7, 1995, the amendment offered by the gentleman from North Carolina [Mr. WATT] had been disposed of and the bill was open for amendment at any point.

Are there further amendments to the bill?

Mr. SCHIFF. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I do not rise at this time to offer an amendment. I rise to comment on apparently a news broadcast that occurred last night with respect to the bill, H.R. 666. I cannot tell my fellow Members where this news report took place. I did not see it. But I received some calls this morning which indicated that there was some rendition of what we were doing on the House floor yesterday and today with respect to this good faith exception to the exclusionary rule.

I think, Mr. Chairman, that it is just important to make a point here, and that is, we are proposing to make and broaden an exception to the exclusionary rule which already exists in law. Apparently, the reports were that we are trying to repeal legislatively the entire exclusionary rule, as it was enunciated by the U.S. Supreme Court, first in Federal cases in 1914 and, second, as applied to the States in 1961.

I certainly acknowledge, Mr. Chairman, that, and anyone could tell it from some of the remarks that were made, that there are Members on our side who feel that the entire exclusionary rule should be repealed. There may even be, though we have not heard from them, I would not be surprised if there are Members on the other side who believe that, too.

There is always the argument that no matter how evidence was seized that, if it points to guilt, it should be used. I do not personally share the view of repealing entirely the exclusionary rule. I think the point that the Supreme Court made in the Mapp versus Ohio opinion of 1961 was also important.

In that case of a total disregard of constitutional protections based upon search and seizure, the Supreme Court said, we have tried everything else, now we will try to suppress evidence as a means of encouraging law enforcement officers to comply with the fourth amendment, which we do place on them through the fourteenth amendment.

PARLIAMENTARY INQUIRY

Mr. COLEMAN. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. Will the gentleman from New Mexico [Mr. SCHIFF] yield for a parliamentary inquiry?

Mr. SCHIFF. I yield to the gentleman from Texas.

Mr. COLEMAN. Mr. Chairman, I thank the gentleman for yielding to me.

My inquiry, Mr. Chairman, is to get an understanding of what place we are in the procedure before the committee. Is it correct that any of us could now rise and seek recognition in order to speak on the overall issue of the exclusionary rule or the fourth amendment or the bill, H.R. 666, without dealing with an amendment? In other words, any of us could now rise and speak on the issue?

The CHAIRMAN. That is correct. The bill is open to amendment at any point under the 5-minute rule.

Mr. COLEMAN. But this is not an amendment.

The CHAIRMAN. The gentleman from New Mexico [Mr. SCHIFF] was recognized and was proceeding for 5 minutes.

Mr. COLEMAN. But not on an amendment, am I correct?

The CHAIRMAN. The gentleman from New Mexico has offered a pro forma amendment.

Mr. COLEMAN. I thank the Chair.

□ 1200

Mr. SCHIFF. Mr. Chairman, as indicated, I am not offering an amendment at this time. I have just sought recognition on the 5-minute rule, and I will conclude in a moment here.

Mr. Chairman, I just want to point out exactly where we are. I understand that there are Members who may still, because they so indicated, oppose this particular bill, H.R. 666. I just wanted to emphasize what this bill does and what this bill does not do.

This bill does not repeal legislatively the entire exclusionary rule, or anything even that comes close to it. Speaking for myself, I would not support a bill that would entirely repeal the exclusionary rule.

I think the Supreme Court had a logic in saying that there was a reason to exclude evidence in certain cases that they enunciated, I thought very well, in the Mapp versus Ohio decision of 1961. Rather, we are taking an exception to the exclusionary rule which already exists. It has already been stated by the Supreme Court in the Leon case.

In that case the Supreme Court said that where police officers make an honest error, a good-faith error, that in that particular case it made no sense under the theory of the exclusionary rule, under the theory of trying to motivate law enforcement logic, to suppress that evidence.

We take that a little bit further. In the area of searches without a search warrant, and there are legal searches without a search warrant, a search warrant is not required under constitutional law for every search, any more than it is required for every arrest. There can be arrests without a warrant.

My point is that we are making an extension of an exception that already exists, and I just want to conclude by saying that we are not repealing the entire exclusionary rule, and further, we are not broadening the exception that much.

I understand that Members, when we get to final passage, will vote yes or no as they see fit, but I just wanted to explain exactly what we were doing.

AMENDMENT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Chair would ask the gentleman, is this an amendment that has been printed in the RECORD?

Mr. CONYERS. This amendment has not been printed in the RECORD, Mr. Chairman.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS: Page 3, line 14, strike the close quotation mark and the period which follows:

Page 3, after line 14, insert the following:

''(d) LIMITATION.—This section shall not apply with respect to a search or seizure carried out by, or under the authority of, the Bureau of Alcohol, Tobacco, and Firearms.''.

Mr. CONYERS. Mr. Chairman, this amendment is offered by myself, the gentleman from Missouri [Mr. VOLKMER], and the gentleman from Michigan [Mr. DINGELL].

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, I wish to take this time to thank wholeheartedly the gentleman from Michigan [Mr. CONYERS] for offering this amendment on my behalf.

I will not take a lot of time because I will let the gentleman from Michigan go back, and then we will take a couple hours, three hours to debate this. I would just like to have plenty of time.

Mr. Chairman, I would like to point out that the gentleman from Michigan [Mr. CONYERS] has offered this amendment on my behalf because of what I heard on the Republican side earlier today, this morning, that one of their Members on the Committee on the Judiciary may, may supplant my opportunity to offer this amendment by offering it themselves, or offering a similar amendment or something that has changed.

As a result of that, and not knowing what was going on on the Republican side, and whether they were going to do it or not do it, as a result, in order to preempt them, I asked the gentleman from Michigan [Mr. CONYERS] to join with me in this amendment, which he has been willing to do so that we at least have the opportunity on this side to offer our amendment.

Mr. Chairman, I hate to see, I really do, this type of activity, because I do not believe this type of activity is very conducive to comity in this House and the running of this House.

In my 18 years, Mr. Chairman, in my 18 years I have never known of anybody in our party after an amendment has been noticed, an amendment had been notified and people have all been notified, that Members of the other party, this party, when the minority party has done that, no Member, no Member ever in 18 years has ever said We may offer an amendment ourselves to preempt you the right to offer that amendment.

Mr. Chairman, what is going on? I thought just yesterday we started out and we had good comity. The gentleman from Texas [Mr. ARMEY], their leader, had been able to work with our leader and people and work out the time frames on these crime bills. Then they come up with some little dig like this.

Mr. Chairman, I think it is really beneath anybody as a Member of this House to come up with such a strategy. It is childish, immature, and I cannot understand their leadership and whoever came up with that strategy at all. I am really disappointed that some people on that side would even think of doing such an insidious tactic.

Mr. SCHIFF. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I want to say, although it is certainly true that the gentleman from Missouri [Mr. VOLKMER] has worked on this amendment for quite some time, I want to say that the accusations of some kind of insidious kind of motivations I think go past where the situation calls for.

The fact of the matter is that we are proceeding under an open rule. This, of course, among other things, means that unlimited amendments can be offered. Those of us who are presently monitoring this bill on the majority side, speaking especially of myself at this moment, have a grave reservation about the gentleman's amendment, despite the fact that a great deal of information has come out that is very questionable, I am sorry to say, about the Bureau of Alcohol, Tobacco and Firearms, which I hope will be explored even further through the committees of this House.

I want to say that I have a reservation about excepting an entire police agency in this bill over certain incidents. It is a matter of fact that there are still, even though I have this reservation, there are members of my party who are more strongly agreed with the gentleman's amendment, and they wanted their opportunity to present a similar view.

Therefore, I do not think that is the same as some plot here to keep the gentleman from Missouri from being acknowledged for his role in this amendment.

Mr. DINGELL. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, the basic legislation before us is bad legislation. It would cause a raid by the BATF or any other agency of Government, to be presumptively valid if there was any property which was seized pursuant to the warrant.

That means any firearms owner, owner of a shotgun, sporting ammunition, sporting weapons of any kind, or target weapons in this country is subject to being raided without the slightest semblance of a defense as to the illegality of the search or seizure, whether the law enforcement authority has a warrant or not.

Mr. Chairman, let me read some words from William Pitt which I think we should keep in mind as we consider the fourth amendment, which is at least as precious as the first and the second.

Here is what William Pitt had to say, a great British parliamentarian:

> The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail, its roof may shake; the wind may blow through it: the storms may enter, the rain may enter, but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement!

What I am saying, Mr. Chairman, is that in this country, until this legislation, under interpretations of the Constitution by conservative courts, not by a congregation of radicals, the ordinary citizen was able to assume that he was protected in his home against improper raids and against improper procedures under warrants, or lacking warrants, by law enforcement persons entering his home. Under this legislation that will no longer be so.

□ 1210

A man had a right to assume that he was secure in his person, in his property, in his home, and he had the right to know that he was protected by the courts.

H.R. 666 would do away with those protections, and particularly so in the case of owners of firearms and sportsmen in this country who use their firearms solely for law-abiding purposes, legitimate sporting and hunting and self-defense purposes.

Now, having said those things, let us look a little bit at what it is that BATF has done over their history. I want my colleagues to go back with me to the raid that was performed on the home of a law-abiding citizen by the name of Kenyon Ballew. BATF first entered an apartment upstairs where they held a shotgun at the head of some 8-year-old children. When they found they had raided the wrong place, they then went downstairs, and they broke through a back door in the man's home which was never used. It was essentially a back door. They seized the man's wife and threw her into the hall in only her underpants. Mr. Ballew was coming out of the shower with a cap and ball revolver seeking to defend his home and his wife against a noisy band of intruders who bore no indicia of their service as law enforcement officers.

Indeed, the event was classed as a training exercise. Mr. Ballew was shot in the head, and he is today, if not dead, still a cripple and still partially paralyzed, incapable of speech.

This whole unfortunate matter was covered up under the aegis of Mr. Connelly, the then-Secretary of the Treasury. My colleagues on the majority side of the aisle will remember Mr. Connelly.

I want to tell you about what they did after the raid was concluded. They went outside, still dressed as hippies with beards and in scruffy clothes, and at which time they first put on their BATF armbands to show that they were law enforcement officers engaged in proper exercise of their legal authority, and that they had given proper warning to the individual of their authority which, in fact, they had not.

I want to tell you a couple of other things about the BATF. BATF ran a citizen of the State of New Jersey off the road while he was driving down the road in New Jersey with his wife and kids. They beat him up. Then they found that they had attacked the wrong citizen, and then they said, ''If you report this to anyone, we will be back and give you some more.''

Now, I want to tell you about an innocent collector, whose home they raided. They seized all of his valuable firearms, all legal, took them, put them in barrels, damaged them, that is the firearms. The citizen then had to sue to recover the firearms which were his lawful property, and whose proper ownership was never contested by the BATF or anybody else. But the law-abiding citizen had to go to court to sue, to recover property improperly taken from him.

The records of BATF are rich with this sort of abuse of the rights of citizens.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 4 additional minutes.)

Mr. DINGELL. The consequences of the behavior of the BATF in these kinds of cases is that they are not trusted. They are detested, and I have described them properly as jackbooted American fascists. They have shown no concern over the rights of ordinary citizens or their property. They intrude without the slightest regard or concern.

Now, if you want a more recent event, take a look at what they did in Waco, TX. Is that a defensible event? Scores of Americans were killed because of ineptitude by BATF acting under legal process, as they said, and that whole matter is going to be suppressed after scores of Americans have been killed because of the ineptitude and crass misbehavior of the BATF.

Now, let us take a look at what this legislation does. H.R. 666 says that there is no defense in the courts against that kind of behavior by BATF or anyone else. The amendment offered by the gentleman from Missouri says that BATF is not included within that rubric. They are not protected in their misbehavior and they must defend their cases on the basis of the propriety of their behavior as now defined under law.

Remember, all that the law now says is that before you raid a man in his home you have to do it incident to a valid arrest or you have to do it with a arrest or search warrant. I do not think that is excessive in a free society, in one where we expect the ordinary citizen to be secure and protected in his home.

Now, what is a citizen to do if he is improperly raided under H.R. 666? There is nothing, literally nothing, that the ordinary citizen can do. The only defense which a citizen has under this kind of improper raid by BATF or by any other agency, State or Federal, was to have the information and the evidence improperly seized suppressed. H.R. 666 sanctifies misbehavior, and it makes such yard, and such seizure of property presumptively valid. It eliminates any question of propriety by the authorities.

Now, it is fair to say that with regard to criminal misbehavior, that law enforcement agencies are able to and have consistently watched wrongdoers over a long period of time. They built their cases with care. Having built their cases with care, they then go to court and get a proper warrant. Then they would proceed to execute the warrant.

H.R. 666, if enacted, will be applied to the ordinary citizen, not to the hardened criminal, but rather to the law-abiding citizen who has a rifle or shotgun in his closet or hanging over his mantlepiece or under his bed, and he is going to be the victim of this kind of legislation. His protection of home, property and personal security will be ended.

This is bad legislation. It has been said today it does not affect the fourth amendment. In point of fact, it blows a huge hole in the fourth amendment. What it says is that a raid conducted improperly without proper warrant, or without warrant at all, is presumptively valid, and the burden then shifts on to the defendant who has been wronged by his Government, by the agencies of his Government, acting under either no process or improper process to defend himself. The wronged citizen is compelled to retain a lawyer. He is compelled to go through a long and costly court procedure, and he cannot, under H.R. 666, get protection afforded him by the requirements for a proper search. He cannot have property seized under an imperfect search warrant, or no search warrant excluded from the trial. That is literally the only defense that a citizen has against improper behavior in terms of search and seizure by law enforcement personnel.

The attack on H.R. 666 is not an attack on law-abiding citizens. It is an attack on wrongdoers. It is a bad piece of legislation.

I urge the legislation be rejected, and I urge the amendment offered by the gentleman be adopted.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment.

I must say I was pleased to hear the gentleman from Michigan quote William Pitts. We were thinking of Billy Pitts on our side whom we all miss, and I am glad, but I guess it was an earlier William Pitts to whom he referred.

Waco suppressed: Gee, I remember sitting through an exciting 1-day hearing under the aegis of the former chairman of the House Commitee on the Judiciary where we heard all and sundry witnesses on the Waco situation. I do not think it was suppressed, at least insofar as that 1-day hearing was concerned.

But I will just point out that the Bureau of Alcohol, Tobacco and Firearms is an executive agency. It is part of the Treasury. Former Senator Bentsen, who was the Secretary of the Treasury, was its commander in chief. The present Secretary of the Treasury is the commander in chief, for want of a better title, of the Bureau of Alcohol, Tobacco and Firearms.

And so this attack on an executive agency is interesting. I would suggest if it is so horrible, let us get rid of it. I would suggest the gentleman introduce legislation to dissolve the Bureau of Alcohol, Tobacco and Firearms.

Instead, you want to make an exception to a general rule which we are trying to adopt, modifying the exclusionary rule so guilty people who possess evidence, contraband, when they are arrested, that it gets admitted into evidence. To make an exception for a single agency of Government is really foolish.

It would seem to me, if the Bureau of Alcohol, Tobacco and Firearms is so oppressive, we ought to get rid of it. Let us attack it head on. Let us hold hearings. I want to tell the gentlemen on the other side, we are going to hold hearings. We are going to hold hearings on the excessive use of force as alleged in Idaho, as alleged in Waco and other places.

□ 1220

We are going to look at that, absolutely. We are not going to sit passively by or have 1-day hearings but to carve out an exception to the exclusionary rule for one agency of Government which is an executive agency of Government makes no sense.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman for yielding.

Mr. Chairman, I express great affection and respect for my friend.

Mr. HYDE. And it is mutual.

Mr. DINGELL. I am just curious. The gentleman is chairman of the Committee on the Judiciary. I am curious why he is in such a rush to get this bill on the floor before he has looked at the kind of misbehavior that I have described or the kind of misbehavior that the gentleman is now describing.

Mr. HYDE. Well, all I can say is I do not recall the gentleman introducing legislation to dissolve, to dissolve the Bureau of Alcohol, Tobacco and Firearms. I would think that would be the way to go if what the gentleman is half true.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from New Mexico.

Mr. SCHIFF. I thank the chairman for yielding to me.

Mr. Chairman, I oppose this amendment also, and I do so because, as I understand the arguments that are being made, they come down to this: The argument is that the Bureau of Alcohol, Tobacco and Firearms is riding roughshod over the rights of innocent law-abiding people, and I want to point out that this was the testimony at our hearing on the exclusionary rule that the exclusionary rule does not protect honest citizens from a law enforcement agency or law enforcement officers who are bent on ignoring constitutional rights. And the reason for that is law-abiding citizens are not going to have any evidence of crime in their possession which can be suppressed under any version of the exclusionary rule.

That is why this amendment is misdirected to this bill. But the chairman's suggestion to look more closely at the Bureau of Alcohol, Tobacco and Firearms for other action is quite appropriate.

Mr. LIGHTFOOT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment that is being offered here this afternoon, for a number of reasons. I think that the amendment is probably motivated by legitimate questions and concerns about ATF's involvement in a couple of incidents.

But as Treasury, Postal Service's chairman and former ranking member, we have had an opportunity to review these incidents and work with ATF and a number of other people. Not being the boot-jacked Gestapo, as they were described earlier, they are good, hard-working Federal employees who have families, men and women with children, who are trying to make a living and do what they think is right.

Earlier reference was made to the situation at Waco, TX, and I would suggest to my colleague from Missouri and others who are so incensed about the Waco issue that rather than respond to all the editorial vitriol that we have read, which much of it is based in untruths and innuendoes and hearsay, that they take an actual look at the case.

If you look at the Waco situation, the warrant that was used initially was a valid warrant. Eleven people were charged. Eight of those people have been convicted and are now in jail.

There were fully automatic weapons in the Davidians' compound, fully in violation of the 1938—1934—law, which prohibits use of ownership of fully automatic weapons in this country. It was a valid warrant.

I also suggest to the gentleman there were other law enforcement agencies involved in the Waco situation, as was there was in Idaho. In fact, the fire was not the result of the ATF, it was a result of the FBI. Attorney General Reno, if you will remember, stood up and said, ''I take the heat for this. It was my decision.''

ATF is not a part of the Justice Department; they are under the Treasury Department. It was two separate law enforcement agencies.

In the situation in Idaho, the ATF had made a clean arrest. But when it got into the fire fight, it was the U.S. Marshall Service involved in that incident.

So I would just suggest, as the chairman of our subcommittee, we have hearings that are coming up and if the gentleman would like to withdraw the amendment, we certainly would make available for him the opportunity, or anyone else who would like to be there, to talk to ATF to bring this thing down.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. LIGHTFOOT. I yield to the gentleman from Missouri.

Mr. VOLKMER. I thank the gentleman for yielding.

Mr. Chairman, I am not about to come and testify and talk to the gentleman's subcommittee because it appears to me, from just listening to the gentleman's statement, that the gentleman is completely in agreement with whatever Bureau of Alcohol, Tobacco and Firearms has done in the past, including keeping law-abiding citizens' guns from them after they have executed a search warrant, no charges ever filed. They have kept those guns and still, even after filing suit, spent all kinds of money to get them back. The gentleman is saying that is good stuff.

Mr. LIGHTFOOT. Reclaiming my time, I say to the gentleman from Missouri I have stood shoulder to shoulder with him fighting for second amendment rights. I own guns. I used to be a gun dealer. I am a hunter. I will go to the wall protecting the second amendment rights to own a firearm. I think it is important. It is part of the Constitution. I think we should do that.

ATF has been charged with the responsibility of enforcing our Federal gun laws. It is not a popular thing to do. I would suggest, from comments the gentleman from Michigan, [Mr. DINGELL] made, there is probably not a law enforcement agency in this country that you cannot go into and find one of these anecdotal stories where someone was mistreated. Unfortunately, that is the nature of the business because a lot of decisions have to be made under pressure, and sometimes those decisions are not correct, and we will admit they are not correct.

I only say, to single one agency out, as we are doing here, is poorly misdirected. If the gentleman persists with his amendment, I am considering offering an amendment to the amendment which would include in this exclusion the FBI and U.S. Marshals Office. Let's include them all. The gentleman is totally off base. The whole purpose of the exclusionary bill that we are offering anyway does not allow anyone to go in on a raid without just cause. You still have to have a warrant, you still have to do it right. It only addresses the fact that if, during the process of executing that maneuver, you can obtain evidence which later is valuable, it was obtained in good faith, then it would be allowed to be admissible in courts. It does not exempt anyone's rights or cause anyone to be under undue pressure from law enforcement people. If you talk with law enforcement people, every day those people work very hard. A lot of times they do things that are very much done in good faith, but it gets kicked out in the courtroom, some criminal goes free, and we really do not solve the problem.

I really think we have a bit of a witchhunt here.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to share my sense of happiness that my Republican colleagues have succeeded so soon in improving American Government. We have just heard virtually every one on the Republican side rise to speak in praise of the Bureau of Alcohol, Tobacco and Firearms, to defend the actions in Waco, to defend the actions in Idaho.

Now, it had not previously been my experience that Republicans were as supportive of the law enforcement efforts of the Clinton administration. And I guess Republicans said that once they got into the majority, things would get better. Well, they have apparently gotten better more quickly than I had thought, because we have been hearing from our Republican colleagues today words of praise and support for the law enforcement Federal agencies that I had not previously heard. I appreciate this.

The simple act of the Republicans switching from minority status when they got to offer amendments and be critical, to majority status where they are now really responsible has apparently had the wondrous byproduct of improving the quality of the executive branch.

Republicans, who on the whole when they were in the minority were quite critical of virtually all the actions of the administration, now they are in the majority, with the responsibility for running this operation, find virtues heretofore unchronicled in various of the Clinton administration entities.

I want to say that I am pleased to welcome this spirit of constructiveness. There is a higher degree of support coming forward than I have heard before. I am glad they have found on a second look that there is a lot more to be supported.

I have myself not been critical of the Bureau of Alcohol, Tobacco and Firearms. I had not previously recollected such Republican support. I hope it will be noted the extent to which the Republican leadership finds that the Federal law enforcement people at Waco and Idaho should be praised.

I thank the gentleman.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman from Massachusetts for yielding to me.

Mr. Chairman, in the interest of comity, I ask unanimous consent to withdraw the amendment and that the gentleman from Missouri [Mr. VOLKMER] be recognized immediately to offer the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

Mr. SCHIFF. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. FRANK of Massachusetts. Mr. Chairman, I will reclaim my time to say that I am sorry that the people on the other side continue to want to deny Mr. VOLKMER the credit to which he is entitled for bringing this amendment forward.

But I do think that it is clear enough to say that this was the idea of the gentleman from Missouri. Apparently,

respect for law and order does not extend far enough to not try to steal credit from the gentleman from Missouri.

□ 1230

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, could I ask the gentleman from New Mexico [Mr. SCHIFF], my friend, what the basis of his objection is? We have already worked in comity during this bill and during the committee. I am puzzled about this. This is a very small technicality, and would the gentleman just tell us what is on his mind?

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from New Mexico.

Mr. SCHIFF. Mr. Chairman, I am not sure how parliamentary it is to ask for a reason for objection to unanimous consents. I do not recall their side ever having to explain, but I will be happy to.

The gentleman from Michigan stood up to offer the amendment. I guess their side thought we did not know what amendment it was they were going to offer. The gentleman from Missouri [Mr. VOLKMER] did not offer the amendment; the gentleman from Michigan offered the amendment.

I say to the gentleman, ''It is your amendment, and it should stay your amendment. We did not determine the order in which your side stood up to offer this amendment.''

Mr. FRANK of Massachusetts. Reclaiming my time, Mr. Chairman, I would just ask my friend, ''This unwillingness to let the gentleman from Missouri take credit for his amendment; was it something he said?''

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Michigan.

Mr. CONYERS. May I point out to my friend, still my friend, that the gentleman from Missouri [Mr. VOLKMER] is one of the cosponsors of the amendment with the gentleman from Michigan [Mr. DINGELL]. We are not adding anything, and it may not come as news to my colleague that he had worked on this amendment, not only now, but for quite a while.

Mr. FRANK of Massachusetts. Mr. Chairman, I will yield to the gentleman from Missouri [Mr. VOLKMER] in the first place, but I suggest, to economize, maybe the gentleman from Michigan can ask unanimous consent to change his name to VOLKMER.

Mr. Chairman, I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, I would just like to point out to the gentleman from New Mexico [Mr. SCHIFF] that we have 2 years in which to operate in less than a little over a month, is what we have to operate under. If the gentleman persists in making such what I call minuscule objections, objections for minuscule reasons, I would say to him, ''You can rest assured, gentleman, that this gentleman knows how to make objections to unanimous-consent requests also.''

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent once more to withdraw the amendment, and that the gentleman from Missouri [Mr. VOLKMER] be recognized immediately to offer the same amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

Mr. SCHIFF. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. BARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have some remarks that go to the substance of the amendment which every person on the other side is the author of it.

I have listened very carefully to the learned remarks, to the gentleman from Illinois, the distinguished chairman of this committee, and I think they are very well spoken and very appropriate.

As the distinguished chairman noted, all of us who care about effective law enforcement, who care about the abuses that all of us have seen in law enforcement over the years, including in recent years, are very concerned and are committed to addressing those problems. Mr. Chairman, there are, however, effective and appropriate ways to address them, and then there are ineffective and inappropriate ways, such as this amendment, Mr. Chairman, which do not really get to the heart of the matter and, in fact, may provide window dressing and refuge for those who really do not want to address the problems.

In addition, Mr. Chairman, with regard to the amendment itself, as a former U.S. attorney and somebody very familiar, I think, with the sorts of joint law enforcement efforts that are extremely important, particularly, but not exclusively, in the area of attacking organized crime and drug trafficking in our country, it is frequent that we in law enforcement, or those who are still in law enforcement, find ourselves involved in trying to orchestrate very complex types of law enforcement activities, and sometimes infrequently those involve the Bureau of Alcohol, Tobacco and Firearms, the FBI, DEA, IRS, State and local agencies; and if in fact, as it is, the intent of those of us who support H.R. 666 to strengthen the role of law enforcement in legitimately carrying out those specific and important types of criminal/anticriminal activities and to ensure that evidence that should be admitted into court is in fact admitted into court under appropriate safeguards which are included in our system of justice, even under H.R. 666, when in fact there may have been a technical violation, but again everything has to satisfy the standard of reasonableness; then I can foresee very clearly and reasonably situations in which the rights of victims and the rights of society in general are going to be harmed if this amendment passes.

For example, Mr. Chairman, if we do have a joint operation involving BATF as well as other agencies, State and/or local and/or Federal, and there is a question that arises as to whether or not evidence should be admitted under the terms of H.R. 666, the fact that ATF may have had some role, whether it is minor or major in that operation, could provide an exception through which a Mack truck could be driven, and we would have in effect defeated the intent of H.R. 666.

So, while I share the gentleman from Missouri's very eloquent statements on this issue, as well as the gentleman from Michigan's very eloquent statements on this issue, I think it does not address the underlying issue that the gentleman from Missouri raised both today and yesterday with regard to the second amendment which I, despite his intimation yesterday, cherish, and know about, and cherish as well as any amendment to the Constitution, but this is not the appropriate vehicle with which to address those very fundamental concerns, and I agree they ought to be addressed, and I do think that this amendment, if it were to go forward, would have the effect of defeating in some instances, but perhaps in very important instances involving major drug trafficking cases, that our Government may choose to bring on behalf of the citizens. This amendment could have the effect of having evidence that really ought to be admitted not admitted, and it could have, therefore, Mr. Chairman, an adverse impact and one that I do not think the gentlemen on the other side of the aisle who are proposing really intend for it to have.

Mr. HOYER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in the strongest possible opposition to this amendment. Its premise is slanderous to 2,700 of our fine law enforcement officers. It is a bigoted statement I say to my friends who have been the subject of bigotry. An NRA letter says that soemhow ATF agents, unlike all the other agents, cannot be trusted. There is no evidence of that. Two hundred sixty-six of those agents since 1920 have lost their lives. Do my friends on this side of the aisle want those agents to believe that somehow they are less trustworthy than other law enforcement agents in this country? I think not. The chairman of the Committee on the Judiciary is correct. If that is our premise, then let us abolish ATF.

My friends in this House, we are talking about crime bills. We are talking about safe streets, and safe schools, and safe communities, and safe neighborhoods. They are threatened today by some of the most violent, vicious

people in America who traffic in guns that will kill people very fast, and a lot of them, not to hunt, not to shot at targets, and they traffic in explosives. We just had a plea by somebody in New York who wanted to blow up the United Nations, undermine the security of the international community. Who investigated and found that conviction? An ATF agent.

Now I think this bill can be argued one way or the other on its merits as to whether you want to extend the exclusionary rule good-faith to warrantless searches or not. I think that is a legitimate debate, but I say to my friend on this side of the aisle: Let us not slander some very good people who daily we ask to go up against some of the most dangerous, deranged criminals in this land who threaten the stability of this Nation.

There is no evidence to support the contentions of the NRA that, unlike all others, and I presume that they would like to see this exclusionary rule applied to the Los Angeles Police Department, or the New York Police Department, or the Dallas or Miami Police Department; they would like that.

□ 1240

Their premise presumably is that they are perhaps not as well-trained or as carefully or as closely supervised as the agents of ATF, and they are wrong—dead wrong. I say to my friend, the chairman of the committee, for whom I have great respect and with whom I am probably going to vote at the conclusion of the consideration of this bill, do not besmirch these officers, do not single them out. There is no evidence on which to say that they are less competent or less concerned with constitutional protections.

They protect our country. We have asked them to do so. We have asked them to do one of the most difficult jobs of law enforcement in this country—dealing with those who traffic in illegal guns and explosives that can kill a lot of people very quickly.

Do not pretend that the debate on this floor is simply in a vacuum to make political points against our friends on that side of the aisle, that we will embarrass them for voting against the NRA this time, and that those 2,700 agents and all their predecessors and that organization will somehow be oblivious to the debate on this floor that intimates that they are less worthy of being extended this authority than some other law enforcement agents charged by the Government of the United States to protect the welfare of this Nation.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. HOYER. I am glad to yield to my very good friend, the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, I am just curious. Did the gentleman vote against the amendment offered by the gentleman from Michigan yesterday?

Mr. HOYER. No, I voted for it.

Mr. VOLKMER. What did that do? It did the same thing for all law enforcement as what this does for BATF.

Mr. HOYER. I understand that. That was on the merits.

Mr. VOLKMER. Yesterday the gentleman said it was OK, and today he said it is not.

The CHAIRMAN. The time of the gentleman from Maryland [Mr. HOYER] has expired.

(By unanimous consent, Mr. HOYER was allowed to proceed for 2 additional minutes.)

Mr. HOYER. Mr. Chairman, to respond to my friend, the gentleman from Missouri [Mr. VOLKMER], as I said at the beginning, that is on the merits of this issue. I think this is a serious issue. There are a lot of Members on this floor who are very concerned about the fourth amendment, which is an amendment that sets us apart from much of the world. It was an amendment that the forefathers thought was critically important so that the King Georges to come in future generations could not simply say, ''I'm going to come into your house; I'm going to come into your private spaces to investigate'' absent probable cause and a magistrate supposedly and in most instances objectively making a determination that there is probable cause.

That is, I say to my friend, the gentleman from Missouri, the objective issue. This amendment does not deal with a substantive issue. It deals with politics, and in the process of politics and posturing it deals with trying to embarrass the other side. I understand that. But my concern with it is that in the process of doing that it slanders a group of people that we ask to do one of the most dangerous jobs in America.

Mr. Chairman, I ask my colleagues on both sides of the aisle to reject this amendment and then vote on the policies raised by the substantive bill itself.

Mr. BRYANT of Tennessee. Mr. Chairman, I move to strike the requisite number of words.

At this point, Mr. Chairman, I would join in the remarks and ask to be associated with the remarks of the gentleman from Missouri [Mr. VOLKMER] as pertains to his regard for the BATF, the Bureau of Alcohol, Tobacco and Firearms.

As a former U.S. attorney, like the gentleman from Georgia [Mr. BARR], I had experience dealing with the ATF on a daily basis and found that they feel very strongly about their mission, and, No. 2, they support by and large as individuals, as I do, the second amendment right to bear arms. I do not think there is anyone any stronger than I am in that regard, as are the Members standing up and talking at this point. And that is not the issue here. The real issue is, what do we do with fighting those criminals who carry guns and use those weapons in the commission of crime?

During my tenure as U.S. attorney there was a project called Project Trigger Lock that focused on aggressive prosecution of those criminals who used guns in the commission of those crimes. It was the prosecution of existing Federal laws, not new laws but laws already on the books, prosecuting felons in possession of weapons. And that program was primarily the result of the work of the ATF.

In our area we had one of the most outstanding Trigger Lock programs throughout the country, one which formed a coalition between ATF and local authorities, including sheriffs, deputies, and police chiefs, in ferreting out again those violent people, those criminals who use guns in the commission of crime. This is what everyone says we ought to do, and that is lock up the people who commit the crimes using the guns, but protect the rights of those innocent law abiding citizens who own and possess these weapons.

My experience with the ATF was that they worked hand in hand with other agencies very well. And as the gentleman from Georgia [Mr. BARR] said earlier, to amend this proposal, this bill, would weak havoc on the law enforcement activities of the ATF as well as all the other agencies they work with.

We had task forces, as I described earlier, that involved local law enforcement authorities in joint operations. Just as a practical matter, to hamstring the ATF with this type of amendment, it would be an impossible task for them to be functional. But I think, more importantly, as the gentleman from Maryland [Mr. HOYER] pointed out, to label one agency with perhaps mistakes made by some and those yet to be decided—and I am sure they will be fully aired as we progress into our Judiciary Committee—but to label one group and to focus on them and exempt them from this bill, I think, is unfair to the many outstanding agents of the ATF.

My experience has been that they were a well-trained, professional organization, trained on a par with other Federal agencies, the FBI, the DEA, Postal, Customs, INS, the whole works. Without exception, I found they were excellent officers. I think such an exemption from this bill is unwarranted and ill-conceived.

I think if we are going to do anything, if there is a problem with ATF, then let us look at it and see if the agency should even exist. But again to hamstring them with this type of amendment is not a good idea, and I would strongly oppose it.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Tennessee. I yield to the gentleman from New Mexico.

Mr. SCHIFF. Mr. Chairman, I just want to say briefly that we have heard some impassioned opinions about the Bureau of Alcohol, Tobacco and Firearms, both in their favor and in their opposition. I want to point out, however that I do not think this is going to be an amendment that will be decided

on whether we approve of how the Bureau of Alcohol, Tobacco and Firearms by itself operates.

The issue is, will this amendment, if it passes, affect those issues that the sponsors and proponents have offered? And the fact of the matter is, if in fact any officer or group of officers—and I say, ''if''—have made a conscious decision to deliberately violate the constitutional rights of any of our citizens, the fact of the matter is that the exclusionary rule of evidence does not protect honest citizens anyway in that circumstances because honest citizens will not have the evidence of crimes which can be suppressed and not used against them at the time of trial. There will never be any kind of criminal conduct, and that is why in my judgment this amendment is misapplied, and if there are problems with the Bureau of Alcohol, Tobacco and Firearms, as suggested, I think other remedies could be brought to bear by this Congress.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I am happy to yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent to withdraw the amendment, and that the gentleman from Missouri [Mr. VOLKMER] be recognized immediately to offer the same amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The amendment has been withdrawn, and the gentleman from Missouri [Mr. VOLKMER] is recognized.

AMENDMENT OFFERED BY MR. VOLKMER

Mr. VOLKMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. VOLKMER: Page 3, line 14, strike the close quotation mark and the period which follows.

Page 3, after line 14, insert the following:

''(d) LIMITATION.—This section shall not apply with respect to a search or seizure carried out by, or under the authority of, the Bureau of Alcohol, Tobacco and Firearms.''.

Mr. VOLKMER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

Is there objection to the request of the gentleman from Missouri?

There was no objection.

The CHAIRMAN. Since this is a new amendment, the Chair is inclined to recognize the gentleman from Missouri [Mr. VOLKMER] for the purposes of explaining his amendment.

□ 1250

Mr. VOLKMER. Mr. Chairman, I ask unanimous consent that the gentleman from North Carolina [Mr. WATT] be allowed to continue and address the committee for 5 minutes.

The CHAIRMAN pro tempore (Mr. BURTON of Indiana). Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. WATT of North Carolina. Mr. Chairman, I hope my colleagues and the American people have been listening to this debate on the underlying bill. I do not want to deal with the amendment itself. I want to talk about the bill that has been offered, because what this bill forces us to do is exactly what we have seen happen on the Floor of this House for the last 2 days. It forces us to try to decide who is good and who is bad.

If I hear one more time during the course of this debate that this is not about innocent people, that this is about guilty people, I think I will throw up. This is about the American people and the Constitution of the United States. It is about innocent people who own guns, who might have them in a closet somewhere and have their door kicked in, which is why this amendment was offered. It is about innocent people like the gentleman from Illinois [Mr. RUSH], who might have bird seed in their closet, and have their doors kicked in because some police officer thought he had some cause to do it and could not go down to the courthouse and get a warrant.

It is about innocent people like the gentlewoman from Colorado [Mrs. SCHROEDER], who had a button, a campaign button in her house, and had her whole being violated by the FBI, who came in, in violation of her rights.

It is about innocent people who own homes, who have the right to be secure in those homes. And we cannot afford as America to turn the questions about who is good and who is bad in our society over to a police officer on the street, whether that police officer is from the ATF, the FBI, the CIA, the Atlanta police, the Raleigh police, the New York police. We cannot make those choices, and the Constitution of the United States put us in a position where we did not have to make those choices.

This debate points up exactly what point I am making, because here we are now talking about whether the ATF is good or whether the FBI is good, or whether this police department is good or that police department is good. But that misses the whole point. It misses the point that every citizen in this country is presumed to be good, presumed to be innocent, until they have had their day in court, and that we ought not allow a police officer in the heat of the moment to kick somebody's door in and make that decision on the spot.

The first amendment, as I indicated yesterday, is not about people who engage in mainstream speech. It is about protecting the rights of the people to say what they want when we do not like what they are saying.

The fourth amendment is not about protecting the guilty or the innocent. This is not about whether we like criminals or not. Nobody in this House likes criminals. I do not want the police officers out there on the street to decide on the spot whose door they are going to kick in and whose rights they are going to violate, even if they are 99 percent right and there is just that 1 percentage point of people out there whose rights they violated. Because that 1 percent, that 1.3 percent we have heard talked about here on this floor, is what the fourth amendment was designed to protect.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 1 additional minute.)

Mr. WATT of North Carolina. Mr. Chairman, this bill puts us in a position of sitting here on this floor and getting into these kinds of irrelevant debates. I agree with my friend, the gentleman from Maryland [Mr. HOYER]. We ought not exempt this one agency without exempting other agencies. We ought to exempt the entire American people from the effects of this bill. That is what the amendment ought to say. If we believe in the Constitution this demon bill, 666, ought to be withdrawn and go back where it came from and never see the light of day again.

Give me the Constitution, drawn by the Founding Fathers, not some version of rights thought up by the Republican Contract for America. I will take the Constitution any day.

Mr. VOLKMER. Mr. Chairman, I rise in support of my amendment.

The CHAIRMAN pro tempore. The gentleman from Missouri is recognized for 5 minutes.

(Mr. VOLKMER asked and was given permission to revise and extend is remarks.)

Mr. VOLKMER. Mr. Chairman, I have been listening to the debate here, and what I hear concerns me greatly. Because what I hear is that we have nothing but praise almost by the speakers, especially the gentleman from Illinois, the gentleman from Iowa, the gentleman from New Mexico, the gentleman from Georgia, about one of the most Rambo-rogue-law enforcement agencies in the United States.

I say that this amendment is not political, Mr. Chairman. This is something that HAROLD VOLKMER has been working on because I believe strongly not only in the fourth amendment, but every amendment to the Constitution, including the second amendment. And if there has ever been a violation by any agency of this government of the second amendment right of the people and gun owners and hunters and sportsmen of this country, it is by the Bureau of Alcohol, Tobacco and Firearms.

I as a member of the board of the Firearms Civil Rights Legal Defense Fund can tell you that this is not something that just happened at Waco, folks. It is not something that just happened in Idaho, folks. Those are the

big ones that got the news. The little ones that we are working on right now, this day, and been working on continuously since I came to this Congress off and on, it depends on who is running the BATF, we have got them going on right now, violations of individuals' rights to own guns.

Well, how would you like it if you had a gun collection and you were a part-time law enforcement officer and you did something that the BATF agent just didn't like, and he did not like you, and he went and got a search warrant and he went in and took all of your guns, every one of them out of your house, about 55 of them, and to the gentleman from Ohio, I say, it happened in Ohio, and they took them away. Never an indictment, never a complaint. Three years ago. And guess what, folks? He still has not got his guns back. He has a lawsuit over it, and we are helping him on it.

Mr. Chairman, I can tell you more. How about places getting broken in by BATF, and, ''I am sorry, folks, after we have torn up the place, we did not find anything.'' ''I am sorry, folks, wrong address.''

What is going on with this Rambo outfit? This is not something that just started this year. When I first came to this Congress I was a member of the Committee on the Judiciary. I heard about instances of BATF and how they were trying to put gun dealers out of business. And that is going on right now, and I can tell you another instance about that right now.

□ 1300

They are trying to put dealers out of business so they cannot sell the guns that our people should have. That was going on because they said there were too many dealers that we have got to get rid of them, and we have got to get rid of the little ones because we cannot investigate them all. That was their excuse for their attitudes.

As a result of that, starting in 1978, in my freshman year, I started working on what became known in Missouri as the Volkmer-McClure bill. In Idaho, it is known as the McClure-Volkmer bill. That bill corrected at that time many of those abuses that were taking place. And for a while it was awful quiet and they behaved themselves. But right now they are right at it again.

It is not much different when I first came here; in fact, it is sometimes worse.

This bill, without this amendment, the gentleman from New Mexico, when we were discussing it yesterday, said, well, all it means is, if the difference is that if they do not find anything, it does not make any difference; if they do not find anything illegal, it does not make any difference if you have a warrant or you do not have a warrant.

Gentlemen, we all know that. That is silly. What this bill does to the BATF is give them a green light. They do not have to go to the magistrate and get a warrant for anything. They just go right in there and bust those doors down.

The CHAIRMAN pro tempore (Mr. BURTON of Indiana). The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

(By unanimous consent, Mr. VOLKMER was allowed to proceed for 5 additional minutes.)

Mr. VOLKMER. Just bust the doors down and go in and take the guns and if they find something illegal, they say ''Hey, we gotcha.'' And if they do not find anything illegal, they say sorry. Sometimes they do not even say that, folks.

Right now they have guns in their possession and some of them, by the way, when they have been forced to return them, forced by court orders to return them, they are not worth a darn anymore. They are damaged. They are rusted. They make sure that our gun owners do not have any guns. There is not any other Federal agency or local agency anywhere in this country that is about this business, but this agency is.

Now, they may do some good things down the road, but they also do some terrible things. I do not believe that the civil rights, and I call them civil rights, under the Constitution of my gun owners, my hunters and my sportsmen, should be put in jeopardy by this bill giving those very same agents the right to go in and take them away. And what I am amazed at, there has not been one Member from that side of the aisle to stand up in favor of sportsmen, hunters, and gun owners.

Who has stood up? I will tell my colleagues who has stood up. Not just Members on this side, the National Rifle Association of America. What does it say?

Just yesterday, ''The National Rifle Association of America would like to express our strong support for your amendment exempting the Bureau of Alcohol, Tobacco, and Firearms from a relaxation of the new exclusionary rule standard as embodied by H.R. 666. The slipshod regard and generally low esteem that ATF has traditionally shown for the constitutional rights of law-abiding Americans indicates that the term 'good faith' has little meaning for them in the context in which they conduct their investigations. We would be remiss in our responsibility to our members and to the rights of all law-abiding Americans were we to allow a further relaxation of the fourth amendment standards to which ATF already gives short shrift to go unremarked and unopposed. We urge all Members of the House to vote in support of your amendment.''

Also I would like to read from the Gun Owners of America. They, too, today delivered a letter to me.

''I urge you to support the Volkmer amendment to H.R. 666. This amendment simply states that the bill will not apply to any searches and seizures carried out by the Bureau of Alcohol, Tobacco, and Firearms. BATF has developed a torrid history when it comes to violating people's gun rights. And thus, Gun Owners of America will score the Volkmer amendment as a gun vote. That is, a vote for the Volkmer amendment will be scored as a pro-gun vote.''

I just want to let all of my colleagues know that what I have heard today on this amendment really bothers me, because I know what BATF is doing out there to our people. And yet I am not going to have any avenue in this Congress to do anything about it except through this amendment. Because it is very apparent to me that the chairman of the Committee on the Judiciary, the majority members of that Committee on the Judiciary think that BATF is a wonderful agency. And they are going to go out and protect that agency. So when I ask for hearings to look into these abuses by BATF, they are going to tell me, forget it, because we are going to protect them. We are not going to do anything to hurt that agency. That is a wonderful agency. That is what I hear from that side.

I was prepared, we are watching some right now, I was waiting just for the opportune time to come to them and say, we need to have some hearings. We need to look into what this agency is doing. Now I am not going to have that avenue.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from New Mexico.

Mr. SCHIFF. I thank the gentleman from Missouri for yielding.

I do not know if the gentleman recalls, but to the best of my recollection, on each of the firearms-related bills that have been introduced on the House floor, I believe the gentleman and I have been on the same side of the argument each and every time. That is my best recollection.

Second of all, I will join the gentleman in seeking hearings on the issues that have been raised concerning the Bureau of Alcohol, Tobacco and Firearms on this floor.

My opposition to the gentleman's amendment very simply is his amendment and this bill have nothing to do with what the gentleman is talking about. I would like to explain it two ways.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has again expired.

(By unanimous consent, Mr. VOLKMER was allowed to proceed for 3 additional minutes.)

Mr. SCHIFF. Mr. Chairman, if the gentleman will continue to yield, we have the exclusionary rule intact now, and it has not prevented any of the incidents that the gentleman has described. And it will not protect anyone in a situation where, if as alleged by the gentleman from Missouri, an agency or even an officer, one officer, have become, to use the gentleman's words, a rouge officer, a rogue institution. Those individuals who choose to abuse their law enforcement power and do so

for the purpose of harassing law-abiding citizens are not going to be deterred by the exclusionary rule because they are not looking for evidence to use in a criminal case in the first place.

To turn it further the other way, this offers a good faith exception. If ATF or any other agency breaks down a door without a search warrant to someone's house, in a situation where they needed a search warrant, it is not good faith, even if they happen to find something that is illegal. It would not be allowed under this bill. So with the utmost respect, again, I suggest that the gentleman's amendment, which he obviously feels so very passionate about because of his view of this agency, is not applied correctly toward this bill.

I thank the gentleman from Missouri for yielding to me.

Mr. VOLKMER. I quite disagree with the gentleman from New Mexico that what I said before, it does not change maybe what BATF is doing at the present. But I still say, because they can go on reasonable belief that what they are doing is right without a warrant, which they cannot do today. They have to get the warrant today. If they are going to go in and take somebody's guns away from that house, they better get a warrant.

Mr. SCHIFF. Mr. Chairman, if the gentleman will continue to yield, again, there must be an objectively reasonable belief that a search without a warrant was in fact constitutional at that time. If it is not supported when that matter is reviewed by a magistrate, the evidence would still be suppressed and it does not protect innocent citizens no matter what kind of exclusionary rule standard we have.

Mr. VOLKMER. Let us talk about that just for a minute. We have a little case not far from right out here in Virginia. We talk about all these things that these magistrates are going to do and everything. How about when a magistrate does not even know what the law is and the agent does not know what the law is. And he goes in and asks for a search warrant to go into somebody's business and take away the guns because he says that these guns are illegal, the magistrate does not know that they are not illegal, that they are legal, and he issues the search warrant and they go get it.

Now, what happens is that he gets sued, and he is going to get sued, that agent is. Now, the thing is that under this, he would not have to go to that magistrate.

□ 1310

That agent based that on erroneous information that an informant had supposedly told him, and the magistrate issued a warrant on that basis.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

(At the request of Mr. SCHIFF and by unanimous consent, Mr. VOLKMER was allowed to proceed for 3 additional minutes.)

Mr. VOLKMER. Under this bill, Mr. Chairman, after that informant had told that agent that information, he could have gone down there and took guns without a search warrant. For that reason, I say if you want to protect your gun owners from these rogue people, I would say Members had better vote for this. This will be the last chance, the only chance Members as gun owners, people protecting gun owners, will have the right to do that.

Mr. SCHIFF. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from New Mexico [Mr. SCHIFF].

Mr. SCHIFF. Mr. Chairman, I thank the gentleman one more time for his courtesy.

Mr. Chairman, I want to point our that the gentleman's premise is what I believe is incorrect in this debate. There is nothing in this bill that changes the law as to when a search warrant is needed or is not needed. It deals only with those situations where, when a search is made without a warrant, if there was a good-faith error, then the evidence can be considered. It expands an exception that already exists in the law for search warrants.

In all of the examples the gentleman from Missouri [Mr. VOLKMER] has given, he has described anything but good faith. Therefore, there is not protection to honest citizens by the gentleman's amendment. Honest citizens, in fact, are not even protected by the exclusionary rule. If a law enforcement officer wants to go through that door, with the power of his immediate armament, and seize something, he or she is going to do it. If so, the exclusionary rule is not going to stop them, because that is an after-the-fact determination when someone is believed to be guilty.

Mr. VOLKMER. Mr. Chairman, I disagree with the gentleman.

Mr. MCCOLLUM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think there are a couple of points that need to be made to put all of this in perspective.

First of all, as chairman of the Subcommittee on Crime of the Committee on the Judiciary, I want to make sure everyone is aware that it is our intention to hold hearings in the next couple of months on the Bureau of Alcohol, Tobacco and Firearms, and on firearms issues generally, and on some of these alleged rights violations, which may be very real or maybe are not, but we are going to explore that.

There will be opportunities, I would present, not only there but probably through legislation that will come out here on firearms in May or June that will give the Members the opportunity to debate all kinds of issues related to this.

Second, what we are doing today, it needs to be stated what it is not, rather than what it is, sometimes. What it is not, it is not a relaxation of the fourth amendment protections against unlawful search and seizures.

We are doing absolutely nothing in the underlying bill today that would in any way affect a person's right to be protected from unlawful search and seizure by police, BATF, or anybody else.

Second, Mr. Chairman, what we are not doing is destroying the exclusionary rule. I heard one of the major networks this morning on one of its morning shows state that this bill would abolish the exclusionary rule of evidence which the Supreme Court established in 1914.

The legislation that we are presenting here today does nothing of the sort. It does not abolish that rule. What we do today, what we are about to do if we pass this bill is to make it very clear that where the Supreme Court itself has carved out what it calls the good faith exception to its own rule of evidence that was designed to deter police from doing things that might violate the Constitution by saying ''If you do it, naughty boys, we are not going to let your evidence in that you get there,'' where it has modified itself and says, ''Look, the police really would have done this anyway.''

There would not be any deterrent there because they had a reasonably objective belief that what they were doing was right in the cases of the warrants which have been presented to them; where there was a search warrant, the court said ''We are not going to let this rule apply. We are going to have a good faith exception, let the evidence in, let the conviction, if the court can get a conviction, stand against the bad guys.''

The court has never faced the situation of a warrantless search, though there are many of them that are perfectly constitutional, with the question of the exception we are proposing today.

However, there have been two Federal circuit courts that have, in the fifth and eleventh. They have embraced what is in this bill. That is what we are doing today. We are saying ''Let us make this nationwide, so we do not have any loopholes involving this question and letting more criminals off the hooks than already have gotten off the hooks in the past.''

If we look at the Arizona case I cited out here in debate yesterday, I think it is illustrative to put to rest the concerns that the gentleman from Missouri [Mr. VOLKMER] has with respect to BATF or any other law enforcement agency.

The type of example we have a concrete example of is an Arizona case in which there was an arrest warrant, not a search warrant, which had been issued on somebody who was stopped by the police out there.

It turns out that 17 days before they stopped this fellow that warrant, that arrest warrant, had been quashed. It had been done away with. It was not any good anymore, but their computers did not show it.

The police, because the computers had not had this input put in this,

stopped this fellow. They searched him and they found evidence of additional crime, marijuana, and I don't know what else.

The courts, because of the rule that the Supreme Court has no exception for cases that do not involve search warrants, threw out this evidence and said this was an unconstitutional search because there was no arrest warrant, and they had no right to make this search, but the police legitimately thought they were.

There was absolutely no deterrent effect on their behavior or would not be any by throwing out the evidence and losing a potential conviction of a bad guy.

The same thing would be true in a case involving weapons, whether it is the Bureau of Alcohol, Tobacco and Firearms, or the FBI or local law enforcement. There is no change in it at all. The illustrations the gentleman from Missouri has given out here today would not be appropriate, in my judgment, to what this legislation we have today affects.

We are affecting a very small situation, but sometimes a critical one, where the police honestly believe that they are doing the right thing when they do it, whatever police agency it is, and I do not think that the amendment is appropriate to give an exception to any police agency and say what we are doing does not apply.

It should apply to all of them. We should address the abuse that any agency has outside of the context of this in some other forum, and we will do that in the future, but not in this bill, because there is no way that excepting BATF from this particular bill, we are going to correct any problems that they may have had in the past or may have in the future.

The BATF, if they are abusing the law and the constitutional rights and doing something illegal or improper, are going to do it just as much in the future after this bill because law as they have done in the past, because what we are passing out here would have no impact whatsoever with respect to what they do or do not do, since it requires what we are requiring for any exception for evidence to come in, a judge finding a reasonably objective basis on the part of whatever police officer it is, including BATF, that what they are doing, they did in the believe that they were acting——

The CHAIRMAN. The time of the gentleman from Florida, [Mr. MCCOLLUM] has expired.

(By unanimous consent, Mr. MCCOLLUM was allowed to proceed for 1 additional minute.)

Mr. MCCOLLUM. Mr. Chairman, that is because the police, the BATF, or whoever it is, is going to be acting in order for evidence to be allowed, whatever it is, in this bill, in order to get convictions, they are going to have to be acting in the reasonably objective belief that they were correct, that there was no problem, as in the arrest warrant case I just gave as a real illustration in a real case in Arizona that has gone before the Supreme Court.

So I do not see any harm, Mr. Chairman, in what we are doing at all. We have two Federal circuits that already have permitted this for all Federal agencies, be that BATF, FBI, or anybody else, and no ill will has come from this, no bad results, and I do not think there should be any exceptions to this, as I say, including the gentleman's effort.

Many of us who may agree with him on other matters relating to firearms simply cannot support this amendment today, even though we understand he is trying to make a protest vote out here on BATF. Unfortunately, it undermines the very basic law we have.

There may be many cases where BATF, FBI, et cetera, work in concert, and you can just mess up the whole evidentiary train if you affect one agency.

Mr. HAYWORTH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in reluctant opposition to the Volkmer amendment to H.R. 666, the Exclusionary Rule Reform Act.

I am a strong supporter of second amendment rights. Like the gentleman from Missouri [Mr. VOLKMER], I have serious concerns about the Bureau of Alcohol, Tobacco, and Firearms. On numerous occasions it is my belief, and certainly the headlines have reflected, that the BATF has overstepped its jurisdictional boundaries and trampled on the rights of law-abiding citizens.

Clearly, we must seriously examine the reckless actions of this agency and work to eliminate the BATF by consolidating its legitimate functions with other agencies. Congress needs to thoroughly review every aspect of the agency's operation and its inefficiencies.

In the interim, strong congressional oversight and congressional control over BATF's budget is the best way to influence BATF management and decisionmaking and safeguard the rights of America's gun owners.

Passage of this amendment, Mr. Chairman, is not a solution to the problems with the BATF.

□ 1320

Congress has a responsibility to maintain strict oversight of this agency. Creating an exemption for the BATF from the reform of this exclusionary rule will not stop the BATF from committing unreasonable searches. It will make it easier for hardened criminals to walk on a technicality.

I urge my colleagues to defeat this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri [Mr. VOLKMER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. VOLKMER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 228, noes 198, answered ''present'' 3, not voting 5, as follows:

[Roll No. 101]

AYES—228

Ackerman	Geren	Peterson (FL)
Allard	Gilman	Peterson (MN)
Baldacci	Gonzalez	Petri
Barcia	Gordon	Pickett
Barrett (WI)	Graham	Pombo
Bartlett	Green	Pomeroy
Bass	Gutierrez	Poshard
Becerra	Gutknecht	Quillen
Bevill	Hall (OH)	Rahall
Bilirakis	Hall (TX)	Rangel
Bishop	Hamilton	Reed
Bliley	Hancock	Richardson
Bonior	Harman	Riggs
Borski	Hastings (FL)	Roberts
Boucher	Hayes	Roemer
Brewster	Hefner	Rogers
Browder	Herger	Rose
Brown (CA)	Hilliard	Roth
Brown (OH)	Hinchey	Roybal-Allard
Bryant (TX)	Holden	Sabo
Bunn	Hunter	Salmon
Burton	Istook	Sanders
Callahan	Jackson-Lee	Scarborough
Camp	Jacobs	Schaefer
Chapman	Jefferson	Schroeder
Chenoweth	Johnson, E.B.	Scott
Chrysler	Johnson, Sam	Seastrand
Clay	Kanjorski	Serrano
Clayton	Kelly	Shuster
Clement	Kennedy (MA)	Sisisky
Clyburn	Kennedy (RI)	Skaggs
Coburn	Kildee	Skelton
Coleman	Klink	Slaughter
Collins (MI)	Klug	Smith (WA)
Combest	LaHood	Souder
Condit	Laughlin	Spence
Conyers	Levin	Spratt
Cooley	Lewis (GA)	Stark
Costello	Lincoln	Stearns
Cramer	Lipinski	Stenholm
Crane	Lofgren	Stockman
Crapo	Martinez	Stokes
Cremeans	Mascara	Studds
Cubin	Matsui	Stump
Danner	McCarthy	Stupak
de la Garza	McDermott	Tanner
DeFazio	McHugh	Tate
Dellums	McInnis	Tauzin
Dicks	McIntosh	Taylor (MS)
Dingell	McKinney	Tejeda
Dooley	Meehan	Thompson
Doolittle	Meek	Thornberry
Doyle	Menendez	Thornton
Duncan	Metcalf	Thurman
Dunn	Miller (CA)	Tiahrt
Durbin	Mineta	Torres
Edwards	Minge	Towns
Emerson	Mink	Traficant
Engel	Moakley	Tucker
Ensign	Mollohan	Velazquez
Evans	Montgomery	Vento
Farr	Moorhead	Visclosky
Fattah	Murtha	Volkmer
Fazio	Myers	Vucanovich
Fields (LA)	Nadler	Walsh
Fields (TX)	Ney	Waters
Filner	Oberstar	Watt (NC)
Foglietta	Obey	Waxman
Foley	Olver	Whitfield
Forbes	Ortiz	Wicker
Franks (CT)	Orton	Williams
Frisa	Parker	Wilson
Funderburk	Pastor	Wise
Furse	Payne (NJ)	Woolsey
Gejdenson	Payne (VA)	Wynn
Gephardt	Pelosi	Young (AK)

NOES—198

Abercrombie	Ballenger	Berman
Andrews	Barr	Bilbray
Archer	Barrett (NE)	Blute
Armey	Barton	Boehlert
Bachus	Bateman	Boehner
Baesler	Beilenson	Bonilla
Baker (CA)	Bentsen	Bono
Baker (LA)	Bereuter	Brownback

Bryant (TN)	Hilleary	Morella
Bunning	Hobson	Myrick
Burr	Hoekstra	Neal
Buyer	Hoke	Nethercutt
Calvert	Horn	Neumann
Canady	Hostettler	Norwood
Cardin	Houghton	Nussle
Castle	Hoyer	Owens
Chabot	Hutchinson	Oxley
Chambliss	Hyde	Packard
Christensen	Inglis	Pallone
Clinger	Johnson (CT)	Paxon
Coble	Johnson (SD)	Porter
Collins (GA)	Johnston	Portman
Cox	Jones	Pryce
Coyne	Kaptur	Quinn
Cunningham	Kasich	Radanovich
Davis	Kennelly	Ramstad
Deal	Kim	Regula
DeLauro	King	Rivers
DeLay	Kingston	Rohrabacher
Deutsch	Kleczka	Ros-Lehtinen
Diaz-Balart	Knollenberg	Roukema
Dickey	Kolbe	Royce
Dixon	LaFalce	Sanford
Doggett	Lantos	Sawyer
Dornan	Largent	Saxton
Dreier	Latham	Schiff
Ehlers	LaTourette	Schumer
Ehrlich	Lazio	Sensenbrenner
English	Leach	Shadegg
Eshoo	Lewis (CA)	Shaw
Everett	Lewis (KY)	Shays
Ewing	Lightfoot	Skeen
Fawell	Linder	Smith (MI)
Flanagan	Livingston	Smith (NJ)
Ford	LoBiondo	Smith (TX)
Fowler	Longley	Talent
Fox	Lowey	Taylor (NC)
Frank (MA)	Lucas	Thomas
Franks (NJ)	Luther	Torkildsen
Frelinghuysen	Maloney	Torricelli
Gallegly	Manton	Upton
Ganske	Manzullo	Waldholtz
Gekas	Markey	Walker
Gibbons	Martini	Wamp
Gilchrest	McCollum	Ward
Gillmor	McCrery	Watts (OK)
Goodlatte	McDade	Weldon (FL)
Goodling	McHale	Weldon (PA)
Goss	McKeon	Weller
Greenwood	McNulty	White
Gunderson	Meyers	Wolf
Hansen	Mfume	Wyden
Hastert	Mica	Yates
Hayworth	Miller (FL)	Young (FL)
Hefley	Molinari	Zeliff
Heineman	Moran	Zimmer

ANSWERED ''PRESENT''—3

Collins (IL)	Reynolds	Rush

NOT VOTING—5

Brown (FL)	Frost	Solomon
Flake	Hastings (WA)	

□ 1340

Mr. MARKEY, Ms. RIVERS, and Messrs. PALLONE, MANZULLO, and FRANK of Massachusetts changed their vote from ''aye'' to ''no.''

Ms. McKINNEY, Mr. FRANKS of Connecticut, Mr. DURBIN, Ms. HARMAN, Mr. GONZALEZ, Ms. McCARTHY, Ms. DUNN of Washington, and Mr. OLVER changed their vote from ''no'' to ''aye.''

Mr. REYNOLDS changed his vote from ''aye'' to ''present.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. FLAKE. Mr. Speaker, because of an unavoidable detainment on the way from the White House, I missed rollcall vote no. 101. Had I been present, I would have voted ''yes.''

□ 1340

AMENDMENT OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT: Page 3, line 14, strike the close quotation mark and the period which follows.

Page 3, after line 14, insert the following:

''(d) LIMITATION.—This section shall not apply with respect to a search or seizure carried out by, or under the authority of, the Internal Revenue Service.''

Mr. TRAFICANT. Mr. Chairman, I want this amendment to be understood. I want it to be debated.

The House has evidently reviewed behavior. I want all the Members in the back to hear this amendment, and I want your vote. The American people want your vote.

Evidently, we have discussed conditions under which some of us may, in fact, in some areas support the bill and in other areas where Congress has some significant reservations.

My amendment is not reactive. My amendment is strictly prevention. Now, I would like to urge the Members of Congress to consider that an ounce of prevention is worth a whole pound of cure.

My amendment states that this section shall not apply with respect to a search or seizure carried out by the Internal Revenue Service.

Ladies and gentlemen, we have an Internal Revenue Service that has taken license and has, in fact, intruded the kitchens and the family rooms of the American people on many cases. Those cases are now legendary.

In the matter of Alex and Kay Council of North Carolina, their accountant advised them under a windfall profit they made on the sale of a business that there was a legitimate tax shelter for a specific investment; they took it. The IRS found difficulty and ruled that the tax shelter was not allowed.

And the case was finally adjudicated, the notice of deficiency was sent to the wrong address. The IRS said they have no bounds by the Congress of the United States to prove they made a proper notice.

In the case of Alex and Kay Council, Alex Council, completely frustrated, finding no other ways to fight this large agency that he reported to that was out of control, took his life and left instructions how his life insurance policy will allow for, in fact, that death benefit on his suicide, and how she could apply that insurance policy, that life insurance policy, to fight the Internal Revenue Service, and she did.

It has come to the point where the Internal Revenue Service is certainly charged with an important task by our Government, Mr. Chairman, but Congress, through a lack of oversight, has allowed this agency to become a little intrusive, even to the point where they enjoy the only exemption under the burden-of-proof statutes of the Bill of Rights which I want to commend the majority party for giving an opportunity for a hearing for that in the future.

My amendment basically says, ''Look, the IRS has so much intrusive power now that to give any more further license would be not in good conscience of the Congress of the United States of America,'' understanding the legendary behavior of this agency.

□ 1350

Now I am not talking about FBI, DEA, ATF, that I recommend to the Congress that all those agencies be put up under one. There is no coordination, as a former sheriff, there is no, or very little, coordination of them anyway. I would not be surprised to have the CIA and DEA thrown up under the FBI, too, with an international section.

But I am not talking about that now. I am talking about a taxpayer who is at the mercy, some of them have taken their own lives, and Congress has been silent for too long.

Now, yes, we have taken these technicalities and these pursuits of criminals, and we have weighed them heavily on the side of the criminals, and there is a debate in this House that perhaps was long overdue regardless of how you will vote on this issue.

But what the Traficant amendment says is this is not normal business, even under this particular law that is being debated.

If we continue to open up and give more license to an agency that has already turned their back on the Congress, I believe we will fail each and every one of our constituents here today. I do not know how many of your constituents are going to have their door kicked in or are going to be blown up in Waco, TX, and I certainly do not like that, and I agree there should be a hearing on what happened to the Weaver family in Idaho and what happened out there in Waco.

The CHAIRMAN pro tempore (Mr. BURTON). The time of the gentleman from Ohio [Mr. TRAFICANT] has expired.

(By unanimous consent, Mr. TRAFICANT was allowed to proceed for 4 additional minutes.)

Mr. TRAFICANT. But what I am talking to you about today is your mother, your father, your grandparents, your children, your neighbor, your mailman, the truck drivers, the clearly, and every business, big or small, in your district. Every American that is afraid, and even afraid to say they are afraid, for every American who has been intimidated in some back room, it is legendary.

So I am not here today citing abuses, and I am not taking off on the IRS. What I am saying to you, though, is there is a reasonable level of prevention that is necessary when you establish law. And there is a prevention element that necessitates this amendment.

I am asking for your vote. The American people are looking for some support from the Congress of the United States, and the American people in poll

after poll say they cannot recognize and understand or fathom the thought of Members of Congress wanting to be anonymous, having made the statement that, ''It does not pay to go after the IRS.'' If you are a Federal judge, why should you? That is a lifetime job. Why get the IRS mad?

''If you are a Member of the Congress, why get the IRS mad?'' Well, damn it, let me tell you the way it is: I am mad as hell. I am prepared not to stand for it any longer, and I think every one of your constituents feels that way. And I think there are some justifiable reasons to vote for this amendment.

So I am asking the gentleman from West Virginia, the gentlemen from Connecticut and Vermont, the gentlewoman from Colorado, the general, the gentleman from California [Mr. CONDIT], the gentleman from Florida [Mr. MCCOLLUM], the gentleman from Illinois [Mr. HYDE]—because you can stand up and probably muster up enough partisan votes to defeat this—I am asking you not to do that and to make a sincere effort to keep this amendment in conference. I believe the American people deserve this.

The IRS has taken too much license with regulations that they have turned their back on already.

So with that, I am going to ask this House to give a vote of affirmation. I want to place on the record through the legislative history that I do not want it to be just an exercise on the floor of Congress, that I do want a commitment on the vote of this Congress, if it is an affirmation that, as a tenacious bulldog, we will save that amendment and keep it in that final law if in fact this becomes final law. No reason to obstruct; that is not my purpose. I believe it makes good sense. I urge the Members of the Congress of the United States to do what is right today and to vote for this amendment.

Mr. MCCOLLUM. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I must reluctantly oppose today this amendment offered by the gentleman from Ohio.

The reason why is not because I do not think there are problems with IRS abuses. The Internal Revenue Service is well known to have had its share of those abuses. I am not here to debate the merits or not of that question.

But I oppose this amendment because I think, just as on the previous amendment offered here on the floor, there is a great deal of misconception about what the effects of the proposed bill and the law changes that we are offering in this bill that underlies the debate today does and does not do.

I do not believe that there is any sense whatsoever in making exceptions for one Federal law enforcement agency or another in respect to what we are doing today that would make any difference at all in the conduct of how they carry out the their business.

In fact, the very point and essence of a lot of debate over this exclusionary rule exception is to make clear that there is absolutely no change in the constitutional requirements that say that we shall not engage in any unlawful search and seizures if we are police of any type; there is nothing in this legislation today that is a bit of a retreat from that, no relaxation of the general principle of excluding from evidence anything where a police officer, knowingly or by anybody's objectively reasonable test of that, as a judge in a court decides that they violated the Constitution in their proceedings and in their actions.

The whole point of this today is to say, ''Look, if you have done a search, whether it is with a warrant or without a warrant, and you with a reasonable belief really believe, Mr. Police Officer of any type, that what you were doing was legitimate and not a violation of someone's constitutional rights, if you believe you followed all the steps in the rules and you got a warrant and you thought the warrant was good and the warrant was necessitated or you thought that you were making a search because on its plain face that that search was authorized by the clear precedents of the law in cases where warrants are not required under the fourth amendment of the Constitution, if you really, according to the judge's view in a case when he is deciding whether to admit evidence or exclude it, if he says you exercised a reasonably objective belief that what you were doing was right,'' then why exclude the evidence? Why exclude the evidence, whether that evidence is gathered by the Federal Bureau of Investigation or the IRS or the Drug Enforcement Administration or anybody else?

Everybody should be treated the same. The evidence of somebody's crime, if they committed a crime or the evidence that would go before a court or a jury to decide whether a crime has been committed, should be allowed in in every single case if that is valid evidence on the merits of the case itself, and let the court decide the guilt or innocence of somebody unless—unless the exclusion of that evidence would in some way, in some way deter a police officer, IRS officer, a Drug Enforcement Administration officer, FBI officer from doing something he should do. And there is absolutely nothing whatsoever suggested here by what we are doing today that would modify that in any way, that principle.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLUM. I would be glad to yield to the chairman, the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. I thank the gentleman from Florida for yielding to me.

Mr. Chairman, I just want to say, implicit in this amendment as well as in the last one, is a denigration of the Federal bench; an assertion that they are incapable of judging whether an acquisition of evidence was in good faith, by an objectively reasonable standard; or whether the public, the long-suffering, victimized public, is better served by the admission of this evidence of guilt or not.

But to carve out exceptions for various Federal agencies not only is insulting to those agencies—and that may or may not be true, but this is not the place to direct those insults—but it also demeans the bench, the Federal bench. I do not think we should overlook that.

Mr. MCCOLLUM. Reclaiming my time, Mr. Chairman, I believe the gentleman is right. I would concur wholeheartedly.

The whole point of the exercise today in passing this legislation is to give relief to the American public in situations where technicalities have been throwing out evidence where people otherwise should have been given the chance and court should have been given the chance to convict the bad guys.

It is not to try to open the door in any way to reduce or relax the standards of the fourth amendment protections against unlawful search and seizures. It does not do that. What is good for the goose is good for the gander, what is good in one Federal district circuit court should be good in another one in this country. There should be uniformity. There is not presently.

□ 1400

Mr. Chairman, for us to come out and make exceptions for one Federal agency or another is just plain nonsense, so I urge a ''no'' vote on this amendment. I know it is offered in good faith, but I urge ''no'' vote.

Mr. CONYERS. Mr. Chairman, I move to strike the last word.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

Mr. Chairman, I say to the Members, this amendment, the closer you scrutinize it, the more you can get to like it, and I would like to ask my colleagues to look very carefully at this amendment.

Mr. Chairman, the gentleman from Ohio is known for his very strong comments and commentary on the floor, but, if my colleagues examine this amendment, they will begin to see what I see in here, that he is attempting a carve-out on the McCollum bill, H.R. 666.

My first amendment to the bill was an attempt at a codification of a U.S. Supreme Court decision, a very modest one, when we had begun, and they are both working toward the same objective.

Now the chairman of the Committee on the Judiciary, the gentleman from Illinois [Mr. HYDE], said that this vote, a vote for this amendment, would denigrate the Federal bench. The Federal bench never gets to hear about these

cases of doors being kicked down or IRS harassing people who are trying to settle their accounts.

Now in my office I have constituents who have been trying to settle their accounts, admittedly delinquent, and if there is somebody here that has never heard of this, I say to them, you can share some of my case load with me. They have been trying to settle their accounts, and they will get a call from the agent at IRS telling them that, if they do not pay in full, immediately, in 30 days, they are going to padlock their dentistry office or they are going to padlock their business, which of course is the only way that they can possibly ever pay back on installments. I have had that repeatedly brought to my attention, so much so that the senior Senator from Michigan has worked with me on hearings in previous Congresses and meetings with IRS officials in our region.

So, on behalf of all African-Americans and working class people who cannot retain a CPA or an attorney, Mr. Chairman, this carve-out to limit this untrammeled authority for an agent to objectively use reasonable good faith when he decides whether he is going to padlock someone or kick their door down is a very late-coming one, and I am sorry that I had not risen to this occasion earlier. The IRS cannot be allowed this kind of activity.

Mr. Chairman, I hope this will spur an investigation in the appropriate committee, and I hope it is the Committee on the Judiciary, but at the same time let us recognize that if BATF can evade this amendment by joining with the FBI or the DEA, would it not be logical that we should extend the carve-outs to those other agencies as well, because if we do not, Alcohol, Tobacco and Firearms will be getting around it by merely cooperating with someone else, including, perhaps, the IRS, perhaps not.

But this amendment on its face, Mr. Chairman, is one that merits our colleagues' support. It speaks to a history of misconduct and wrongdoing, and I think that it is a commendable amendment, and as the ranking member of the Committee on the Judiciary, I am very proud to attach my support to it.

Mr. FIELDS of Louisiana. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of this amendment and yield to the distinguished gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Chairman, I thank the gentleman from Louisiana [Mr. FIELDS], and I listened to the debate of the distinguished chairman and subcommittee chairman of the Committee on the Judiciary, and I saw that we just passed a pretty much politically charged vote, and I must say the American taxpayers do not have too many powerful lobbyists down here. Most people are afraid of the IRS, and most average Americans are more or less at their mercy.

But there is an incident, just occurred here this past month out in the district of the gentlewoman from California [Ms. ESHOO], and the IRS basically came to the office of one of the dentists in her community and said they were with the IRS, and they wanted to see the doctor. They were asked if the doctor was expecting them, and they said, ''No, not at all.''

Mr. Chairman, in the midst of the day's business, the dentist office's business, the IRS completely disrupted it, had taken that dentist away from where he is doing significant work on the dental needs of one of his patients. The IRS has almost limitless powers.

There are very few opportunities for the Congress of the United States to lend a helping hand to these taxpayers. So, Mr. Chairman, yes, I could see where a lot of people crossed over and voted on that issue that surrounds guns, but there is just not enough advocates for the American taxpayer, there is no powerful support for the American taxpayer, and that is why I say to my colleagues, to the Congress, that the last center of possible support, the last board of grievance and appeal, is the Congress of the United States of America, and if the Congress of the United States of America can make exception for guns, and the popularity of that issue, and the politics of that issue, then Congress could do the right thing and support this amendment that in fact safeguards the interests of all of our taxpayers, each and every one of them.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am not going to give the same speech I gave the last time, although it would be equally applicable in the context of this amendment. But we are making a mockery of the Constitution, and we just did it again when we passed the last amendment. It is not that the amendment was bad, but now we have got a different standard applying to one law enforcement agency, constitutional standard presumably, than we have applying to all other law enforcement agencies, and I have got nothing against the Internal Revenue Service, but it seems to me that the Internal Revenue Service makes more sense to be exempted than the ATF, or whatever it was called, because there are less circumstances under which they need to go and kick somebody's door in than the other agency.

The point is it is the underlying bill that is the problem here. It is not exempting ATF, or the Internal Revenue Service, or the Immigration and Naturalization Service, or the city of Atlanta, or New York, or the FBI. The standard ought to be the same, and that standard was articulated in 1791 when we passed the first 10 amendments to the Constitution. That is the standard that ought to apply, and that is the problem that we are into here, and that is the reason that we are getting all these inconsistencies, because what we did in 1791 was to make one consistent standard, and what my colleagues on the other side are trying to do is to get at the bad guys.

□ 1410

Well, who are the bad guys?

Mr. TRAFICANT. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Ohio.

Mr. TRAFICANT. With that, let me say the gentleman makes a point about bad guys, and this bill is targeted toward bad guys. Keep in mind that much of the activity covered by this amendment covers civil procedures. They are not coming for bad guys. They are using an awful lot of law and a lot of leniency under that law in civil proceedings, and many times the burden of proof is even on the taxpayer to prove they are innocent.

This is an unbelievable tenet of opposition. Clearly if there is an exception, it should deal with the preponderance of the facts that the civil proceedings involved here are clearly outside of the view of what the main thrust of this bill deals with. You are concerned about criminals. We are talking about license in civil process. I think that goes too far, which lends to a rational for support for the amendment.

Mr. WATT of North Carolina. Mr. Chairman, reclaiming my time, the gentleman makes the very point that I am trying to make. This is not about bad guys and good guys. What we do when we subvert the Constitution of the United States to try to get some bad guys is that we subvert the Constitution of the United States for the good guys also. We cannot afford to do that. The rules cannot be different for one group and another group, because then we have to decide which one falls into each of those groups.

Mr. Chairman, I want to call upon my colleagues to withdraw this bad bill. Bet us out of this pointing of fingers and talking about who is bad and who is good. All of the American citizens are good, until the law says they are bad. We cannot let the police officers on the street make that determination, whether they are with the Internal revenue Service, the ATF, the Atlanta police office, the D.C. police office, whatever. This is about the Constitution. This is not about bad guys and good guys.

Mr. WISE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Traficant amendment. I do want to say and to note that while various agencies such as the BATF are being asked to abide by higher standards, this is not a commentary on the thousands of good, hard-working employees of many of those agencies, the DEA, the FBI, the BATF and the Internal Revenue Service, because indeed there are thousands of well-meaning, hard-working personnel, many of them in the enforcement divisions.

But unfortunately, occasionally you have a bad apple, and that bad apple can spoil the whole barrel and can be the one that brings that agency, despite all the hard work that goes in, can bring that agency and its employees into disrepute.

So what this tries to do and what the fourth amendment tries to do is say we do not want to make it harder for those genuinely doing their work. We also want to make sure there cannot be the occasional abuse, or at least we try to limit it as much as possible.

The distinguished chairman of the full committee, the gentleman from Illinois [Mr. HYDE], pointed to Federal judges as being the safeguard and said why would you denigrate Federal judges? No one is denigrating the Federal judiciary. As the gentleman from Ohio [Mr. TRAFICANT] pointed out, many of these cases do not even get there.

You are trying to devoid those cases getting to the Federal judiciary. You are trying to have the occasional Federal judicial officer have in the back of their mind this is something you don't do, there are sanctions, and it is something prohibited from the beginning in the mental process. So that is one reason.

The second thing is you want to set a standard so you do not get these problems to the judiciary, and that standard is what is trying to be set here. In the case of the IRS there have been occasional abuses. There are a lot of people working hard and doing the processes of raising the revenues of our country the way they should, but there have been occasional abuses. I have one in my district as well that we have worked on for 2 years now.

But you are saying because there can be the chance for the abuse and because it does not handicap the ongoing work of that agency 99 percent of the time, then indeed they should abide by that higher standard. This body has already said there should be a higher standard in the case of BATF. The IRS, which reaches every one of our constituents in some way, needs to have that higher standard, not to denigrate the work of the IRS or the men and women of the IRS, but to say where there are occasionally a few bringing down the reputation of an agency, that will be reined in and this Congress will demand that they abide by that higher standard. That is what this amendment is about, and I would urge its adoption.

Mr. TORRICELLI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to share in the sentiments of the gentleman from North Carolina that it is not a question of this amendment or any exceptions. The problem is the undermining legislation.

Any nation, Mr. Chairman, can fight crime, can secure its streets and its cities, if it is prepared to compromise the rights of its citizens. No totalitarian or authoritarian government has ever feared the problems of crime on its streets.

But the goal has never been simply to secure the streets. It is also to have its people secure in their homes, and from their government, not just from criminals.

So the United States has always been different. We have sought to protect the innocent while we were prosecuting the guilty. That balance has made the United States unique. It is also now at question.

The underlying legislation, if it means anything, would violate the sanctity of the home, the privacy of the family, the right to have a wall of protection in the front door of your own house between you and the government, to ensure that the only judgment is not the police officer as to whether or not your home should be violated, but a judge issuing a warrant on probable cause. The very Constitution of the United States. And the irony of it is, is that this was one of the motivating factors that led to our own revolution, the insistence on the part of the British Government of breaking down the doors and violating the property rights of our citizens 200 years ago.

But to add insult to injury, now we are creating two different levels of privacy and property rights. If your violation is for tobacco, alcohol, or on guns, your rights will be secured. The BATF will not get in your home, because the gun lobby would have it be so. But if you are a citizen of no particular offense, your wall of privacy is being lowered. What a statement to the American people, and what a violation of the historic trust and commitment of this institution to our constitutional principles.

Mr. Chairman, our Republican colleagues in the last election have had every reason to be proud. They won a tremendous victory. But they did not receive a mandate to change the Constitution of the United States, to rearrange its powers, or to make our people less secure from a government that would abuse their rights.

Mr. Chairman, I cannot claim to ever have been a conservative Member of this House, but I have always respected tenets of Republican philosophy, limited government, power in the hands of people, controlling the excesses of government authority. Allowing a government to enter a home or seize property without warrant, expanding the police powers of the government, is an invitation to abuse.

□ 1420

It is not simply a violation of some of our historic commitments. Ironically, it is a departure from the conservative philosophy of the very Members who have now won electoral control of this institution.

Mr. Chairman, our leaders may have failed us in protecting us in recent years from crime and the problems of our country, but it is our leaders who have failed, not our Constitution. If the country is in need, it is our leaders who should change, not our Constitution.

Because if, my colleagues, we succeed in defeating crime on the streets at the cost of criminal activity by our government, then we have achieved nothing.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. CONYERS. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Does the gentleman insist on his point of order?

Mr. CONYERS. Mr. Chairman, I withdraw my point of order and my demand for a recorded vote.

So the amendment was agreed to.

The CHAIRMAN. Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. FIELDS OF LOUISIANA

Mr. FIELDS of Louisiana. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FIELDS of Louisiana: Page 2, line 10, after ''United States'' insert ''if the evidence was obtained in accordance with the fourth amendment to the Constitution of the United States''.

Mr. FIELDS of Louisiana. Mr. Chairman, yesterday we debated for some time the Watt-Fields amendment as it relates to the fourth amendment of the Constitution. This amendment is similar to that amendment, but, Mr. Chairman, I want to make a couple of comments about the amendment before I proceed.

First of all, under the fourth amendment of the Constitution, it says in no uncertain terms that ''the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.''

It does not say ''should not be violated'' or ''ought not be violated.'' It says in no uncertain terms that it ''shall not be violated.''

The fourth amendment to the Constitution further states, Mr. Chairman, that no warrant, not some warrants, not two or three warrants, but it says ''no warrant shall,'' again, the Constitution deals with not the permissive language but the mandatory language, ''shall issue but upon probable cause supported by an oath of affirmation and particularly describing the place to be searched and the persons or things to be seized.''

Now, I did a little further research, Mr. Chairman, and Members, to get a good understanding of what shall actually means. According to the Webster dictionary, shall is very simple. Shall means will have to. Shall means must. Shall means used in laws to express what is mandatory.

So I rise today, Mr. Chairman, to suggest to the House that this amendment is a very basic amendment. It

simply says that any evidence obtained ''in accordance with the fourth amendment of the Constitution.''

If we are going to pass this legislation and allow law enforcement officers to go out into the world and break down people's homes without a warrant and say, I am operating with reasonable expectations or reasonable belief that there is something wrong taking place in the household, then we shoot a big bullet in the center of the fourth amendment to the Constitution. Not only that, Mr. Chairman, we basically silence the fourth amendment of the Constitution.

So if Members support the fourth amendment of the Constitution, and I think we all do, because we all by law, when we took the oath of office, said we would, we would support this amendment. It is a very simple amendment. If we want someone, a law enforcement officer, to be able to walk into our constituent's home by breaking down the doors, showing, flashing his or her badge or badges and saying, I am the law enforcement officer of this particular city, move over, I am going to search all of your personal effects, then vote against this amendment. It is very simple. Nothing complicated about it, nothing difficult about it.

But if Members want that law enforcement officer to go to a judge which is clothed with the responsibility of looking at the probable cause to see if there is enough evidence to support a warrant to be issued to search a person's home, then vote for this amendment. It is a very simple amendment, nothing complicated about it.

If we want to go back to the western days, where people break down doors and take people's assets and nothing is done about it, then I would suggest that Members not vote for this amendment.

Let me make another point, Mr. Chairman. Someone made the statement that, well, if someone breaks in a person's home and they find no evidence and they have not violated any law, then no harm is done. I beg to differ with my colleagues on that.

There is a lot of harm that is being done when you break down a person's home and go through all their personal effects, finding evidence or not finding evidence. You have violated somebody's right to privacy. That is one of the most sacred amendments to this Constitution. And to allow law enforcement officers to do that and then exempt one or two agencies to me is asinine, unconscionable, unbelievable, to say the least.

So I would certainly urge my colleagues, in the interest of justice and fair play, please, the worst thing we want to do this session of Congress is to violate our own contract, our own Constitution, the one we held our hands up before the American people and said we will uphold. This bill destroys the fourth amendment of the Constitution. There is no question about that.

I want to be able to leave this institution, leave this Congress and go home tonight and have a sense of security in my own home and not worry about some Rambo cop busting down the door and saying this Congress gave them the right to do it. That is wrong. There is not a Member on this side or the other side that can argue the fact that this amendment does not do that.

Now, they may argue, well, if it is unconstitutional, the courts will hold it to be unconstitutional. Why would we pass a law that we know good and well is unconstitutional. Why would we even opine the thought that the American people ought not have the rights that are afforded them under the Constitution of the United States of America.

I beg of my colleagues on the other side of the aisle, if they really want to do something to secure people in their homes, yes, we have a crime problem in America. There is no question about it. There is a crime problem in my own district, in my own State, but it is not to the extent that we ought to take away people's individual constitutional rights.

Mr. MCCOLLUM. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I think the gentleman is onto something we all would agree with in principle, but I think how he has crafted this amendment makes it fatally defective or at least it makes it ambiguous enough that this side cannot accept it.

What I have stated in the past and did yesterday to the gentleman from Louisiana as well as to others is that I would have no problem accepting and our side would have no problem accepting what was printed in the RECORD as amendment No. 1 by the gentleman from Michigan [Mr. CONYERS] that would read at the end of the bill ''nothing in this section shall be construed so as to violate the fourth article of the amendments to the Constitution of the United States.''

That would be perfectly acceptable. This particular amendment being placed where it is in the context of the lines that read, evidence which was obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States, and then with these words ''if the evidence was obtained in accordance with the fourth amendment of the Constitution of the United States,'' and then goes on and on and on and leaves the clear implication that there can be no exclusionary rule because the very nature of the rule is to apply in situations where there has been a violation of the fourth amendment.

That is why we need it. That is why we need a good faith exception to this whole process.

It would in essence nullify the good faith exception in warrant cases, in my judgment.

□ 1430

We would have an exclusionary rule that excluded it clearly from day one, and there would be no exceptions to it. One could go on and read the rest of it, since it is placed in the middle of it and nothing is stricken, as saying that it is then further modified. But I would suggest that the fact that there was such ambiguity here, courts could interpret this any number of ways, that it makes no sense to posture this in the location the gentleman from Louisiana [Mr. FIELDS] that I presume in good conscience is attempting to do.

I do not understand why we do not offer the original language of the gentleman from Michigan [Mr. CONYERS] if the gentleman wants to do that, at the end of the legislation where he places it that does what I think the gentleman wants us to do.

Mr. Chairman, I would suggest that this amendment be withdrawn and that the other one be substituted in its place, but I am not going to offer anything out here today to do it. I am going to oppose this amendment in its present form, but I would accept, as I say, the words ''Nothing in this section shall be construed so as to violate the fourth article of amendment of the Constitution of the United States'' if it were offered at the end of the bill, as the gentleman from Michigan [Mr. CONYERS] does in what he printed in the RECORD a few days ago.

Without that, Mr. Chairman, I just think the gentleman created an ambiguity that could defeat the whole good faith language that the courts already adopted for warrant searches, searches with warrants, as well as searches without them. For that reason, Mr. Chairman, I am opposed to the amendment.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, almost 24 hours ago I stood in the well of this House and I talked about an amendment that would take us back to the fourth amendment to the Constitution. Colleagues on the other side said ''No, we cannot support you, because you strike the rest of our bill out. If you would just craft this in such a way that you did not strike the rest of the bill, this would be acceptable to us.''

They voted against the wording of the fourth amendment to the U.S. Constitution.

Mr. Chairman, almost 24 hours later, we are back here having essentially the same debate, different language. This language does not strike one word out of the underlying bill. All it says is it is going to be subject to the fourth amendment to the U.S. Constitution.

However, again, my colleagues are back saying ''Oh, no, picky, picky, picky. I can't agree with that either, it has to be drafted some other way.''

Mr. Chairman, this is an open rule we are operating under, they say. Anybody who wants to come in and offer an amendment can offer an amendment to

say whatever they wanted to say. Yet, my colleagues on the other side say ''Oh, no, you have not been able to draft it in such a way that is satisfactory to us yet. There is some language out there somewhere that will satisfy us,'' but 24 hours almost has passed and they have not drafted it. All they want to do is come back in and say ''Oh, no, your language is not good enough.''

Mr. Chairman, Madison and Webster drafted the language of the fourth amendment, or whoever the Founding Fathers were who were working on that particular portion of it. I wish that these new masters of the Constitution, these master draftspersons who drafted this artistic Contract With America, would draft some language that would be satisfactory to them, that would not trample on the Founding Fathers' language.

It is not doing my constituents or the American people any good to say ''Oh, no, this is not good enough, we need a comma here or a period there, or a T crossed here or an I dotted there.'' If they believe in the Constitution, draft the language, give it to us. I invited them to do it yesterday. I have not seen it yet.

Mr. MCCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, the language I do not have to draft. I read it to the gentleman, and it is printed in the CONGRESSIONAL RECORD.

Mr. WATT of North Carolina. Mr. Chairman, I would say to the gentleman, offer it. I reclaim my time, Mr. Chairman.

Mr. MCCOLLUM. Mr. Chairman, if the gentleman will yield, I will do it.

Mr. WATT of North Carolina. If the gentleman offers it, if he votes this one down, let him offer some amendment that will make this constitutional, and then maybe we can talk about supporting it, Mr. Chairman.

However, do not come in here and say ''Oh, no, yesterday you struck the rest of my bill.'' This does not strike one iota of his bill, yet it is still not satisfactory to him. If he wants something, draft it and put it in and let us talk about it. That is what this House is all about. That is what we came here for. But do not be picayune with me.

Mrs. COLLINS of Illinois. Mr. Chairman, I move to strike the requisite number of words.

(Mrs. COLLINS of Illinois asked and was given permission to revise and extend her remarks.)

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I also rise in vehement opposition to H.R. 666, the exclusionary rule, and urge my colleagues to reject such a blatant attempt to eradicate one of the most fundamental constitutional protections afforded all Americans, the prohibition against unreasonable searches and seizures by the Government that is so precisely spelled out in our fourth amendment.

This misguided bill highlights the GOP's disconnect with the American people, and it is just one more example that the leadership's so-called contract is, to borrow a phrase from well-known cereal advertisers, chock full of nuts.

Under this bill, as astonishing and unbelievable as it may seem, evidence that is illegally obtained by law enforcement officials without the aid of a search warrant would be admissible in Federal trial proceedings.

If this not a complete and total affront to both the spirit and intent of the founding document of our great democracy, I do not know what is.

Let me give the Members an example of what I am talking about. About a year or so ago in my district the BATF and some local law enforcement officials entered into some HUD-owned Chicago Housing Authority property in my district in the city of Chicago and knocked down the doors. They said they were looking for guns.

What happened as a result of that? They found a number of assault weapons that they were looking for, but in addition to that, they went into the homes of a number of people, and they did not find any weapons there. What they found instead was terrified children.

Imagine, here you are in your home, little kids running around in there, somebody comes in and knocks on your door, bursts their way in with ''ATF'' on the back, with ''Chicago Police'' on their shoulders, et cetera, guns all ready to be drawn, little kids sitting there screaming, and law enforcement officers are running through people's houses, ransacking through their dresser drawers, through their closets, up under their beds and anyplace else they thought there might be a weapon to be found.

Mr. Chairman, this is a tremendous amount of terror that you can give anybody, but particularly to young children. To have this kind of thing happen without a search warrant, without cause, was beyond all realism whatsoever. I just could not believe it was happening, but it did happen. It happened in my district of Chicago.

Mr. Chairman, we are talking about a crime bill here, yes, but we are also talking about crimes that the Federal Government and others can perpetrate on people. It is not right for the police to do that. It is not right for the IRS to do that. It is not right for agencies to do that.

If it is a crime, it is a crime for them to commit a crime as well, without probable cause.

Mr. Chairman, the U.S. Supreme Court has continually and consistently refused to adopt such sweeping exceptions to the exclusionary rule as those that are embodied in this legislation before us today.

H.R. 666 would not only render the exclusionary rule, and therefore, the most basic rights of all of our citizens, moot, but also provide a disincentive for police officers to follow the dictates of the law.

By allowing courts to admit evidence gathered in the case of warrantless searches, this body would be giving law enforcement officials the mere option of following legal search and seizure requirements or not.

In fact, there would be much less incentive on the part of officers to even obtain warrants, knowing that the courts would be lenient, as far as they are concerned.

As the high court has so eloquently stated, and as so many of my colleagues have so eloquently stated on this floor yesterday and today, a strong exclusionary rule is required to enforce the right of all Americans ''to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.''

□ 1440

Sweeping exceptions to this rule would, quoting again the Supreme Court, ''permit that right to remain an empty promise,'' an empty promise.

Mr. Chairman, the absolute last thing I would want to see is our Constitution reduced to an empty promise.

It strikes me as peculiar that the GOP, the Republican majority, will shroud itself in the second amendment as a defense to the weak, tired, worn-out line that all Americans have an unrestricted right to own a deadly arsenal of assault weapons, but then will turn right around and support legislation such as H.R. 666 which so obviously guts the fourth amendment's civil liberties protections upon which all our citizens have come to rely.

Mr. Chairman, it is becoming increasingly clear that my Republican colleagues are quick to invoke the constitutional principles and the wisdom of the Founding Fathers whenever it suits their political whims but completely disregard it when the rights of average Americans like my constituents and like yours, Mr. Chairman, and all the rest of our constituents are at stake, as in this case. This is no way to legislate and the citizens of the country I believe clearly see through this charade.

I would again urge my colleagues to vote no on this turkey, thereby preventing unfounded invasions of privacy and constitutional rights violations against all our constituents. We cannot and simply must not allow this 100-day agenda to undo 200 years of democracy.

AMENDMENT OFFERED BY MR. MCCOLLUM AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. FIELDS OF LOUISIANA

Mr. MCCOLLUM. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. MCCOLLUM as a substitute for the amendment offered by Mr. FIELDS of Louisiana: Page 3, line 12, strike ''Rule'' and insert ''Rules''.

Page 3, line 14, after ''proceeding.'' insert ''Nothing in this section shall be construed

so as to violate the fourth article of amendments to the Constitution of the United States.''.

Mr. MCCOLLUM. Mr. Chairman, this does what we said we would do all along if the gentleman from Michigan [Mr. CONYERS] had offered it. It is what he had printed in the RECORD a couple of days ago.

It provides what seems to me to be on its face the clear language that any of us would know is true and, that is, that nothing in this legislation that we are proposing in any way violates the fourth amendment to the Constitution. We have no problem with that. That is all that this amendment says. It does not say anything more, it does not say anything less. It should not be construed as saying anything more or anything less, but it is placed in simple language, it is placed at the end of the bill. It does not mess up the rest of it. It keep the good faith exception expansion that we want in this bill intact.

Mr. Chairman, I would encourage my colleagues to accept this, I hope the gentleman from Louisiana [Mr. FIELDS] could accept it and we could move on.

Mr. FIELDS of Louisiana. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLUM. I yield to the gentleman from Louisiana.

Mr. FIELDS of Louisiana. Can the gentleman explain what is the difference between the two amendments, because it appears, based on his dissertation, there is no difference between the amendment that I have and the substitute amendment that he just introduced.

Would the gentleman please explain?

Mr. MCCOLLUM. If I can reclaim my time, I would be glad to. There is no real difference in intent. I am sure you intend to do exactly as I have suggested. It is just that where you had placed what you had written could be construed in my judgment and by others over on this side of the aisle in a way that you did not intend, in a way that would actually end, by some court interpretation in the future, those kinds of good-faith exceptions we already have in search warrant cases. I do not think you intended that. If you do it this way, then there is no ambiguity, there is no question for the courts to interpret. It is just a lot cleaner.

That is what I think the gentleman wants and I do not have a problem with what you want to do if that is what you want, as I believe it is.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLUM. I yield to the gentleman from Michigan.

Mr. CONYERS. I am very appreciative of the accord here. Could this be known as the McCollum-Fields substitute amendment?

Mr. MCCOLLUM. I would be delighted if it were known as the McCollum-Fields-Conyers substitute amendment.

Mr. CONYERS. I did not suggest that.

Mr. MCCOLLUM. Mr. Chairman, the gentleman from Michigan wrote it, so I would be glad to give him credit.

Does anyone else want time? Otherwise, I hope the gentleman would accept this.

Mr. FIELDS of Louisiana. Mr. Chairman, will the gentleman yield further?

Mr. MCCOLLUM. I yield to the gentleman from Louisiana.

Mr. FIELDS of Louisiana. I have not had an opportunity to see the amendment, but it is the exact amendment that we had on this side of the aisle?

Mr. MCCOLLUM. Reclaiming my time, it is the exact amendment that was published by your side of the aisle under the name of the gentleman from Michigan [Mr. CONYERS] as amendment No. 1 in the CONGRESSIONAL RECORD of February 6, 1995.

Mr. FIELDS of Louisiana. I thank the gentleman.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLUM. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Chairman, I was just looking at the language, and it refers to section rather than bill. There are several sections in this bill, and what I am trying to be clear on is that your language applies to the entire bill, not just to one particular section of the bill.

Mr. MCCOLLUM. Well, this entire bill refers to an entirely new section of the code, section 3510, and I think that that is the key to this and that is what this applies to. That is virtually the entire bill. What we talking about is amendment chapter 223 of title 18 and this is an entirely new section, section 3510, we are creating by this piece of legislation. That is what this applies to, the entire new section.

Mr. WATT of North Carolina. I thank the gentleman for yielding.

Mr. SCHUMER. Mr. Chairman, I ask unanimous consent that on all subsequent amendments to this one, for the remainder of the bill, there be a time limit of 5 minutes of debate on each side.

The CHAIRMAN. On this amendment and any subsequent amendments thereto?

Mr. SCHUMER. Not on this amendment but on any subsequent amendment.

The CHAIRMAN. And on all amendments thereto?

Mr. SCHUMER. Correct.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. MCCOLLUM] as a substitute for the amendment offered by the gentleman from Louisiana [Mr. FIELDS].

The amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana [Mr. FIELDS], as amended.

The amendment, as amended, was agreed to.

The CHAIRMAN. Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. SERRANO

Mr. SERRANO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SERRANO: Page 3, line 14, strike the close quotation mark and the period which follows.

Page 3, after line 14, insert the following:

''(e) LIMITATION.—This section shall not apply with respect to a search or seizure carried out by, or under the authority of, the Immigration and Naturalization Service.''.

The CHAIRMAN. The gentleman from New York [Mr. SERRANO] will be recognized for 5 minutes on his amendment, and a Member in opposition will be recognized for 5 minutes.

Mr. MCCOLLUM. I claim the time in opposition, Mr. Chairman.

The CHAIRMAN. The gentleman from Florida [Mr. MCCOLLUM] will be recognized for that purpose.

The Chair recognizes the gentleman from New York [Mr. SERRANO].

Mr. SERRANO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as we can notice by the amendments that have been submitted here today, there are two issues that are being discussed. One is the belief by many of us that in fact the bill presented by the majority strikes down most if not all of the protections of the fourth amendment. But in addition, some agencies have been singled out by these amendments because they are, unfortunately, agencies with either a reputation of misusing their power or, and in most cases, a reputation of striking fear into the hearts of hard-working, law-abiding American citizens and in many cases, or in most cases, both.

There is no reason that one can imagine why an American citizen or a resident of this country should be afraid of any of its Federal agencies. Yet that is the case in so many instances. That is why today you have seen people discussing so many different agencies.

The INS is, in many neighborhoods in this country, at the top of the list of the kind of an agency that can strike fear into the hearts of people. Because when the INS decides that it has cause to believe that there is illegal immigration taking place or has taken place in a certain neighborhood, the INS does not stop to ask questions and to determine who they should go after and who should be protected under our Constitution. What the INS usually does is walk into a neighborhood where the color of the people's skin or the language they speak appears to indicate that illegal immigrants could be in fact living in that community, and they will tear down a business door, they will tear down a home, they will tear down the privacy of a family or an

individual searching, if you will, searching for illegal immigrants.

We have seen this throughout our communities, most recently in the northern Manhattan section of Washington Heights where reports took place, where bodego owners, grocery store owners were illegally confronted by the Immigration Department in a desire to determine whether or not there were illegal immigrants, undocumented immigrants, in that community.

So for anyone in my community, whether they were born American citizens or not, this Federal agency is one that strikes fear into our hearts. And incidentally, someone may say, ''Well, if you've got nothing to hide, you should not be afraid.''

□ 1450

That is not the case. If you look like a certain person, if you have the first name of Jose, you can be sure that you will run into the INS at one time in your life and they will not give you any way to explain yourself. They will just ask you some very hard questions.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. SERRANO. I yield to the gentleman from Michigan.

Mr. CONYERS. If the gentleman will yield, Mr. Chairman, the Government Operations Committee had hearings on the INS in the last Congress with harassed African-American and other minorities and women officers, and the gentleman's amendment and the discussion that surrounds it flows exactly with what we heard. I would refer every Member here to the Government Operations hearings on INS in the 103d Congress. It is a very dangerous instrumentality.

There are a lot of good people. I love the commissioner, the director, but it still is not under control and the gentleman's amendment is very good and I accept it on this side.

Mr. SERRANO. I thank the gentleman very much.

The gentleman's comments obviously fall right to the point that there has been ample proof that this Federal agency has not carried out its duties in a proper way, and when they do not carry them out in a proper way, I think it becomes the role of this body to protect our citizens. I think that is a point that should be made.

In many instances the violation of rights and privileges are committed upon citizens of the United States, the illegal searches, the fear, the attacks, the midnight raids, the middle of the night raids, the lack of respect for individual rights.

If the folks on the other side really believe that their bill is a good bill, and if they believe that they have not in fact trampled, as I believe, on the fourth amendment, there should be no problem in accepting this amendment. This amendment simply will strengthen their belief that the fourth amendment is still intact, and I would urge a ''yes'' vote on this amendment.

The CHAIRMAN pro tempore (Mr. HOBSON). The gentleman from Florida [Mr. MCCOLLUM] is recognized for 5 minutes in opposition to the amendment.

Mr. MCCOLLUM. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I cannot accept this amendment. I did not accept the other two amendments that were passed that exempted a whole host of Federal law enforcement officials from the opportunity to have the Federal court exclude evidence that they obtain which may be in violation of the fourth amendment but was obtained without any intent on their part to violate, without any knowledge they were doing it, and with no good reason that I can think of for us to be excluding it from court proceedings where convictions could otherwise be obtained for bad guys and people who have committed major crimes in this country. There is no reason to want to exempt these folks.

We are not doing anything with this bill that would in any way reduce protections individuals have from illegal searches and seizures. We may all be angry at some of these agencies for one reason or another, because they have overstepped their bounds. I do not think there is a single police agency in this country that has not had somebody at some point overstep their bounds in the history of these agencies. It probably has happened more than once for most of them, and in some too frequently, and nobody condones that, not good police, not you, not the President, not the Governors of the States, nobody condones them overstepping the bounds and violating the protection of our citizenry under the fourth amendment.

The question is what is the best way to proceed to correct those problems, and it certainly is not in keeping out evidence of criminals that will prohibit their being convicted when they should be, when the evidence is perfectly good itself.

Why do we want to prohibit somebody from going to jail who has committed a bad crime in the name of stopping something that is not going to be stopped? If a police officer, INS or anybody else does not know they are doing anything wrong and a judge decides that they do not know, and they could not know, and there is no reason for a reasonable person to ever know they did anything wrong, then there is no deterrent whatsoever to the behavior they have done. They are going to do it every time. We need to find other ways to stop it, but the only way we want to stop is where it is antagonizing being done in violation of the Constitution and trampling, and as the Founding Fathers wanted us to do to protect it. It makes no sense to penalize the general public of the United States by allowing more criminals out on the streets as are now being allowed on technicalities by the situation that exists today.

We need to carve out an exception to the exclusionary rule that is even broader than the courts have accepted today. That is what this bill does. Where a police officer of any type, be he INS or otherwise, acts in good faith and believes, and reasonably and objectively by a judge's decision believes, and is determined to believe that what he is doing is right and correct and not violative of the fourth amendment, and why in the world would anybody want to exclude any evidence? The gentleman has every right to protest INS like others protested other agencies of the Federal Government.

I submit this bill is not the place for that. It does not do us any good and it does damage to the fundamental underlying principle of this bill, this effort to create a better protection of our American citizenry.

I urge a ''no'' vote.

Mr. SERRANO. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLUM. I yield to the gentleman from New York, the author of the amendment.

Mr. SERRANO. With all due respect to the gentleman, the reason for the protection that I try to put forth, a reason that the gentleman may probably never experience or has ever experienced in his life, is the fact that there are some Federal authorities that upon looking at some American citizens determine, assume that that person does not belong in this country, simply by the way they look, simply by their first name or their last name or the fact that they may not have fully mastered the English language. This simply says give me the protection that I deserve as an American citizen.

Mr. MCCOLLUM. If I can reclaim my time, I would simply say to the gentleman no, fortunately I have not had that personal experience. I do not doubt for a moment that goes on but that is not a remedy for that.

What the gentleman is doing makes an exception to this bill of a whole entire agency and their efforts at law enforcement. That makes no sense whatsoever. It undermines the purposes of this bill and it is not in the interests, as far as I am concerned, of the general public where we are trying to get more convictions where somebody commits a crime. And I do not care, if they have committed a crime, we ought to get them convicted and we have the evidence to do it. We have no business excepting an agency, particularly INS, from that, particularly where we have alien smuggling and all kinds of stuff the Immigration Service is having to investigate. I would suggest it is not in the best interest of aliens, legal aliens coming here to have this provision, and those who would be citizens and would make great contributions to this country, it is not in their best interests to allow the criminals in the world to

prey on those who are unfortunately in their midst.

So I urge a rejection of this amendment, and I yield back the balance of my time.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from New York [Mr. SERRANO].

The question was taken; and the Chairman announced that the ayes 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 103, noes 330, not voting 1, as follows:

[Roll No. 102]

AYES—103

Barrett (WI)
Becerra
Berman
Bishop
Bonior
Boucher
Brown (CA)
Brown (FL)
Bryant (TX)
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Coyne
DeFazio
Dellums
Dingell
Durbin
Engel
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Furse
Gejdenson
Gephardt
Green
Gutierrez
Hastings (FL)
Hefner
Hilliard
Hinchey
Jackson-Lee
Jefferson
Johnson, E. B.
Kennedy (MA)
Kennedy (RI)
Kildee
Levin
Lewis (GA)
Lofgren
Martinez
Matsui
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Nadler
Oberstar
Obey
Olver
Owens
Pastor
Payne (NJ)
Pelosi
Rangel
Reynolds
Richardson
Rose
Roybal-Allard
Rush
Sabo
Sanders
Schroeder
Scott
Serrano
Skaggs
Stark
Stokes
Studds
Thompson
Thornton
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wynn
Yates

NOES—330

Abercrombie
Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Beilenson
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Brewster
Browder
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dixon
Doggett
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (CT)
Johnson (SD)
Johnson, Sam
Johnston
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennelly
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martini
Mascara
McCarthy
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Reed
Regula
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Wyden
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—1

Dooley

□ 1516

Messrs. MONTGOMERY, ACKERMAN, and DE LA GARZA, Mrs. LOWEY, and Mr. GONZALEZ changed their vote from ''aye'' to ''no.''

Ms. FURSE and Mr. FIELDS of Louisiana changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Ms. PELOSI. Mr. Chairman, I rise in strong opposition to H.R. 666, the Exclusionary Rule Reform Act. While its supporters would have us believe that this bill will simply broaden a previously existing exception to the fourth amendment, it will, in reality, seriously damage a constitutional amendment that has protected Americans from unreasonable searches and seizures for over 200 years.

Simply put, Mr. Chairman, the fourth amendment places a check on the ability of the Government to arbitrarily search a person's home or person by requiring that a search warrant be issued by a neutral and detached magistrate. Since 1914, the Supreme Court has held that evidence obtained as the result of an illegal search must be excluded at trial.

Mr. Chairman, H.R. 666 removes this important constitutional safeguard by virtually eliminating the warrant requirement that the American Colonists demanded of the Constitution's Framers following their occupation by British soldiers. In spite of these origins, the fourth amendment has, in no way, lost its historical or legal relevancy. We need only look at the documented abuses from law enforcement jurisdictions all over the country to reaffirm the inherent protective value of the fourth amendment.

If by congressional mandate, the courts begin to admit evidence gathered in good faith but without a search warrant, there would be much less incentive for the police to obtain search warrants at all—thereby undermining the fundamental protection of the fourth amendment to the Constitution.

Mr. Chairman, the exclusionary rule is what protects all Americans against unreasonable searches and seizures and the invasion of privacy by law enforcement officers. It does not undermine the ability of the police to enforce the law; indeed, it has been part of the training given to all Federal law enforcement agents since 1914. The Directors of the FBI have endorsed the exclusionary rule and have stated that the rule does not hinder the FBI's work.

Mr. Chairman, the exclusionary rule works because it creates an incentive for law enforcement officers to know legal search and seizure standards. By passing this bill, law enforcement will actually have an incentive not to know the law.

In the rush to pass their legislative agenda in the first 100 days, the authors of this bill are asking us to sacrifice the constitutional safeguards that have protected all Americans for 207 years.

I urge all of my colleagues to oppose this attack on the fourth amendment and vote ''no'' on H.R. 666.

Mr. STOKES. Mr. Chairman, I rise in strong opposition to H.R. 666, the Exclusionary Rule Reform Act of 1995. Let me state from the beginning that I recognize the challenge we face in curbing crime in our Nation. In fact, I have been a longstanding advocate for substantial congressional action to reduce and prevent violence and crime. Nonetheless, Mr. Speaker, I cannot support this measure before us today because the very belief upon which our judicial system was created—protection of individual constitutional rights balanced with society's right to be free from harm—has yet to be achieved for many Americans.

Over the years, I have been a staunch supporter of crime control measures. I have patrolled our streets as part of Neighborhood Watch efforts. I have seen firsthand the effects that drugs and violence have had on our neighborhoods. Before I came to Congress I

was blessed with the opportunity to practice law in this great Nation. I have litigated civil rights issues before many courts. One of my most memorable experience is having argued *Terry* v. *Ohio,* 392 U.S. 1 before the U.S. Supreme Court in 1968. Because of these experiences, I feel that I cannot support the unbalanced approach that H.R. 666 represents.

While I agree that strong measures must be taken to curb the crime epidemic, I do not believe that such measures should undermine any individual's basic rights and constitutional liberties. My duty as a Member of Congress requires that I act in the best interest of the people I represent and in the best interest of the U.S. Constitution I have sworn to uphold. We cannot, and should not, in an attempt to facilitate the prosecution of alleged criminals, be unfaithful to our responsibility to act in the best interest of the American people by disrespecting the founding document of this Nation—the fourth amendment of the U.S. Constitution. This shortsighted legislation will not only compromise Americans' constitutional rights, but will actually do very little to reduce crime or enhance the prosecution of crimes.

Mr. Chairman, the exclusionary rule was created in *Weeks* v. *United States,* 232 U.S. 383 (1994), where Justice William Day's opinion for a unanimous court concluded that the use of illegally obtained evidence by the Government was a clear ''denial of the constitutional rights of the accused'' (p. 398). The exclusionary rule was fashioned by the Supreme Court as the enforcement mechanism of the fourth amendment, which protects citizens against unreasonable searches and seizures. The exclusionary rule embodies our national principle of respect for the fundamental inalienable rights of all our citizens under the U.S. Constitution.

Since 1914, the exclusionary rule as we know it today is a mere shadow of the rule envisioned in the Weeks opinion. Over the years, the U.S. Supreme Court has established exceptions to the rule that have permitted more and more illegally obtained evidence to be used against accused criminals. One of the most prominent exceptions to the exclusionary rule is the good faith exception created by the court in *United States* v. *Leon,* 468 U.S. 897 (1984).

We must all remember that the fourth amendment, working in conjunction with the exclusionary rule, represents significant constitutional protection for anyone accused of a crime. As you know, being accused does not mean that you are guilty. Yet, the drafters of this current legislation, in their haste to sweep up criminals, have presented a law that treats the accused as if they were guilty. No American deserves to be treated as a criminal without the benefit of a trial.

Contrary to the assertions of the proponents of this legislation, the application of the exclusionary rule almost never prevents the prosecution of a case against an accused. A 1983 study by Thomas Y. Davies, entitled, ''A Hard Look at What We Know (and Still Need To Learn) About the 'Costs' of the Exclusionary Rule'' (1983), estimates that only 0.6 to 2.35 percent of all felony arrests are lost as a result of this rule. Thus the challenge to the exclusionary rule based on the risk of lost arrests is fueled by an ideological agenda that is hostile to our freedoms ensured by the fourth amendment.

Mr. Chairman, the bill before us today, the Exclusionary Rule Reform Act of 1995, codifies the good faith exception to the exclusionary rule, but will also make it more broad. Such an abdication of congressional responsibility will certainly undermine many of our most important efforts to protect the Constitutional rights of all Americans.

The stated purpose of the Exclusionary Rule Reform Act if to provide a statutory basis for the good faith exception in cases of searches with and without warrants. Under the good faith exception, evidence obtained in a search or seizure that violates constitutional protections would not be excluded if ''the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment'' to the Constitution.

The legislation to limit citizens' fourth amendment rights warps the Constitution to such an extent that the constitutionality of this provision is seriously in question. While I agree that Congress should continue to make significant strides to reduce crime, this proposed measure goes well beyond the legitimate objective of crime prevention and prosecution enhancement. In fact, this bill is specifically designed to inhibit the constitutional rights of the people of America by violating their fourth amendment rights. Justice Douglas eloquently warned us of the dangers involved in compromising the fourth amendment in his dissenting opinion in Terry versus Ohio:

> To give the police greater power than a magistrate is to take a long step down the totalitarian path. Perhaps such a step is desirable to cope with modern forms of lawlessness. But if it is taken, it should be the deliberate choice of the people through a constitutional amendment.

Millions of arrests and searches are carried out by police each year in the United States. The fourth amendment, with its ban on unreasonable searches and seizures, is the constitutional provision that, more directly than any other, governs police conduct. This amendment is designed to preserve the most cherished values of a free society by striking a fair balance between society's demand for order, and individual rights.

It is my belief that our judicial system's major focus should be to protect its citizens from crime and violence. However, as a nation, we cannot afford to compromise our Constitutional rights in exchange for unconstitutional, excessive police state tactics. We all have an obligation to uphold the Constitution and protect the rights of all Americans to be free from unreasonable searches and seizures. I urge my colleagues to uphold our Constitution, protect the American people, and vote down this unconscionable invasion upon one of their most priceless constitutional guarantees.

The CHAIRMAN. If there are no further amendments, under the rule the Committee now rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HOBSON) having assumed the chair, Mr. RIGGS, 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. 666) to control crime by exclusionary rule reform, pursuant to House Resolution 61, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate voice demanded on any amendment?

If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

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

RECORDED VOTE

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

A recorded vote was ordered.

Mr. CONYERS. Mr. Speaker, I withdraw the request for a recorded vote.

□ 1520

The SPEAKER pro tempore (Mr. HOBSON). The Chair advises the gentleman from Michigan [Mr. CONYERS] that a recorded vote has already been ordered.

The vote was taken by electronic device, and there were—ayes 289, noes 142, not voting 3, as follows:

[Roll No. 103]

AYES—289

Allard	Clinger	Frisa
Andrews	Coble	Funderburk
Archer	Coburn	Gallegly
Armey	Collins (GA)	Ganske
Bachus	Combest	Geren
Baesler	Condit	Gilchrest
Baker (CA)	Cooley	Gillmor
Baker (LA)	Costello	Gilman
Ballenger	Cox	Goodlatte
Barcia	Cramer	Goodling
Barr	Crane	Gordon
Barrett (NE)	Cremeans	Goss
Bartlett	Cubin	Graham
Barton	Danner	Green
Bass	Davis	Greenwood
Bateman	de la Garza	Gunderson
Bentsen	Deal	Gutknecht
Bereuter	DeLay	Hall (TX)
Bevill	Deutsch	Hancock
Bilbray	Diaz-Balart	Hansen
Bilirakis	Dickey	Harman
Bliley	Dicks	Hastert
Blute	Dooley	Hastings (WA)
Boehlert	Doolittle	Hayes
Boehner	Dornan	Hayworth
Bonilla	Doyle	Hefley
Bono	Dreier	Heineman
Borski	Duncan	Herger
Brewster	Dunn	Hilleary
Browder	Edwards	Hobson
Brownback	Ehlers	Hoekstra
Bryant (TN)	Ehrlich	Hoke
Bunn	Emerson	Holden
Bunning	English	Horn
Burr	Ensign	Hostettler
Burton	Everett	Houghton
Buyer	Ewing	Hunter
Callahan	Fawell	Hutchinson
Calvert	Fields (TX)	Hyde
Camp	Flanagan	Inglis
Canady	Foley	Istook
Castle	Forbes	Jacobs
Chabot	Fowler	Johnson (CT)
Chambliss	Fox	Johnson (SD)
Chapman	Frank (MA)	Johnson, Sam
Christensen	Franks (CT)	Jones
Chrysler	Franks (NJ)	Kanjorski
Clement	Frelinghuysen	Kasich

Kelly
Kim
King
Kingston
Klink
Klug
Knollenberg
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
LoBiondo
Longley
Lucas
Luther
Manton
Manzullo
Martini
Mascara
Matsui
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pombo
Pomeroy
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wise
Wolf
Wyden
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—142

Abercrombie
Ackerman
Baldacci
Barrett (WI)
Becerra
Beilenson
Berman
Bishop
Bonior
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chenoweth
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Coyne
Crapo
DeFazio
DeLauro
Dellums
Dingell
Doggett
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Jackson-Lee
Jefferson
Johnson, E.B.
Johnston
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Kolbe
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Maloney
Markey
Martinez
McCarthy
McDermott
McKinney
Meehan
Meek
Menendez
Metcalf
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pastor
Payne (NJ)
Pelosi
Pickett
Poshard
Rangel
Reed
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Stark
Stockman
Stokes
Studds
Taylor (NC)
Thompson
Thornton
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Watts (OK)
Waxman
Williams
Woolsey
Wynn
Yates

NOT VOTING—3

Cunningham Dixon Gekas

□ 1537

Mr. NEAL of Massachusetts changed his vote from ''aye'' to ''no.''

Mr. SAM JOHNSON of Texas and Mr. COSTELLO changed their vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the House by Mr. Edwin Thomas, one of his secretaries.

EFFECTIVE DEATH PENALTY ACT OF 1995

The SPEAKER pro tempore (Mr. HOBSON). Pursuant to the order of the House of Tuesday, February 7, 1995, 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. 729.

□ 1539

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, 729) to control crime by a more effective death penalty, with Mr. DREIER in the chair.

The Clerk read the title of the bill.

□ 1540

The CHAIRMAN. Pursuant to the order of the House of Tuesday, February 7, 1995, the bill is considered as having been read the first time.

The gentleman from Florida [Mr. MCCOLLUM] will be recognized for 30 minutes and the gentleman from New York [Mr. SCHUMER] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. MCCOLLUM]

Mr. MCCOLLUM. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 729, the Effective Death Penalty Act of 1995, is one of the most important pieces of crime legislation that the 104th Congress will consider. It offers relief to State law enforcement officials, comfort and a chance for healing to crime victims, and enhanced credibility for the criminal justice system. And this bill even offers something for criminals, if we want to look at it that way.

By curtailing the seemingly endless appeals of death-row inmates, particularly those who have been there for a long period of time, H.R. 729 sends the clear message to criminals that the criminal justice system is not a game. It sends the message that if you do the crime, you do the time. It sends the message of swiftness and certainty of punishment that has been missing from our criminal justice system for some time, and it goes a long way to restoring deterrence to the criminal justice system, which is a corner, a pillar of our entire criminal justice system, deterrence. Nothing is more important for public safety than to reaffirm that message, because far too many of today's criminals think that they can beat the system if they are ever caught.

Congress has been considering this reform for several years. Despite victories in the House and Senate going back as far as 1984, supporters of habeas corpus reform have not been able to overcome the well-positioned minority of Members who oppose reform. Mr. Chairman, it is my strong hope that those days are now finally over.

It is often said that the public does not understand what is meant by the term ''habeas corpus.'' And that may be true to some extent. But the public does understand this: that convicted murderers on death row regularly make a mockery of the criminal justice system by using every trick in the book to delay imposition of their sentences. In many cases where the people's elected representatives have passed capital punishment laws, executions never occur because of endless appeals and lawsuits. People are sick and tired of the legal maneuvers of violent criminals. They want accountability.

H.R. 729 stands for the clear and simple proposition that there must be finality and accountability. The voices of victims have been heard. When this bill becomes law, no longer will the victims of horrible violent crimes wait for a decade or more for justice to be served. Victims will no longer experience the revictimization caused by endless litigation which continuously stirs up memories of the pain and agony caused by the original crime.

The bill before us today balances the need for finality and accountability with a firm regard for due process of law and full constitutional protections. Federal and State prisoners will have ample opportunity to challenge their conviction and sentence in both direct appeals and in collateral attacks.

The difference, however, would be this. Convicted criminals, particularly murderers on death row, will generally get only one opportunity to raise their claims in Federal court using habeas corpus petitions. Once the first petition is disposed of, further legal challenges must be based on newly discovered evidence pertaining to the prisoner's actual innocence of the crime.

The essence of H.R. 729 comes from the recommendations of the Habeas Corpus Study Committee, chaired a few years ago by retired Supreme Court Justice Lewis Powell. The Powell Committee established the basic quid pro quo approach to this bill with regard to death row inmates. If States provide legal counsel in State habeas review to indigent convicted murderers, even though such provision of counsel is not

required by the Constitution according to the Supreme Court, then the States will receive the benefits of limited and expedited habeas corpus procedures when such prisoners bring their claims to the Federal courts.

These procedures could help insure that defendants are given competent counsel in postconviction proceedings. If States enact these provisions, the time in which a habeas corpus petition must be filed following the conclusion of direct appeal of the conviction is reduced to 180 days. This portion of the bill would also require that Federal courts could not entertain any claims not raised in the prior State court proceedings unless certain exemptions apply.

These optional provisions also certify that executions will be stayed while a habeas corpus petition is pending, but limits the granting of further stays if the petition is denied by the district court and the court of appeals.

Additionally, this portion of the bill would require Federal district courts to decide habeas corpus petitions within 60 days from the date of any hearing on the petition, and also requires the courts of appeal to decide an appeal from the decision of the district court within 90 days of the last brief in the case being filed.

Aside from capital cases, State prisoners will have a 1-year period of limitation for filing habeas corpus petitions after they have been convicted of a State crime. Federal prisoners would have a similar 2-year period of limitation for initiating a habeas proceeding when they have been convicted of a Federal crime.

Federal judges would be prevented from granting relief on a habeas petition filed by a person convicted in State court unless the person exhausts his State remedies first.

Finally, H.R. 729 modifies existing law to insure that a Federal death sentence is imposed in certain cases where the death penalty is an appropriate punishment.

Under current law, the jury in a capital case is given the complete discretion to impose the death penalty, life imprisonment, or some lesser penalty regardless of the severity of the facts found to exist. Under this title of this bill, juries would be required to impose a sentence of death in cases where they determine that aggravating factors outweigh mitigating factors or where at least one aggravating factor exists but no mitigating factor exists. If the jury does not find that these conditions exist, they are prohibited from imposing the death penalty.

H.R. 729's habeas corpus reform provisions are supported by nearly every major law enforcement organization in the country. These protectors of public safety, victims of crime, and the general public have waited a long, long time for these reforms.

I urge in the strongest of terms that my colleagues support this bill, that we get it passed and put it into law this year, 1995.

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

Mr. SCHUMER. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. BONIOR].

Mr. BONIOR. Mr. Chairman, I thank the gentleman for yielding time to me.

I would address my comments not on the subject necessarily but to the Chair and to the distinguished gentleman from Florida both. I would hope that they would relay these comments in the good faith that they are given to the appropriate Members within their party structure. We have had today a series of problems with the Committee on Science. I raise this just to alert my friends that we feel on our side of the aisle that our committee members have not been treated fairly. Let me be very specific.

The committee is marking up the risk assessment bill. It is a very important bill affecting the health and the safety of all Americans. And that bill, the draft of that bill was made available last night but was not available to our Members until 11:20 today, when they went in to meet to do the bill in committee.

In addition to that, just a few minutes ago, prior to coming here for this last vote, they were taking a rollcall vote in the committee on this important bill on an important amendment that I think passed only by two or three votes, while a vote was going on on the floor here in the Committee of the Whole, excuse me, I think we were in the full House at that time moving to final passage.

What occurred was two or three of our Members missed that vote because they were here. The bells had gone off.

I am requesting in a civil way this afternoon that that type of behavior cease and that our Members be given the courtesy to participate and to vote and to express themselves in a legitimate, fair, and open manner in that committee and that we be given notice on the bills that are pending before that committee while the committee is considering it, not after the bills have been brought up.

I thank the Chairman for his indulgence, and I would hope those messages would get relayed to the proper people, the gentleman from Pennsylvania [Mr. WALKER] and the gentleman's leadership.

Mr. SCHUMER. Mr. Chairman, I reserve the balance of my time.

□ 1550

Mr. MCCOLLUM. Mr. Chairman, while we may have not have a lot of speakers on this our side, we are going to spend a lot of hours debating habeas corpus reform. I have no knowledge whatever about the leadership comments on the other side of the aisle, about the Committee on Science today, but I would like to bring us back, so we do not close on the topic of something that happened in another committee, to the fact that what we are going to consider is a provision that should have been offered in the last Congress, but we were not permitted to do so by the other side when they were in the majority.

That is a provision that will ultimately end the seemingly endless appeals of death row inmates and get on with the carrying out of their sentences. It is something the public has wanted for a long, long time.

We should be excited about the fact that it is here today, that we have a chance to finally vote on this and get it reformed, and we are going to have a series of important amendments to consider.

I urge my colleagues to listen attentively to these amendments, but during the course of the several hours of debate on them, in the end we need to vote for this bill, get it on to the Senate, the other body, and let us get in this calendar year finally, after all these years, relief for the States, relief for the public, relief for the victims, and end the seemingly endless appeals of death row inmates. That is what this bill is all about.

Mr. STOKES. Mr. Chairman, I rise in strong opposition to the Effective Death Penalty Act of 1995. Let me state from the beginning that I have consistently, throughout my career, believed in and fought for the protection all Americans rights under habeas corpus. As Chief Justice Salmon P. Chase described it in ex parte Yerger U.S. (1868), habeas corpus is "The most important human right in the Constitution" and "The best and only sufficient defense of personal freedom". Therefore, I cannot support this measure before us today because the very belief upon which our judicial system was created—the protection of an individual's fundamental constitutional rights balanced with society's right to be free from harm—is at risk if H.R. 729 becomes law. I cannot and will not support the anti-human rights and anti-Constitution provisions of H.R. 729.

It is my belief that our judicial system's major focus should be to protect its citizen's fundamental constitutional rights. As a nation, we cannot afford to compromise the cherished habeas corpus protections guaranteed each of us in the U.S. Constitution. Rooted in the Magna Carta (1215), the writ of habeas corpus is as Justice Brennan pointed out in Fay versus NOIA (1963).

> * * * Inextricably intertwined with the growth of fundamental rights of personal liberty * * * its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release."

Mr. Chairman, the arbitrary 1-year limitation on the filing of general Federal habeas corpus appeals after all State remedies have been exhausted entirely fails to address the true cause of any delay in the capital system. The lack of competent counsel at the trial level and on direct appeal constitutes the primary basis for the delay of many appeals. Provision of competent counsel at the trial and appellate

stages of capital litigation would eliminate the need for many of the habeas appeals currently in our court system. Despite the fact that this is the case, H.R. 729 merely offers counsel for State postconviction proceedings, and only to capitally sentenced petitioners in States that happen to select the counsel plan of this law. Even if counsel is provided at this late date, no time savings advantage will be achieved. This counsel plan is too little too late.

It is no secret that I am opposed to the death penalty. H.R. 729, among other things, would greatly expand the reach of the Federal death penalty, and fails to include any provisions to end the repugnant practice of the disproportionate application of the death penalty on minorities. In fact, the bill specifically makes it easier to impose the Federal death penalty by reducing the discretion of a Federal jury in deciding whether to recommend the death penalty. While I agree that strong measures must be taken to curb the crime epidemic, I do not believe that any actions should be taken to the detriment of an individual's basic rights and constitutional liberties.

When closely examined, the sentencing history of the death penalty has generally been arbitrary, inconsistent, and racially biased. It is my belief that the Federal death penalty is overly harsh, particularly because it fails to address the economic and social basis of crime in our most troubled communities. The fact is that there has always been a racial double standard in the imposition of capital punishment in the Untied States. Even after the black codes of the 1860's were abolished, blacks were more severely punished than whites for the same offenses in our penal system. By the time the U.S. Supreme Court deemed the existing process for imposing the ultimate penalty unconstitutional in 1972, more than half of the persons condemned or executed were African-American—even though they were never more than 15 percent of the population. The advances in statistical analysis of the last 20 years have allowed numerous experts to test the raw data with disturbingly consistent results.

Mr. Chairman, in 1990, after 29 studies from various jurisdictions were reviewed, the General Accounting Office confirmed that there is a consistent pattern of disparity in the imposition of the death penalty in the United States and that race is often a crucial factor that determines the outcome. Since the resumption of executions in 1977, of the 236 persons who have been executed, 200 persons, or an alarming 85 percent, were executed for the murder of white victims. In fact, statistics show that blacks convicted of killing whites are 63 times more likely to be executed than whites who kill blacks.

In 1991, the U.S. Justice Department's Bureau of Justice Statistics reported that African-Americans accounted for 40 percent of prisoners serving death penalty sentences. In my home State of Ohio, of the 127 people on death row, 62—nearly 50 percent—are African-Americans. These statistics reflect how the African-American community is disproportionately affected by the death penalty. Furthermore, in a nation where the No. 1 leading cause of death for young African-American males is homicide, further disproportionate application of the death penalty will not resolve the epidemic of violence in our Nation.

Regardless of whether this double standard is intentional or not, the result clearly establishes that there continues to be an impermissible use of race as a key factor in determining imposition of the death penalty. Because of the disproportionate number of minorities serving death sentences, it is of great concern to me that H.R. 729's death penalty provisions force juries to render death sentences where they might not have without H.R. 729.

Mr. Chairman, it is my belief that we cannot afford to compromise our fundamental rights in exchange for excessive discriminatory tactics. We all have an obligation to uphold the Constitution and protect the rights of all Americans to be free from unjustified imprisonment. I urge my colleagues to uphold our fundamental rights, protect the American people, and vote down this unconscionable invasion upon one of our most important guarantees.

Mr. YOUNG of Florida. Mr. Chairman, I rise today in support of H.R. 729, the Effective Death Penalty Act. This legislation represents title I of the Taking Back Our Streets Act, 1 of the 10 points of the Republican Contract With America, and is the third of the six bills we will consider which compose this important crime legislation.

Today's legislation changes the laws affecting the death penalty in an effort to create consistent and fair procedures for its application, and to streamline the current appeals process. The habeas corpus writ, originally designed as a remedy for imprisonment without trial, has become a tool of Federal and State defendants who have been convicted and have exhausted all direct appeals. Most of the petitions are totally lacking in merit, clog the Federal district court dockets, and allow prisoners on death row to almost indefinitely delay their punishment. The bill before us today will help put an end to this travesty of justice.

Specifically, H.R. 729 establishes a 1-year limitation period for filing a Federal habeas corpus petition contesting a State court conviction and a 2-year limitation period for a Federal conviction. This measure limits the granting of stays when prisoners have failed to file a timely appeal, and imposes a 60- and 90-day deadline for district courts and appeals courts respectively to decide an appeal. Finally, the bill authorizes funds to help States defend their convictions against these appeals and allows juries far greater latitude in deciding whether to apply the death penalty.

Under current law, there are virtually no limits or restrictions on when prisoners can file habeas corpus appeals. Thanks to last year's so-called crime bill at least two lawyers must be appointed to represent the defendant at every stage of the process, and a defendant can appeal anytime there is a change in the law or a new Supreme Court ruling. In this environment it is not surprising that delays of up to 14 years are not uncommon. This abuse of the system is the most significant factor in States' inability to implement credible death penalties.

Mr. Chairman, the death penalty is now unworkable and must be reformed. It is encumbered with nearly endless—and often frivolous—appeals that delay punishment. The Effective Death Penalty Act upholds a simple rule of law—those who kill must be prepared to pay with their own life, and I urge its support.

Mr. MFUME. Mr. Chairman, today we are deliberating whether or not we will make it easier for the Government to kill. The bill we have before us will limit the ability of State prisoners to challenge the constitutionality of their conviction or sentence. It also reduces the discretion of a Federal court jury in deciding whether or not to recommend the death penalty.

It has been said that this bill is necessary in order to stop ''the pattern of litigation abuse and endless delay that has thwarted the use of the state death penalty.'' This, however, is untrue. The number of State executions have increased in the past few years. Since the death penalty was reinstated in 1976, Texas has executed 90 defendants; Florida has executed 33; and Virginia has executed 25. There have been over 100 State executions in the past 3 years. There have been seven executions so far in 1995. The pace of State executions is not stalled. To the contrary, it has dramatically increased.

History shows that minorities have received a disproportionate share of society's harshest punishments, from slavery to lynchings. Since 1930 nearly 90 percent of those executed for rape were African-Americans. Currently, about 50 percent of those on the Nation's death rows are from minority populations representing 20 percent of the total population.

Three-quarters of those convicted of participating in a drug enterprise under the general provisions of Anti-Drug Abuse Act—the Drug Kingpin Act—have been white and only about 24 percent of the defendants have been black. Of those chosen for death penalty prosecutions under this act, 78 percent of the defendants have been black and only 11 percent of the defendants have been white.

Federal prosecutions under the death penalty provisions of the Anti-Drug Abuse Act of 1988 reveal that 89 percent of the defendants selected for capital prosecution have been either African-American or Mexican-American. Judging by the death row populations, no other jurisdiction comes close to the Federal 90 percent minority prosecution rate.

The proportion of African-Americans admitted to Federal prison for all crimes has remained fairly constant between 21 percent and 27 percent during the 1980's, while whites accounted for approximately 75 percent of new Federal prisoners.

The General Accounting Office stated in its report ''Death Penalty Sentencing''

> [The] race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found more likely to be sentenced to death than those who murdered blacks. Last year, 89% of the death sentences carried out involved white victims, even though 50% of the homicides in this country have black victims. Of the 229 executions that have occurred since the death penalty was reinstated, only one has involved a white defendant for the murder of a black person.

A large body of evidence shows that innocent people are often convicted of crimes, including capital crimes, and that some of them have been executed. Since 1970, 48 people have been released from death row because they were found to be innocent.

In February 1994, Justice Harry A. Blackmun stated:

> Twenty years have passed since this court declared that the death penalty must be imposed fairly, and with reasonable consistency or not at all, and, despite the effort of the states and courts to devise legal formulas and procedural rules to meet this daunting

challenge, the death penalty remains fraught with arbitrariness, discrimination, caprice and mistake.

Now, in spite of the studies, in spite of the evidence, and in spite of the dramatic increase in executions in recent years, some still want to make it easier to impose the death penalty and execute the defendant. Is it really justice we are after? Or is it revenge?

Mr. STENHOLM. Mr. Chairman, I rise in strong support of H.R. 729, the Effective Death Penalty Act.

H.R. 729 establishes new and greatly needed restrictions on the use of habeas corpus petitions. This bill would limit the endless appeals process and set fair time limits for the filing of habeas appeals. Not only does this bill place time limits on filing habeas petitions, but also on complete consideration of habeas petitions in death penalty cases by the Federal courts.

Furthermore, this bill would generally limit State prisoners under a sentence of death to a single Federal habeas petition. In order to file another petition, the prisoner would need to show through clear and convincing evidence that, without the constitutional error, the defendant would not be found guilty by a reasonable jury. This provision will help close the loopholes that have allowed prisoners to have their cases reviewed time and time again. The abuse of habeas appeals has had a significant effect on the enforcement of the death penalty in States, and this bill appropriately addresses these abuses.

This bill also simplifies the process of imposing the Federal death penalty by reducing the discretion of the jury in deciding whether to recommend the death penalty. This bill not only eliminates life imprisonment without parole as a possible sentence for the specified Federal crimes subject to the death penalty, but it requires that juries in Federal courts be instructed to recommend a death sentence if the aggravating factors outweigh the mitigating factors.

For far too long now the American taxpayer has footed the bill while death row prisoners have filed appeal after meaningless appeal. It is time for Congress to provide sound guidelines to the appeals process. Those who have been victimized by violent criminals have a right to expect timely justice, and this bill will help to ensure that they receive nothing less. I strongly urge my colleagues to support H.R. 729.

Mr. CONYERS. Mr. Chairman, H.R. 729 is the latest in a series of legislative proposals dating back a decade that have attempted to speed up the execution of the more than 2,300 people on death row in this country. The common thread in these proposals is imposing a time limit on filing the habeas petition, typically set at 6 months to 1 year, and restricting the number of appeals a prisoner can make, that is, one bite at the apple.

The McCollum bill follows this approach, with a few variations, one of which is worth supporting. That is the section providing for automatic stays of execution while a habeas petition is pending. This is a much needed improvement on the current system where the fate of a condemned man hangs in the balance while lawyers scramble at the last minute to find a judge who will issue a stay of execution.

In all other respects, H.R. 729 combines the worst of the habeas bills, for instance, by setting a 6-month deadline for habeas petitions instead of 1 year, or it fails to make meaningful changes.

Thoughtful reformers like my former colleague, Representative Kastenmeier, the American Bar Association, and the Judicial Conference, have suggested that the goals of streamlining the process and eliminating uncertainty could be achieved if the States agreed to adopt measures that would ensure fairness. That is a good tradeoff, in my view.

The McCollum bill, however, imposes all the deadlines and restrictions without any of the fairness. In that sense, it is more of a political statement than a serious attempt to reform the process. The bill may achieve the goal of speedier executions but the cause of justice will not be served. It is an admission of failure to pursue one without the other.

What is missing is any attempt to remedy the most pressing problem at the source: poorly represented defendants at trials where almost all the constitutional errors that are later reversed on appeal occur. The reason for incompetent representation is simple: Many States pay less than $1,500 for trials—not enough to defend a drunk driver, let alone a capital defendant.

When you consider that retrials have been ordered by the Federal courts in 40 percent of the habeas cases since 1976, the McCollum bill's failure to require competent counsel at State trial proceedings is a fatal flaw that makes me unable to support this legislation.

There is another omission in the bill that is even more glaring. It goes to the heart of due process and fundamental fairness: An innocent man should never be executed.

The McCollum bill permits habeas claims only in the difficult-to-imagine situation where there is ''clear and convincing'' evidence of innocence and ''no reasonable juror'' would find the petitioner guilty. I will be supporting an amendment that will substitute ''preponderance of the evidence'' instead of the more restrictive standard.

This amendment simply states that the Federal courts should always be available to hear claims of innocence when based on newly discovered evidence. Representative MCCOLLUM's standard is far better suited to dispose of the claim rather than a standard of whether to hear the claims in the first place.

Mr. PORTMAN. Mr. Chairman, every year nearly 5 million people are victims of violent crime. Despite this, only 65 percent of all reported murders, 52 percent of reported rape, and 56 percent of reported aggravated assault result in the arrest of a suspect. Every year, 60,000 criminals convicted in a violent crime never go to prison. Given these facts, it is easy to understand why crime, especially among young offenders, is increasing. Without an effective criminal justice system, there is no meaningful deterrent to crime.

This is especially the case when you look at death penalty procedures. The death penalty should be the most extreme deterrent against crime. In many countries around the world it has this effect. In the United States, however, it has become so mired in convoluted proceedings, that it has lost its significance as a credible punishment and deterrent to crime. Death row prisoners routinely take advantage of an endless appeals process to delay punishment indefinitely. Since 1991, Federal habeas corpus cases have more than doubled. Thousands of frivolous petitions clog the Federal court system, making it virtually impossible to complete the process and deliver punishment. It is not uncommon for proceedings to take up to 14 years, or more; 14 years from the time a person is sentenced for committing a violent crime until the time he receives his punishment—hardly a credible deterrent. In 1994, district courts fully dismissed only 2 capital habeas corpus petitions, out of the hundreds that were filed to delay the process further. This undermines our whole system of justice.

Today we have the opportunity to remedy this serious problem within our criminal justice system. The Effective Death Penalty Act will streamline the habeas corpus process and reform death penalty procedures, reaffirming the commitment of Congress to ensure swift and effective punishments for perpetrators of the most egregious crimes. I urge my colleagues to support meaningful reform to the habeas corpus process and give the American people a reason to put their faith back into our criminal justice system.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the order of the House of Tuesday, February 7, 1995, the committee amendment in the nature of a substitute is considered as an original bill for the purpose of amendment and is considered as having been read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 729

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Effective Death Penalty Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

TITLE I—HABEAS CORPUS REFORM

SUBTITLE A—POST CONVICTION PETITIONS: GENERAL HABEAS CORPUS REFORM

Sec. 101. Period of limitation for filing writ of habeas corpus following final judgment of a State court.

Sec. 102. Authority of appellate judges to issue certificates of probable cause for appeal in habeas corpus and Federal collateral relief proceedings.

Sec. 103. Conforming amendment to the rules of appellate procedure.

Sec. 104. Effect of failure to exhaust State remedies.

Sec. 105. Period of limitation for Federal prisoners filing for collateral remedy.

SUBTITLE B—SPECIAL PROCEDURES FOR COLLATERAL PROCEEDINGS IN CAPITAL CASES

Sec. 111. Death penalty litigation procedures.

SUBTITLE C—FUNDING FOR LITIGATION OF FEDERAL HABEAS CORPUS PETITIONS IN CAPITAL CASES

Sec. 121. Funding for death penalty prosecutions.

TITLE II—FEDERAL DEATH PENALTY PROCEDURES REFORM

Sec. 201. Federal death penalty procedures reform.

TITLE I—EFFECTIVE DEATH PENALTY

Subtitle A—Post Conviction Petitions: General Habeas Corpus Reform

SEC. 101. PERIOD OF LIMITATION FOR FILING WRIT OF HABEAS CORPUS FOLLOWING FINAL JUDGMENT OF A STATE COURT.

Section 2244 of title 28, United States Code, is amended by adding at the end the following:

''(d)(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of the following times:

''(A) The time at which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.

''(B) The time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action.

''(C) The time at which the Federal right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable.

''(D) The time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.

''(2) Time that passes during the pendency of a properly filed application for State review with respect to the pertinent judgment or claim shall not be counted toward any period of limitation under this subsection.''.

SEC. 102. AUTHORITY OF APPELLATE JUDGES TO ISSUE CERTIFICATES OF PROBABLE CAUSE FOR APPEAL IN HABEAS CORPUS AND FEDERAL COLLATERAL RELIEF PROCEEDINGS.

Section 2253 of title 28, United States Code, is amended to read as follows:

''§ 2253. Appeal

''(a) In a habeas corpus proceeding or a proceeding under section 2255 of this title before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

''(b) There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

''(c) 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, or from the final order in a proceeding under section 2255 of this title, unless a circuit justice or judge issues a certificate of probable cause. A certificate of probable cause may only issue if the petitioner has made a substantial showing of the denial of a Federal right. The certificate of probable cause must indicate which specific issue or issues satisfy this standard.''.

SEC. 103. CONFORMING AMENDMENT TO THE RULES OF APPELLATE PROCEDURE.

Federal Rule of Appellate Procedure 22 is amended to read as follows:

''RULE 22

''HABEAS CORPUS AND SECTION 2255 PROCEEDINGS

''(a) APPLICATION FOR AN ORIGINAL WRIT OF HABEAS CORPUS.—An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

''(b) NECESSITY OF CERTIFICATE OF PROBABLE CAUSE FOR APPEAL.—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and in a motion proceeding pursuant to section 2255 of title 28, United States Code, an appeal by the applicant or movant may not proceed unless a circuit judge issues a certificate of probable cause. If a request for a certificate of probable cause is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or the Government or its representative, a certificate of probable cause is not required.''.

SEC. 104. EFFECT OF FAILURE TO EXHAUST STATE REMEDIES.

Section 2254(b) of title 28, United States Code, is amended to read as follows:

''(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State. A State shall not be deemed to have waived the exhaustion requirement, or be estopped from reliance upon the requirement unless through its counsel it waives the requirement expressly.''.

SEC. 105. PERIOD OF LIMITATION FOR FEDERAL PRISONERS FILING FOR COLLATERAL REMEDY.

Section 2255 of title 28, United States Code, is amended by striking the second paragraph and the penultimate paragraph thereof, and by adding at the end the following new paragraphs:

''A two-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of the following times:

''(1) The time at which the judgment of conviction becomes final.

''(2) The time at which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, where the movant was prevented from making a motion by such governmental action.

''(3) The time at which the right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable.

''(4) The time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.''.

Subtitle B—Special Procedures for Collateral Proceedings in Capital Cases

SEC. 111. DEATH PENALTY LITIGATION PROCEDURES.

(a) IN GENERAL.—Title 28, United States Code, is amended by inserting the following new chapter after chapter 153:

''CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

''Sec.
''2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.
''2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.
''2258. Filing of habeas corpus petition; time requirements; tolling rules.
''2259. Scope of Federal review; district court adjudications.
''2260. Certificate of probable cause inapplicable.
''2261. Application to State unitary review procedures.
''2262. Limitation periods for determining petitions.
''2263. Rule of construction.

''§ 2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

''(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

''(b) This chapter is applicable if a State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

''(c) Any mechanism for the appointment, compensation and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record: (1) appointing one or more counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer; (2) finding, after a hearing if necessary, that the prisoner rejected the offer 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 prisoner is not indigent.

''(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence 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.

''(e) The ineffectiveness or incompetence of counsel during State or Federal collateral postconviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254 of this chapter. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal postconviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

''§ 2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

''(a) Upon the entry in the appropriate State court of record of an order under section 2256(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application must recite that the State has invoked the postconviction review procedures of this chapter and that the scheduled execution is subject to stay.

''(b) A stay of execution granted pursuant to subsection (a) shall expire if—

''(1) a State prisoner fails to file a habeas corpus petition under section 2254 within the time required in section 2258, or fails to make a timely application for court of appeals review following the denial of such a petition by a district court;

''(2) upon completion of district court and court of appeals review under section 2254 the

petition for relief 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 court of competent jurisdiction, in the presence of counsel and after having been advised of the consequences of his decision, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254.

''(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution or grant relief in a capital case unless—

''(1) the basis for the stay and request for relief is a claim not previously presented in the State or Federal courts;

''(2) the failure to raise the claim is (A) the result of State 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 for State or Federal postconviction review; and

''(3) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the petitioner guilty of the underlying offense.

''(d) Notwithstanding any other provision of law, no Federal district court or appellate judge shall have the authority to enter a stay of execution, issue injunctive relief, or grant any equitable or other relief in a capital case on any successive habeas petition unless the court first determines the petition or other action does not constitute an abuse of the writ. This determination shall be made only by the district judge or appellate panel who adjudicated the merits of the original habeas petition (or to the district judge or appellate panel to which the case may have been subsequently assigned as a result of the unavailability of the original court or judges). In the Federal courts of appeal, a stay may issue pursuant to the terms of this provision only when a majority of the original panel or majority of the active judges determines the petition does not constitute an abuse of the writ.

''§ 2258. Filing of habeas corpus petition; time requirements; tolling rules

''Any petition for habeas corpus relief under section 2254 must be filed in the appropriate district court within one hundred and eighty days from the filing in the appropriate State court of record of an order under section 2256(c). The time requirements established by this section shall be tolled—

''(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

''(2) during any period in which a State prisoner under capital sentence has a properly filed request for postconviction review pending before a State court of competent jurisdiction; if all State filing rules are met in a timely manner, this period shall run continuously from the date that the State prisoner initially files for postconviction review until final disposition of the case by the highest court of the State, but the time requirements established by this section are not tolled during the pendency of a petition for certiorari before the Supreme Court except as provided in paragraph (1); and

''(3) during an additional period not to exceed sixty days, if (A) a motion for an extension of time is filed in the Federal district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254; and (B) a showing of good cause is made for the failure to file the habeas corpus petition within the time period established by this section.

''§ 2259. Scope of Federal review; district court adjudications

''(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

''(1) the result of State action in violation of the Constitution or laws of the United States;

''(2) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

''(3) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal postconviction review.

''(b) Following review subject to the constraints set forth in subsection (a) and section 2254(d) of this title, the court shall rule on the claims properly before it.

''§ 2260. Certificate of probable cause inapplicable

''The requirement of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to the provisions of this chapter except when a second or successive petition is filed.

''§ 2261. Application to State unitary review procedure

''(a) For purposes of this section, a 'unitary review' procedure means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. The provisions of this chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

''(b) A unitary review procedure, to qualify under this section, must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2256(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

''(c) Sections 2257, 2258, 2259, 2260, and 2262 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State 'post-conviction review' and 'direct review' in those sections shall be understood as referring to unitary review under the State procedure. The references in sections 2257(a) and 2258 to 'an order under section 2256(c)' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, then the start of the one hundred and eighty day limitation period under section 2258 shall be deferred until a transcript is made available to the prisoner or his counsel.

''§ 2262. Limitation periods for determining petitions

''(a)(1) A Federal district court shall determine such a petition or motion within 60 days of any argument heard on an evidentiary hearing, or where no evidentiary hearing is held, within 60 days of any final argument heard in the case.

''(2)(A) The court of appeals shall determine any appeal relating to such a petition or motion within 90 days after the filing of any reply brief or within 90 days after such reply brief would be due. For purposes of this provision, any reply brief shall be due within 14 days of the opposition brief.

''(B) The court of appeals shall decide any petition for rehearing and or request by an appropriate judge for rehearing en banc within 20 days of the filing of such a petition or request unless a responsive pleading is required in which case the court of appeals shall decide the application within 20 days of the filing of the responsive pleading. If en banc consideration is granted, the en banc court shall determine the appeal within 90 days of the decision to grant such consideration.

''(3) The time limitations contained in paragraphs (1) and (2) may be extended only once for 20 days, upon an express good cause finding by the court that the interests of justice warrant such a one-time extension. The specific grounds for the good cause finding shall be set forth in writing in any extension order of the court.

''(b) The time limitations under subsection (a) shall apply to an initial petition or motion, and to any second or successive petition or motion. The same limitations shall also apply to the redetermination of a petition or motion or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings, and in such a case the limitation period shall run from the date of the remand.

''(c) The time limitations under this section shall not be construed to entitle a petitioner or movant to a stay of execution, to which the petitioner or movant would otherwise not be entitled, for the purpose of litigating any petition, motion, or appeal.

''(d) The failure of a court to meet or comply with the time limitations under this section shall not be a ground for granting relief from a judgment of conviction or sentence. The State or Government may enforce the time limitations under this section by applying to the court of appeals or the Supreme Court for a writ of mandamus.

''(e) The Administrative Office of United States Courts shall report annually to Congress on the compliance by the courts with the time limits established in this section.

''(f) The adjudication of any petition under section 2254 of this title that is subject to this chapter, and the adjudication of any motion under section 2255 of this title by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters.

''§ 2263. Rule of construction

''This chapter shall be construed to promote the expeditious conduct and conclusion of State and Federal court review in capital cases.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part VI of title 28, United States Code, is amended by inserting after the item relating to chapter 153 the following new item:

''154. Special habeas corpus procedures in capital cases ..... 2256''.

Subtitle C—Funding for Litigation of Federal Habeas Corpus Petitions in Capital Cases

SEC. 121. FUNDING FOR DEATH PENALTY PROSECUTIONS.

(a) IN GENERAL.—Part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following new section:

''FUNDING FOR LITIGATION OF FEDERAL HABEAS CORPUS PETITIONS IN CAPITAL CASES

''SEC. 523. Notwithstanding any other provision of this subpart, the Director shall provide grants to the States, from the funding allocated pursuant to section 511, for the purpose of supporting litigation pertaining to Federal habeas corpus petitions in capital cases. The total funding available for such grants within any fiscal year shall be equal to the funding provided to capital resource centers, pursuant to Federal appropriation, in the same fiscal year.''.

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting after the item relating to section 522 the following new item:

''Sec. 523. Funding for litigation of Federal habeas corpus petitions in capital cases.''.

TITLE II—FEDERAL DEATH PENALTY PROCEDURES REFORM

SEC. 201. FEDERAL DEATH PENALTY PROCEDURES REFORM.

(a) IN GENERAL.—Subsection (e) of section 3593 of title 18, United States Code, is amended by striking ''shall consider'' and all that follows through the end of such subsection and inserting the following: ''shall then consider whether the aggravating factor or factors found to exist outweigh any mitigating 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. The jury shall be instructed that its recommendation concerning a sentence of death is to be based on the aggravating factor or factors and any mitigating factors which have been found, but that the final decision concerning the balance of aggravating and mitigating factors is a matter for the jury's judgment.''.

(b) CONFORMING AMENDMENT.—Section 3594 of title 18, United States Code, is amended by striking ''or life imprisonment without possibility of release''.

The CHAIRMAN. Pursuant to a previous order of the House, the bill shall be considered for amendment under the 5-minute rule for a period not to exceed 6 hours.

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. MCCOLLUM

Mr. MCCOLLUM. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MCCOLLUM: Page 20, line 6, strike ''shall'' and insert ''is authorized to.''

Mr. MCCOLLUM. Mr. Chairman, this is purely a technical amendment. We had unintentionally done an appropriations and authorization bill, and we simply needed to change the language to make sure that, in the section of the bill dealing with the funding portions of this with respect to the director providing grants to the States for prosecution and litigation pertaining to habeas corpus, we do not actually direct the funding, but rather, we authorize it. It is a technical amendment.

Mr. Chairman, I do not have anything else I can say except we need to do this. I urge the adoption of the amendment.

Mr. SCHUMER. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I have seen the gentleman's amendment. It is truly a technical amendment. I have no objection to that. I believe our side has no objection to it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. MCCOLLUM].

The amendment was agreed to.

The CHAIRMAN. Are there other amendments to the bill?

AMENDMENT OFFERED BY MR. SCHUMER

Mr. SCHUMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SCHUMER: After subtitle B of title I insert the following:

Subtitle C—Competent Counsel in Death Penalty Cases in State Court

SEC. 121. COMPETENT COUNSEL IN STATE COURT.

(a) IN GENERAL.—Title 28, United States Code, is amended by inserting after the chapter added by section 111 the following:

''CHAPTER 154A—COMPETENT COUNSEL IN STATE COURT

''Sec.
''2263. Competent counsel in State court.

''§ 2263. Competent counsel in State court

''(a) If an action under section 2254 of this title, brought by an applicant under sentence of death, the court determines that—

''(1) the relevant State has established or identified a counsel authority which meets the requirements of subsections (b) through (e) of this section, to ensure that indigents in capital cases receive competent counsel and support services at trial in State court and on direct review in the appropriate State appellate courts;

''(2) if the applicant in the instant case was eligible for the appointment of counsel and did not waive such an appointment, the counsel authority actually appointed an attorney or attorneys to represent the applicant; and

''(3) the counsel so appointed met the qualifications and performance standards established by the counsel authority;

then the court shall not apply subsection (f) of this section to the claims presented in the application.

''(b) The counsel authority may be—

''(1) the highest State court having jurisdiction over criminal matters;

''(2) a committee appointed by the highest State court having jurisdiction over criminal matters; or

''(3) a defender organization.

''(c) The counsel authority shall publish a roster of attorneys qualified to be appointed in capital cases, procedures by which attorneys are appointed, and standards governing the qualifications, performance, compensation, and support of counsel; and, upon the request of a State court before which a death penalty is pending, shall appoint counsel to represent the client.

''(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 competent legal representation.

''(e) Upon receipt of notice from the counsel authorized 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.

''(f) Except as provided by subsection (a) of this section, in an action under section 2254 of this title, brought by an applicant under sentence of death, the court shall not decline to consider a claim on the ground that it was not previously raised in State court at the time and in the manner prescribed by State law and, for that reason, the State courts refused or would refuse to entertain it.''.

(b) CLERICAL AMEMDMENT.—The table of chapters at the beginning of part VI of title 28, United States Code, is amended by inserting after the item relating to the chapter added by section 111 the following new item:

''154A, Competent Counsel in State Court ..... 2263''.

Redesignate succeeding subtitles and sections (and any cross references thereto) accordingly.

Mr. SCHUMER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. SCHUMER. Mr. Chairman, as I have mentioned before, I favor the procedural form in the bill before us as it was reported, because I take the need for these reforms seriously. I support the death penalty in appropriate cases, and I believe that it should be carried out when the time comes.

I believe that the time for this ultimate penalty should not be delayed over and over and over again by repeated, redundant, and frivolous petitions. Those who bring the petitions are morally opposed to capital punishment. I respect that view. However, their view is not the prevalent law of the land in most of the Sates, and they should not be allowed to use that moral preference to just delay and delay and delay.

Mr. Chairman, I think that the general proposal made by the gentleman from Illinois is a fair one. I supported it in committee and intend to support it on the floor of the House, at least as it was reported. I do not know what amendments will come from the other side.

However, Mr. Chairman, I also strongly believe that to put people on trial for their very lives without giving them good counsel is fundamentally unfair and ultimately outrageous. It is not worthy of all the good and decent and fair things that make us proud of our country and of our unique system of justice. Unfortunately, Mr. Chairman, the sad truth is that we do just that in far too many cases.

The greatest single cause of error in death penalty cases is poor counsel at trial. Let me be blunt, Mr. Chairman, about what the words ''poor counsel'' mean. They mean lawyers who are drunk at trial. They mean lawyers who openly speak of their clients in racially

insulting terms. They mean lawyers who do not have a clue about how to stand up to the emotion and community pressure that is inevitably generated in every death penalty case. This is a national disgrace. Yet, this reform bill before us contains not one word, not one single word, to ensure that people put on trial for their lives have good lawyers at trial.

Mr. Chairman, my amendment would correct this important omission. Of course, the States are already required by the Constitution to provide some kind of counsel to all criminal defendants, but that is not the point. The point is whether they provide good, competent lawyers who know how to handle death penalty cases and are willing and able to do so. Unfortunately, the evidence is that in all too many instances, lawyers are appointed who are incompetent, who are overworked, who are cronies of trial judges, or, most shameful of all, are actually prejudiced against their clients.

Mr. Chairman, my amendment does not require the States to do anything. It is not a mandate of any form. It does not dictate standards from Washington. It simply gives every State a simple choice. It may choose to set up an independent counsel authority, and that authority can be the highest court, a committee appointed by that court, or a defender organization.

There is wide latitude in that part of the choice. It will be up to the State authority to set standards of competence for counsel, means of appointing counsel, and adequate pay for counsel. If the State chooses to set up an authority, then Federal courts will not review claims that should have been raised in State courts but were not. To a large extent, that is the law that now exists.

On the other hand, Mr. Chairman, if a State chooses not to set up a counsel authority, then Federal courts will consider claims that petitioners fail to raise in State court but did not. It is a very simple choice. It is saying,

> If you provide adequate counsel, without we, the Federal Government, dictating what adequate counsel is, then you don't have to have full Federal review of your claims. However, if you don't, there ought to be a full Federal review.

That makes eminent sense to anyone, it seems to me, who is fair-minded and looks at capital punishment fairly. I say that again as somebody who supports capital punishment.

Let me give the Members a few examples, all from within the last 10 years of how it happens that these claims are not raised.

A lawyer in Florida admitted to the trial judge in chambers that, ''I am at a loss,'' he told the judge. He said, ''I really don't know what to do in this type of proceeding. If I had been through one, I would, but I have never handled one except this time.''

A lawyer in an Alabama trial asked for time between the guilt phase and the death penalty phase to read the Alabama death penalty statute. A lawyer in Pennsylvania built his client's defense around a statute.

The CHAIRMAN. The time of the gentleman from new York [Mr. SCHUMER] has expired.

(By unanimous consent, Mr. SCHUMER was allowed to proceed for 3 additional minutes.)

Mr. SCHUMER. Mr. Chairman, the lawyer from Pennsylvania billed his client's defense around a statute that 3 years earlier had been declared unconstitutional. These are only a few cases of many, many examples that show bad lawyers are appointed to death penalty cases.

If a person has a bad lawyer, that lawyer obviously will fail to raise issues that should be raised when they should be raised. When that happens, Mr. Chairman, the only place they can be effectively heard is in Federal court on a habeas petition.

If one has a good lawyer, however, that will raise all the important issues, so that they are heard of and disposed of in States courts, there is no need to review them in Federal court unless the State court has made a mistake in law.

In other words, it will be done right the first time, and for so many of the members on that side of the aisle and on this side of the aisle who really feel that there is too much delay and too much appeal, the best way to ensure that there is not that delay, not only on a statutory but on a constitutional basis, is to make sure in this way that there is adequate counsel at trial.

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The amendment will help make sure we do it right the first time. It is fair, it is just, it is needed.

I urge every member, whatever their view is on the ultimate bill, to support this very reasonable amendment.

Mr. MCCOLLUM. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I rise in opposition to this amendment. The gentleman I am sure is sincere about what he wishes to accomplish but quite frankly if this amendment is adopted, it is going to destroy the underpinnings of this bill to speed up the process of carrying out the death sentences in this country.

Right now the way the bill works is that you have to have as a State an agreement to appoint certain counsel as prescribed in the legislation, certain attorneys or lawyers, for defendants in State habeas proceedings, not at the trial level.

If you opt to do that, then the time limits come down for taking the appeals to the Federal court to 180 days instead of the lengthy time that is otherwise in the bill, and you would otherwise be subjected to. You gain the limits on successive petitions so that there is no right to have these successive petitions, and you engage the timetables in this bill that are designed at every stage of the proceeding to reduce the amount of time involved in death row cases.

What the gentleman is suggesting is that essentially this be expanded, this right to counsel, this provision of opting in, that the States in order to be able to be eligible for all of the kinds of changes in the law we are going to enact today if we pass this bill must provide counsel under the procedures that he has described at the trial level, at the original trial level.

I think everybody needs to understand that under the laws of this country, since Gideon versus Wainwright, every accused has the right to counsel and the State must provide that counsel, adequate counsel, to the accused in any case, be that a death penalty case or otherwise. If inadequate counsel is provided and sometimes unfortunately that has happened and the gentleman is quite right on that point, then in that particular case there is a grievance that is appropriately presented in the court system and sometimes that is presented in the habeas corpus petitions that we are discussing today in Federal court, and if indeed that is upheld that somebody did not have the proper counsel, did not have adequate counsel, then he is entitled to have his entire case retried, and that certainly would not be something we would particularly want to have happen.

But the truth of the matter is that we do have a procedure for adequate counsel and all kinds of protections for the accused that are built into that system at the trial level.

What the gentleman wants to do and what he does by his amendment today is to add a series of things that people have to go through, a roster has to be formed, a State has to pass a counsel authority in one of three or four forms and you have to comply with all of these procedures and in the end the expense and the problems and the difficulty of going through this in my judgment and many others' who have looked at this will mean that most States will choose not to do this. They will simply choose to not opt in. Therefore, we will not have an effective bill. We will not shorten the time death row inmates have for carrying out their sentences that we want to do. The underlying bill will indeed fail in its objective if this indeed occurs.

Right now, under current law in most Federal cases, a court cannot hear a claim on Federal collateral review that was not first raised in State collateral review. This is known as a procedural default.

The purpose of this rule is to ensure that State courts first have an opportunity to correct constitutional errors. It discourages sandbagging of claims and encourages the orderly consideration of claims by State and Federal courts.

The Schumer amendment in addition to everything else I have said will gut this important rule if States do not adopt his counsel requirements. His

amendment puts States in a no-win situation. Either they adopt his expensive requirements of counsel, which I do not think many will do, at all stages of State review, for the first time in history putting counsel in State capital trials under the thumb of Congress, or face more delays in litigation in Federal court.

Under the Schumer amendment, States can choose between an unfunded mandate or greater delay for capital cases.

Our bill gives States the option of continuing to litigate cases under current law or getting stronger rules of finality as the benefit for having provided counsel on collateral review, the State habeas proceedings that we are talking about rather than the requirements at the trial level that the gentleman from New York [Mr. SCHUMER] is talking about.

We do not punish States that want to impose the death penalty as the Schumer amendment would do and the amendment as I view it is insulting to victims and to States. It would not result in reform. It would be a retrogression, and it should be rejected.

Mr. FOGLIETTA. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to oppose the Effective Death Penalty Act, and in favor of the Schumer amendment.

Earlier today we pulled the teeth out of the fourth amendment. Now we are continuing our assault on the Constitution by making it near to impossible for a prisoner sentenced to death to seek justice. The Framers said in Article I, section 9 that ''the privilege of the Writ of Habeas Corpus shall not be suspended.'' Today, we are not just suspending it. We are ripping it to shreds.

Like so many things in the contract, we resort to coping with genuine problems with artificial deadlines, gimmicks and smoke and mirrors—instead of effective solutions.

Make no mistake, there are problems with the way the courts are required to handle habeas corpus petitions. If you talk to the lawyers and the judges who deal with this every day, you will know what the problem is. It is that many of the attorneys trying death penalty cases are not qualified. I am not saying that we should pay Johnny Cochran or Robert Shapiro to represent every accused killer. But, to really solve this problem, we have to improve the caliber of attorneys in death cases. That way, a prisoner could not come back to the court on countless occasions and say that their attorney was ineffective in his case.

That is why the Schumer amendment makes so much sense. This strategy would allow us to balance the need to preserve the Constitution, with better efficiency in our courts.

There are so many things that are unfair about the Effective Death Penalty Act. The sole incentive for a state to provide counsel at the habeas stage is to reduce the statute of limitations. But that is grossly unfair to the prisoner. Just think about it. How can a new lawyer, however competent, freshly investigate the case, develop legal arguments and effectively prepare a petition in just 6 months. This law begs for the very ineffectiveness of counsel we are trying to end.

Further, the standard for filing a second habeas petition is so tough that it renders habeas a constitutional memory. How could a prisoner like Walter McMillan seek justice? This is a man who was finally able to convince a court that he was the wrong man, but only after four habeas petitions. We must allow prisoners to present newly discovered evidence in a habeas petition.

The title of this bill is the Effective Death Penalty Act. But it is anything but effective. It is unfair, unjust and unconstitutional.

A lot of my colleagues on the other side of the aisle have cited Jefferson and Madison in these debates. They assure us that they would approve of what we are doing. But they do not cite their words.

The fact is that we know precisely what the Founders have said. They said, ''no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.''

They said, ''The Privilege of the Writ of Habeas Corpus shall not be suspended.''

This is what they said. This is our Constitution. Let's begin to pay attention to it. Let us not tear it up.

Mr. CHABOT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the Latin phrase habeas corpus may cause people's eyes to glaze over, but the reforms in this bill begin to address what I consider to be the biggest problem in the Federal justice system, the seemingly unending string of appeals that convicted criminals may file to postpone again and again the day of final judgment.

Mr. Chairman, there is no good reason for the taxpayers in my community, Cincinnati, or anywhere else to foot the bill for the John Wayne Gacys and other criminals in this world who have taken human life, innocent human life so they can play games with our legal system from their prison cells for year after year after year.

There ought to come a point, Mr. Chairman, after a trial by a jury of one's peers and after going through the appeals process in the State court system and then finally the Federal court system where enough is finally enough.

By moving forward on this bill, the Effective Death Penalty Act, we are fulfilling another element of the Contract With America. In doing so, we are also attempting to ensure that the death penalty is of more than academic interest to jailhouse lawyers.

□ 1610

If the death penalty is to serve as a real deterrent, we must see that it is imposed fairly and surely—and reasonably swiftly. This bill is just a start, but it is a good start.

Our colleagues should understand that the statutory habeas corpus provisions we are reforming today are not related to the habeas corpus protections contained in the Constitution. The constitutional protections apply to remedy lawless incarcerations by the executive without court authority; they do not deal with imprisonment ordered by State officials pursuant to court order after conviction at trial. But confusion over the shared Latin title should not confuse the issue: Our Constitution does not mandate, nor does common sense decree, today's system of virtually unlimited frivolous Federal appeals.

Unlike the valuable protections our Constitution provides, today's statutory scheme as interpreted by the courts allows endless appeals after endless delays. If a decision ever is reached, the convicted criminal simply starts the process all over again on some other point. In effect, there is now no statute of limitations, and no finality of Federal review of State court convictions. The statutory habeas system is not rational, it's not just, and it's not followed by any other civilized nation.

As former Supreme Court Justice Lewis Powell said in his review of our flawed process: ''I know of no other system of justice structured in a way that assures no end to the litigation of a criminal conviction.''

Mr. Chairman, this bill makes a start toward bringing victims of crime some closure to their ordeals. Some may not believe that this reform goes far enough, but it is reform, and I urge the bill's adoption and I urge defeat of the Schumer amendment.

Mr. CONYERS. Mr. Chairman, Sixty-three years ago, in Powell versus Alabama, the case involving the Scottsboro boys, the Supreme Court established as a constitutional principle that indigent defendants would not be sentenced to death unless they were represented by competent counsel.

That promise remains unfulfilled to this day and it is one of the most glaring omissions in the McCollum bill.

Having competent counsel is so important because failure at the front end, that is, the trial stage, leads to the delays and multiple petitions at the back end that resulted in retrials being ordered in 40 percent of all habeas petitions filed since 1976. Without competent counsel at trials any reform is meaningless.

Leaving it to the States to appoint counsel is no solution because the current system is a disaster: in Kentucky, attorneys who represented a quarter of the State's 26 death row inmates have since been suspended, disbarred, or convicted of crimes.

In Mississippi and Arkansas, compensation for death row attorneys was limited by statute to $1,000, though hundreds of hours of work are involved.

In one judicial district in Georgia, capital cases were awarded to the lowest bidder.

South Carolina pays $10 per hour for out-of-court work and $15 for in-court work.

That is the system the McCollum bill would seek to preserve: uncompensated, ill-prepared and inexpert counsel for those whose lives are hanging in the balance. Surely, we can do better.

Habeas cases are among the most complex in all litigation. In addition to the highest stakes possible—life or death—there is a very complex body of constitutional law and unusual procedures that do not apply in other criminal cases. There are often two separate trials with very different sets of issues. Jury selection standards are different. The penalty phase requires in-depth investigation into personal and family history.

The McCollum bill is woefully inadequate in providing counsel and I urge my colleagues to support the amendment to require counsel at the trial as well as postconviction phase.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. SCHUMER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 149, noes 282, not voting 3, as follows:

[Roll No 104]

AYES—149

Abercrombie
Ackerman
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Berman
Bishop
Bonior
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Dicks
Dingell
Dixon
Doggett
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hilliard
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson, E. B.
Johnston
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
LaFalce
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Thompson
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—282

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kanjorski
Kasich
Kelly
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Rahall
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—3

Collins (MI)
Frank (MA)
Radanovich

□ 1631

The Clerk announced the following pair:

On this vote:

Miss Collins of Michigan for, with Mr. Radanovich against.

Messrs. ROSE, SPENCE, KLINK, MURTHA, ORTIZ, and DOYLE changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Page 4, line 26, strike the period and insert the following:

''or a substantial showing that credible newly discovered evidence which, had it been presented at trial, would probably have resulted in an acquittal for the offense for which the sentence was imposed or in some sentence other than incarceration.''

Page 4, line 26, Strike the entire sentence beginning with the word ''The'' and ending with ''standard.''

Page 15, line 7, delete the period and insert ''; or''

Page 15, after line 7 add:

''(4) the facts underlying the claim consist of credible newly discovered evidence which, had it presented to the trier of fact or sentencing authority at trial, would probably have resulted in an acquittal of the offense for which the death sentence was imposed.''

Mr. WATT of North Carolina. Mr. Chairman and colleagues, we have heard, again, the Constitution of the United States is under attack in this bill.

There is only one place in the United States Constitution where the words habeas corpus are written. It is Article I, section 9, clause 2, which says, ''The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.''

As much as I have looked for rebellion or invasion in our streets, among all the crime I have not found it. Yet here we are attempting to undermine the provision in the Constitution again.

In the committee, Mrs. SCHROEDER brought in some evidence, a letter which was a letter of support from a number of different people and groups. And one of those groups was some people who felt strongly about supporting the Constitution because they had been involved with the Civil War issue. And the question was raised: Why would they have an interest in this? And I went back and looked, and I pointed out to the committee members that the reason that somebody who had some interest in slavery would have an interest in this bill was because the provisions, original provisions in the Constitution having to do with slavery, are in article I of the Constitution also.

That provision in the Constitution says, and this is section 9, clause 1 of

article I of the Constitution, says, ''The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808,'' and then it goes on.

My colleagues, we fought a Civil War a hundred years later in this country over this provision in the Constitution. A hundred years after the year 1808, southerners were still claiming that they had the right to bring slaves into the South. And a whole war was fought about this single line in the Constitution.

And in 1 day in our Judiciary Committee, and apparently in less than 2 hours or so of debate on this floor, we are getting ready to do essentially what a civil war was fought about in our country.

We are undermining a simple provision in the Constitution, not the same provision, but I would submit to you that if that language 100 years after the prohibition in the Constitution had expired, clearly based on the language was worth fighting for, surely the right of habeas corpus in this country ought to be worth fighting for.

But here we are again, conservatives saying, ''This is a conservative group of people, we have a conservative Contract With America, we are conservatives, but we don't believe in the most conservative document that our country has ever had, and we would undermine it.''

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 4 additional minutes.)

Mr. WATT. Mr. Chairman, the language is simple. It says, point blank, this is the only place you will find these words in the Constitution, there being no other reference to habeas corpus in the entire Constitution, and listen, let them resonate in this body, if they will, if anybody will listen to them. This is the Constitution of the United States that we are talking about.

It simply says the privilege of the writ of habeas corpus shall not be suspended unless when in the cases of rebellion or invasion the public safety may require it. There is no rebellion or invasion. There may be a bunch of crime in the streets, but I ''ain't'' seen a rebellion and no invasion.

□ 1640

And here we are, undermining the writ, and I say to my colleagues, ''Mind you, it doesn't say we can suspend it if we find probable cause. That's not here. That's what the language of the bill says, but that's not here in the Constitution. Nothing about probable cause. Probable cause is what we were arguing about in the last assault on the Constitution just a couple of hours ago that these conservative Members would have us do away with.''

Well, what does my amendment do? It says, ''At least, if somebody comes forward with credible evidence of innocence, at least they ought to be guaranteed the protections that our Constitution provides to us.''

And we are seeing it every day now. Advances in technology have given us DNA testing that allows us to run specific DNA testing to determine whether a person is guilty or innocent, and in a number of cases where this sophisticated technology—cases where people have been in jail for 20 years, been on death row—this DNA technology is coming forward now and saying we went back, and we checked that blood sample, or that hair strand, or that fingerprint, or that little piece of clothing, and this person could not have been the perpetrator of this crime. Yet they sat in jail. They have been subjected to facing the death penalty.

Mr. Chairman, all this amendment would do is preserve that right for them to raise credible evidence of innocence. We are talking about protecting people who can come in with credible evidence of innocence at any time during the proceeding.

My colleagues, I am the last person who is going to get into an argument about who is the most conservative person in this body. I think I have demonstrated, when it comes to the Constitution, though not bragging rights in my district to go home and say I am a conservative, but, my colleagues, it is a conservative principle to uphold the Constitution of the United States. This is not radical liberal stuff. This is the stuff that our country is made of.

So, Mr. Chairman, I ask my colleagues, in their haste to undermine habeas in a general way, at least preserve the rights and protections to those people who can still come forward with credible evidence of their own innocence. We should never, never, ever, put a person to death in this country when they are innocent because of procedural technicalities. In the last bill they were arguing all these procedural technicalities. Well, look. Give me a break. Give the people a break. We should never put anybody to death on a procedural technicality, and that is what this bill does. It poses an additional procedural technicality.

Mr. MCCOLLUM. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from North Carolina [Mr. WATT].

Mr. Chairman, on the face of what the gentleman from North Carolina says and offers, one might make the assumption that it sounds perfectly reasonable. He says he wants somebody to have a shot at habeas corpus petitions and to appeal his conviction if he has newly discovered evidence which, had it been presented at trial, would probably have resulted in acquittal for the offense for which the sentence was imposed or in some sentence other than incarceration. That sounds reasonable, however it is contrary to existing law. It is contrary to existing court interpretation.

I say to my colleagues, ''The standard for review of the question of whether or not you get a chance to set aside your death penalty case today on the basis of newly discovered evidence of guilt or innocence is that the petitioner, in the absence of constitutional error, which is other stuff, must show that the new factual evidence that he has presented unquestionably establishes innocence.'' That is a 1993 recent decision of the U.S. Supreme Court. Consequently what the gentleman offers would weaken the current law with respect to these processes.

I would like to remind all of my colleagues that we are now not talking about somebody who has not gone through the due process considerations. We are not even talking about whether he had a competent counsel or not. We are talking about somebody who has been to trial, gone through a jury trial, been found guilty of some heinous crime that merits at least in the abstract principle the death penalty on the books of a State or the Federal Government, has taken an appeal of that undoubtedly all the way through the State, if it is a State case, the State supreme court, perhaps the U.S. Supreme Court, probably has gone through one or at least numerous appeals in Federal court under the habeas corpus statute, and I would commend the gentleman to technically observe, and it is just a technical question, that the habeas corpus we are talking about today is statutory, not the great writ in the Constitution. But he has probably taken several statutory habeas corpus appeals, perhaps State habeas, certainly Federal, and he has been denied. Somebody has found him to all the procedures to have been fine. He is found guilty the first time around. He was sentenced properly, et cetera, and how he comes up and comes up with some new standard that is going to be put in law that says for the first time, different from anything that we have done before in the history of the country on these cases, that, ''If you find new credible evidence that would probably have resulted in an acquittal for the offense for which the sentence is imposed, then a Federal court judge can set aside the case and sentence in the conviction and require a new trial.'' It means that there is going to be a relitigation virtually in front of this Federal judge because that Federal judge has got to make a decision that the new evidence would probably have resulted in an acquittal in the first place.

This is a new complexity. It will give new opportunities for appeals. Most of these probably will be denied, and we would have lots more time dillydallying around before these sentences are carried out.

So, as well-meaning as the gentleman's amendment may be on the surface, it actually undermines the very effort we are about to hear today,

which is to speed up the process of carrying out the death sentences in this country.

We have a process now, I think that process is very, very fair. We do not alter it except in timetable sequence here today. We are not changing the underlying law and the rules that we play by in reviewing cases and death penalty cases. But the gentleman from North Carolina's amendment would change the underlying law. He would give another bite at the apple in the conditions and circumstances today the Supreme Court says, ''You don't have that right,'' and even establish an entirely new standard that does not presently today exist for appeals of death penalty cases.

So, for all of those reasons I would oppose this amendment.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLUM. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Let me be sure that the gentleman understands my amendment because I think he has a misconception of my amendment or he has a misconception of the law.

My amendment only gets the person who is filing the habeas in the courthouse. This is not the standard for determining whether he wins or loses the case. This is the standard for determining whether the court will hear the case.

I say to my colleague, ''If you look at page four where I have amended the bill, it says, 'An appeal may not be taken to the Court of Appeals unless certain things apply,' and that's where my amendment comes into play. It allows him to take appeal. It doesn't set a different standard for that appeal once it is taken.''

□ 1650

If you look on page 14, it says, ''The District Court shall only consider a claim.'' And then it spells out certain circumstances.

The CHAIRMAN. The time of the gentleman from Florida [Mr. MCCOLLUM] has expired.

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mr. MCCOLLUM was allowed to proceed for 3 additional minutes.)

Mr. MCCOLLUM. Mr. Chairman, I continue to yield to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. In that section it says, ''The court shall only consider a claim under certain circumstances.''

I agree with the gentleman that this is not the standard for an ultimate disposition of the case, but it is the prevailing standard for determining whether one gets review or not. That standard was set out very recently by the court again in the case of Schlup versus Delo, January 23, 1995. This is the standard for getting a review. It is not the standard for determining whether somebody gets off or not.

In that case, the court says, ''The standard requires the habeas petitioner to show that 'a constitutional violation has probably resulted in the conviction of one who is actually innocent.'" That is the same language that I have picked up.

So I just wanted to make sure that the gentleman understands. I am not trying to change the ultimate standard on which the person wins or loses. All this does is get the person into the courthouse so the court can evaluate the evidence.

Mr. MCCOLLUM. Mr. Chairman, reclaiming my time, I understand the point of the gentleman. But he changes the rules of how you get into the courthouse in the first place by striking out the current standards of having to have a constitutional infirmity. You do not have to have a constitutional infirmity after you have put your provision in. All you have to show is there is a probability that if you retry the case, you would be found innocent.

In fact what the net result or net defect of this is going to be is that you have established a new process. You may technically say the standards have not changed in the sense that ultimately somewhere down the road the Supreme Court rulings would not be overturned, but the fact of the matter is you have given another bite of the apple to somebody on death row that he does not today have because today you have gained access under this process under something less heavy, a burden on him, than a burden that requires that you show a constitutional defect to get there.

Mr. WATT of North Carolina. If the gentleman will yield further, I am not disputing what the gentleman says. Your bill says you have to raise a constitutional issue.

Mr. MCCOLLUM. So does current law.

Mr. WATT of North Carolina. My amendment says that if you show that you are probably innocent, you should not have to raise a constitutional issue.

If you can come into court at the outset and show there is evidence that you are probably innocent, why should we be telling somebody that they have got to raise a constitutional claim if they are probably innocent?

The CHAIRMAN. The time of the gentleman from Florida [Mr. MCCOLLUM] has again expired.

(By unanimous consent, Mr. MCCOLLUM was allowed to proceed for 1 additional minute.)

Mr. MCCOLLUM. Mr. Chairman, I just want to explain to the gentleman and anybody else here listening to this, other Members, that the current standard, the current threshold for all of this, is either that you have a constitutional infirmity of some sort that gets you into the habeas corpus setting, and your appeals are then heard on that basis, you did not have the proper lawyer or whatever, or the factual evidence is that you are unquestionably innocent. And that is the standard, the Herrera case, a 1993 case. It has been confirmed in the Schlup case in January of this year.

I would submit to the gentleman, while he may be intending to do something less than it is perceived by me to be doing, it seems on its face that he is making a weaker and less stringent standard in terms of getting to the appeal process, and thereby undermining what we are trying to do, to carry out sentences more quickly, and I urge the defeat of his amendment.

Mr. SCOTT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as I understand the amendment, and the gentleman from North Carolina [Mr. WATT] can correct me if I am wrong, this is for people who are alleging that they are innocent and they are asking for an opportunity to be heard, and they have evidence that would show that they will probably be found not guilty if the evidence were to be heard.

It seems to me that we have an unfortunate situation in that we have to have the same procedure for those that are in fact guilty and those that are in fact innocent, and we do not know until they are heard which category they fit in. So we have to have one procedure. So we are going to have the procedure for people that are innocent, and the gentleman's amendment would allow the person that is innocent to be heard.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I think the gentleman from Florida [Mr. MCCOLLUM] is debating a different amendment than the one I offered. I am not trying to change the standard by which somebody wins or loses ultimately. What I am trying to do is make sure that somebody who has a credible claim of innocence does not sit in jail for 30, 40, or 50 years without any remedies or rights; that somebody who has been sentenced to death does not go to the gas chamber or be put to death without being able to come into court and at least present their evidence. Once they present their evidence, the standard of whether they win or not is still going to be the same as the one that the gentleman from Florida [Mr. MCCOLLUM] has talked about.

I cannot be any more blunt. I mean, the Supreme Court has said this is the exact standard, and they said it as recently as January 23, 1995.

So on the last bill we were trying to codify case law. This time we are trying to keep from codifying case law, because we do not care whether somebody is innocent or guilty; we just do not want them in our court system.

Mr. Chairman, I cannot believe we would stand in this body and talk about some kind of procedural technicality to put somebody to death and not give somebody the opportunity if

they have got credible evidence of innocence to present that evidence. Have we become absolutely inhumane in our society and in our quest to deal with the crime problem in this country?

Mr. HEINEMAN. Mr. Chairman, I move to strike the requisite number of words.

(Mr. HEINEMAN asked and was given permission to revise and extend his remarks.)

Mr. HEINEMAN. Mr. Chairman, let us enter into this debate with a little practicality and a little what really happens out there in the street. We will walk the walk a little bit.

On December 3, 1980, Kermit Smith kidnaped Whellette Collins and two of her girlfriends. He kidnaped them from Hallifax, NC. He robbed, raped, and murdered Whellette Collins. He attempted to rob her two girlfriends. They escaped.

Mr. Kermit Smith was apprehended at the scene of the crime. He was tried and convicted of murder and sentenced to death.

Despite the conviction, this case dragged on for 14 years, going before 46 judges and to the U.S. Supreme Court 5 times. Over 150 different writs, stays, and motions were filed during these 14 years. Each delay caused the family of Whellette Collins horrendous pain, and justice was denied them over and over again. And just yesterday we were talking about victims compensation.

Worse still, Smith should have been in prison at the time of the murder for an earlier offense. Not only do we have a problem with outrageous numbers of appeals on death row, but we also are turning criminals loose from a revolving door criminal justice system. I wish this was an isolated incident, but I am willing to wager that every Member in this distinguished body has a Kermit Smith in his or her district.

In the course of ensuring the rights of criminals, we are throwing away the rights of the victims and the victims' families from these painful, extended habeas corpuses.

□ 1700

The current appeals process takes far too long and ties up our court system. Right now State courts hearing death penalty appeals are taking as long as 2½ years. When the Federal appeals process is factored in, an appeal can take as long as 15 years.

Over 300,000 Americans have been murdered since the Supreme Court decision reinstating the death penalty. Approximately 250 criminals have been executed for those crimes. Some say the death penalty is not a deterrent. It would be a deterrent if it were carried out with surety and swiftness. Part of the reason it is not being used is because of the continual unending appeals process. Today we will change that.

The public's safety is the first duty of government. It is why governments were created in the first place, to protect us from predators, both foreign and domestic.

We are, in essence, all victims of government's inept handling of its first duty. Costs of victimization far outweigh the costs of incarceration. Violent crimes are escalating exponentially, despite the good intentions of the administration's hug-a-thug approach to criminal justice. According to the Department of Justice, if something drastically different is not done to reduce crime, five out of six of today's 12 year olds, your children and mine, will be victims of a successful or at least attempted violent crime in their lifetimes. That is five out of six.

As a former chief of police with 38 years of law enforcement experience, I am deeply disturbed by these trends in our criminal justice system. As a father and grandfather, I am outraged.

As the Congressman from the Fourth District of North Carolina and a member of the Committee on the Judiciary, I intend to take action. In this bill the Effective Death Penalty Act, we will return to the notion of deterrence. The only deterrence to criminal activity is punishment. Criminals, by their very definition, do not obey the law. We need to play hard ball so. So far we have not.

More laws will only help if they affect the way the system works. This bill will change the way punishment is meted out. It creates consistent and fair procedures for the application of the death penalty and streamlines the appeals process. In America it seems we try anything once, except criminals.

Over and over and over again criminals play the courts like the lottery, hoping to escape punishment on technicalities.

I strongly urge my colleagues to vote for the Effective Death Penalty Reform Act.

STATE OF NORTH CAROLINA,
Raleigh, NC, January 27, 1995.

Hon. FRED HEINEMAN,
House of Representatives, Longworth House Office Building, Washington, DC.

DEAR CONGRESSMAN HEINEMAN: I urge you to push for action in Congress this year to reduce the time for appeals in capital murder cases to the minimum required by the Constitution.

You may have read about the case of Kermit Smith, executed this week for the brutal kidnapping, rape and murder of a college cheerleader. Despite Smith's conviction, this case dragged on for 14 years, going before 46 judges and to the United States Supreme Court five times. As the victim's family and friends told me, each delay caused new anguish. This is not right.

The current appeals process takes far too long and ties up our court system. Right now, state courts hearing death penalty appeals are taking as long as 2½ years. When the federal appeals process is factored in, an appeal can take as long as 15 years. I have included for your review, a procedural outline of the Smith case.

In the last two years, North Carolina has taken significant steps to combat violent crime. We have built or authorized the construction of more than 12,800 new prison beds, built prison work farms and boot camps, and toughened punishment for violent offenders. However, there is still much more to be done to fight crime and protect the citizens of North Carolina. I look forward to working with you on this important issue.

My warmest personal regards.

Sincerely,

JAMES B. HUNT, Jr.,
Governor.

Enclosure.

PROCEDURAL OUTLINE ON KERMIT SMITH

12–3–4–80—Kermit Smith kidnapped Whellette Collins, Dawn Killen and Yolanda Woods. He robbed, raped and murdered Whellette Collins, he attempted to rob Dawn Killen and Yolanda Woods. Smith was apprehended and arrested at the scene.

12–09–80—Halifax County Grand Jury returned true bills of indictment charging Kermit Smith with murder, (Whellette Collins) in Case #80 CRS 15266, Robbery with a Dangerous Weapon, (Whellette Collins) in Case #80 CRS 15271 and First Degree Rape (Whellette Collins) in Case #80 CRS 1565.

04–30–81—Trial in Halifax County Superior Court, before the Honorable George M. Fountain; Smith was found guilty of second degree rape, common law robbery, first degree murder, and received the Death Penalty for the first degree murder conviction.

04–30–81—Notice of Appeal to North Carolina Supreme Court.

10–07–81—Motion to By-Pass the Court of Appeals for second degree rape and common law robbery was granted.

01–29–82—Defendant-Appellant's Brief was filed in the North Carolina Supreme Court.

02–18–82—State's brief was filed in the North Carolina Supreme Court.

06–02–82—Opinion by the North Carolina Supreme Court, affirming convictions and sentences. *State* v. *Smith*, 305 N.C. 691, 292 S.E.2d 264 (1982).

08–22–22—Petition for Writ of Certiorari filed by Smith in United States Supreme Court, No. 8205335.

11–29–82—Certiorari was denied by the U.S. Supreme Court. *Smith* v. *North Carolina*, 459 U.S. 1056, 103 S.Ct. 474, 74 L.Ed.2d 622 (1982).

06–06–83—Motion for Appropriate Relief filed by Smith in Halifax County Superior Court.

08–19–83—Order by Judge Frank R. Brown, limiting issues for hearing. D.A. to file answer to claim V in 20 days.

11–23–83—Amendment to Motion for Appropriate Relief filed by Smith in Halifax County Superior Court.

11–30–83—Answer to Motion for Appropriate Relief by State.

12–5–16–83—Evidentiary hearing. State's proposed Findings of Fact and Conclusions of Law.

12–16–83—Order denying Motion for Appropriate Relief by the Honorable Donald L. Smith, Halifax County Superior Court.

12–16–83—Order setting new date for execution. Date of execution is March 9, 1984.

01–30–84—Order Staying Execution of Death Sentence by Honorable Joseph Branch, Chief Justice of the North Carolina Supreme Court.

08–14–84—Petition was filed by defendant to the North Carolina Supreme Court for certiorari to review the denial of his Motion for Appropriate Relief.

08–13–85—Order by the North Carolina Supreme Court denying Petition for Writ of Certiorari to review the Superior Court of Halifax County. *State* v. *Smith*, N.C. , 333 S.E.2d 495 (1985).

10–15–85—Petition for a Writ of Certiorari filed in the Supreme Court of the United States.

11–12–85—Brief in opposition to petition for writ of certiorari to the North Carolina Supreme Court.

12–09–85—Order by the Supreme Court of the United States denying certiorari. *Smith* v. *North Carolina*, 474 U.S. 1026, 106 S.Ct. 582, 88 L.Ed.2d 565 (1985).

01–30–86—Renewed Petition for Certiorari and Alternative Motion to Reconsider denial of certiorari filed by Smith to the North Carolina Supreme Court.

02–11–86—Order in response to Smith's renewed petition; dismissed without prejudice to allow Smith to file a motion for appropriate relief on the issue in the Superior Court of Halifax County.

04–04–86—Second Motion for Appropriate Relief by defendant to Halifax County Superior Court.

04–04–86—Brief in support of Motion for Appropriate Relief by defendant.

09–26–86—State's answer to Smith's Motion for Appropriate Relief filed April 4, 1986.

10–10–86—Smith's reply to the State's answer.

10–16–86—Brief in opposition to Kermit Smith's Motion for Appropriate Relief by the State.

03–02–87—Oral argument scheduled for hearing on defendant's Motion for Appropriate Relief.

03–06–87—Defendant's proposed Findings of Fact.

03–06–87—Motion for Appropriate Relief denied by Order of Superior Court Judge I. Beverly Lake, Jr.

06–01–87—Petition to the North Carolina Supreme Court for certiorari to review the order of Judge Lake.

02–05–88—Certiorari denied by the North Carolina Supreme Court by the Honorable J. Whichard. *State* v. *Smith*, N.C. , 364 S.E.2d 668 (1988).

02–25–88—Motion for Stay of Execution of Death Sentence, execution scheduled for April 26, 1988; Motion Denied.

03–01–88—Motion for Stay of Execution to the North Carolina Supreme Court.

03–09–88—Stay of Execution denied by Order of the Court in conference, Honorable J. Whichard, North Carolina Supreme Court.

04–15–88—Petition for Writ of Certiorari filed in United States Supreme Court seeking review of the Superior Court of Halifax County, North Carolina.

04–19–88—Motion for stay of execution pending disposition of Petition for Writ of Certiorari and filing of petitions for Writ of Habeas Corpus.

04–20–88—Response to Smith's motion for a Stay of Execution.

04–21–88—Order Staying execution of death sentence.

04–27–88—Order by United States Supreme Court denying certiorari. *Smith* v. *North Carolina*, 485 U.S. 1030, 108 S.Ct. 1589, 99 L.Ed.2d 903 (1988).

05–20–88—Petition for Writ of Habeas Corpus filed by Smith pursuant to 28 U.S.C. §2254.

06–30–88—Answer to Petition for Writ of Habeas Corpus—Habeas Corpus Rule 5, 28 U.S.C. 2243.

12–15–88—Motion for evidentiary hearing. (Rule 8, Rules Governing §2254 cases in the United States District Courts.

12–15–88—Request for Discovery. (Rule 6, Rules Governing §2254 cases in the United States District Courts.

12–15–88—Memorandum in support of Petitioner's Motion for Evidentiary Hearing.

12–15–88—Memorandum of Law in Support of Petitioner's request for discovery.

12–22–88—Memorandum in Opposition to request for discovery, Habeas Rule 6(a), Local Rules 4.05 and 5.01—Denied.

01–23–89—Memorandum in Support of Petition for Reconsideration/Request for Reconsideration.

01–31–89—Request for Reconsideration denied.

02–16–89—Request to expand the length of Petitioner's brief.

02–22–89—Request to expand both petitioner and respondent's brief is allowed.

02–28–89—Brief in Support of Petition for Writ of Habeas corpus by Petitioner.

03–28–89—Motion for Extension of Time to file respondent's brief.

03–30–89—Order granting extension of time to file brief in response to Petitioner's brief is allowed. Brief should be filed by May 1, 1989.

04–21–89—Brief in support of respondent's answer to petition for Writ of Habeas Corpus.

04–24–89—Motion for extension of time within which to file petitioner's reply brief and for permission to file a reply brief in excess of their pages.

05–30–89—Memorandum in support of renewed motion for evidentiary hearing, discovery, and expert assistance.

05–30–89—Renewed motion for evidentiary hearing, discovery and expert assistance.

10–11–89—Order from United States District Judge, W. Earl Britt, reference decision in *State* v. *McKoy*.

11–27–89—Reponse to Motion for Authorization to obtain services of Resource Counsel.

04–27–90—Order allowing extension of time by petitioner. Motion to defer further proceedings is denied by Judge Britt, United States District Judge.

05–04–90—Petitioner's brief on the applicability of the Supreme Court's decision in *McKoy* v. *North Carolina*, 494 U.S. 433 (1990).

07–06–90—Motion to remand to the Superior Court of Halifax County for the imposition of a life sentence, or, in the alternative, petition for writ of certiorari.

07–06–90—Memorandum in Support of Motion to Defer Further Proceedings pending Re-exhaustion in the Courts of North Carolina.

07–06–90—Motion to Defer further proceedings pending re-exhaustion in the Courts of North Carolina.

07–31–90—Memorandum in opposition to Petitioner's motion to defer further proceedings pending re-exhaustion in the Courts of North Carolina.

08–09–90—Order—Petitioner's motion is allowed and further consideration of petition by the Court is deferred pending ruling by the North Carolina Supreme Court of petitioner's ''Motion to Remand to the Superior Court of Halifax County for the Imposition of a Life Sentence'', or, in the alternative, Petition for Writ of Certiorari.

09–24–90—Reponse in Opposition to Petitioner's Motion to Remand to the Superior Court of Halifax County for the Imposition of a Life Sentence, or, in the Alternative, Petition for Writ of Certiorari.

11–01–90—Order—the motion by respondent for leave to amend his answer to the petition is allowed.

11–07–90—Reply (Traverse) to amended answer to petition for Writ of Habeas Corpus.

12–10–90—Brief in support of Respondent's Amended Answer to Petition for Writ of Habeas Corpus. Habeas Rule 5, 28 U.S.C. §2243.

12–11–90—Motion to suspend page limitation of local rule 5.05.

12–12–90—Motion to extend page limitation.

12–13–90—Motion to suspend page limitation of local rule 5.05 for supporting memorandum is granted.

12–13–90—Petitioner's supplemental brief on the issue of retroactively.

06–10–91—Memorandum Opinion: For reason stated in Section III.C. of this opinion Kermit Smith's petition for a Writ of Habeas Corpus is hereby granted, subject to further review by the North Carolina Supreme Court. Petitioner is not entitled to any relief on the remainder of his claim.

06–10–91—It is ordered that for reasons stated in Section III.C. of the Memorandum Opinion filed on June 10, 1991, the petition for a writ of habeas corpus is hereby granted subject to further review by the North Carolina Supreme Court and the petitioner is not entitled to any relief on the remainder of his claim. *Smith* v. *Dixon*, 766 F.Supp. 1370 (E.D.N.C. 1991).

06–20–91—Respondent's Motion for Amendment of Judgment, Fed.R.Civ.Proc. 59(e).

06–20–91—Memorandum in support of respondent's Motion for Amendment of Judgment, Local Rules 4.04 and 5.01.

06–24–91—Memorandum in support of Petitioner's Motion to alter or to amend the Judgment.

06–24–91—Petitioner's Motion to Alter or to Amend the Judgment.

07–15–91—Petitioner's response to respondent's Motion for Amendment of Judgment.

08–14–91—Order: It is ordered and adjudged that for the reasons stated in Section III.C. of the Memorandum Opinion filed on June 10, 1991, the petition for a writ of habeas corpus is hereby granted and defendant is ordered discharged from his sentence of death to be re-sentenced to life imprisonment unless the State of North Carolina shall conduct a resentencing hearing pursuant to N.C.Gen.Stat. §15A–2000 within 180 days of the entry of judgment. Entry of this judgment is stayed for 90 days to permit respondent to seek further review in the North Carolina Supreme Court in accordance with *Clemons* v. *Mississippi*, 494 U.S. 738 (1990). If such review is not obtained by November 15, 1991, this judgment will then become effective. If such review is obtained during this time period, entry of judgment will remain stayed until the stay is lifted by this court on motion by either party. Petitioner is not entitled to any relief on the remainder of his claims.

08–19–91—Corrected Amendment: that for reasons stated in Section III.C. of the Memorandum Opinion filed on June 10, 1991, the petition for writ of habeas corpus is hereby granted and defendant is ordered discharged from his sentence of death to be resentenced to life imprisonment unless the State of North Carolina shall conduct a resentencing hearing pursuant to N.C.Gen.Stat. §15A–2000 within 180 days of the entry of judgment.

10–01–91—Petition for Writ of Certiorari filed by State in North Carolina Supreme Court requesting clarification of basis for finding on direct appeal that ''especially heinous, atrocious, or cruel'' was supported by evidence, and whether instructional error was harmless.

11–14–91—Order: The stay in the entry of the Court's judgment is hereby extended from its current expiration date of November 15, 1991 until seven days followed the denial of the petition or seven days following a decision on the merits in the event that the State of North Carolina grants certiorari.

11–15–91—North Carolina Supreme Court denied State's petition, believing it did not have appellate jurisdiction. *State* v. *Smith*, 330 N.C. 617, 412 S.E.2d (1991).

12–02–91—Order: The Clerk is hereby directed to enter the corrected amended judgment which was filed on August 18, 1991.

12–13–91—Motion for stay of order granting writ of habeas corpus Fed. R. App. P. 8(a).

12–13–91—Notice of Appeal: State enters notice of appeal to the United States Court of Appeals for the Fourth Circuit from the final judgment entered June 10, 1991, modified August 19, 1991, and ordered into effect on November 30, 1991 issuing a writ of habeas corpus to Kermit Smith, Jr. requiring resentencing.

12–13–91—State's Memorandum in support of motion for stay of writ of Habeas Corpus.

12–24–91—State's Appeal docketed in the United States Court of Appeals for the Fourth Circuit.

12–27–91—Notice of Smith's Cross-Appeal to the United States Court of Appeals for the Fourth Circuit.

12–27–91—Response to respondent's motion for stay of order granting writ of habeas corpus.

12–27–91—Memorandum in support of Petitioner's request for issuance of a certificate of probable cause.

12–30–91—Smith's Cross-Appeal docketed in Fourth Circuit.

01–03–92—Order: August 19, 1991 judgment is hereby stayed until further order of this Court; respondent is not required to post a supersedeous bond. The court finds that petitioner does have probable cause for his cross appeal and therefore grants a certificate of probable cause.

01–11–92—Fourth Circuit appoints C. Frank Goldsmith, Jr., of Marion, N.C., and Martha Melinda Lawrence of Raleigh, N.C., as counsel, and the North Carolina Resource Center as ''consultant.''

01–11–92—Fourth Circuit's Briefing Order, directing State's opening Brief and Appendix to be filed by 2–20–92.

01–16–92—State's Letter to Smith's counsel designating Appendix.

01–31–92—Smith's designations for Appendix.

02–18–92—Order Appointing Counsel *Nunc Pro Tunc*.

02–20–92—The State timely filed its opening Brief of Appellant in Fourth Circuit.

03–02–92—District Court Order approving CJA Form 20 payment for counsel's requesting hours; and in addition, reimbursement for expenses incurred.

03–06–92—Smith's motion to exceed page limitation for his Brief.

03–10–92—Order by Fourth Circuit granting Smith leave to file Brief not to exceed 100 pages.

03–24–92—Smith first submitted to Fourth Circuit his 100-page Brief of Appellee/Cross-Appellant.

03–26–92—Brief returned to Smith because of improper material in the addendum; Smith was directed to resubmit his Brief in proper form on or before April 6, 1992; State's time not to begin running until Smith's Brief resubmitted and filed.

04–05–92—Smith refiled Brief of Appellee/Cross-Appellee.

04–22–92—State filed motion to suspend page limitation, seeking leave to file a Brief not to exceed 100 pages.

04–27–92—Order by Fourth Circuit granting State leave to file Brief not to exceed 100 pages.

05–08–92—State filed its Brief of Appellant/Cross-Appellee.

05–12–92—Smith's motion to exceed page limitation for his Reply Brief.

05–18–92—Order by Fourth Circuit granting Smith leave to file Reply Brief not to exceed 50 pages.

05–26–92—Smith filed his Reply Brief.

05–27–92—State's Letter of Additional Authorities.

09–22–92—Smith's Letter of Additional Authorities.

09–23–92—Smith's Motion for Additional Time for Oral Argument.

09–28–92—State's Letter of Additional Authorities, citing *Nickerson* v. *Lee*, 971 F.2d 1125 (4th Cir. 1992), CERT. DENIED, U.S. , 113 S. Ct. 1289 (1983).

09–28–92—Smith's Letter of Additional Authorities.

09–29–92—Order by Fourth Circuit denying Smith's motion for additional oral argument time.

09–30–92—Argument heard in Fourth Circuit before Wilkins, Butzner, and Sprouse.

05–10–93—State's Letter of Additional Authorities.

06–11–93—Fourth Circuit 2-to-1 panel decision affirming District Court's grant of resentencing, but otherwise denying relief on remaining grounds. *Smith* v. *Dixon*, 996 F.2d 667 (4th Cir. 1993).

06–22–93—State filed Petition for Rehearing and Suggestion for Rehearing *In Banc*.

06–25–93—Letter from Fourth Circuit to Smith's counsel requesting answer to State's Petition for Rehearing and Suggestion for Rehearing *In Banc*, and that answer be filed by 7/6/93.

07–06–93—Smith's Response to Petition for Rehearing and Suggestion for Rehearing *In Banc*.

07–19–93—Order by Fourth Circuit making technical amendments to opinion filed 6/11/93.

07–23–93—Order by Fourth Circuit granting rehearing *In banc*, calendaring case for October session, and directing additional copies of briefs and appendix to be filed.

08–23–93—Smith's Motion for Leave to File Supplement Brief.

09–03–93—Order by Fourth Circuit granting ''the parties leave to file supplemental briefs not in excess of 25 pages each''; required Smith's brief to be filed on or before 9–13–93, and that State's responsive brief, if any, be filed on or before 9–21–93.

09–08–93—Smith filed motion seeking to reorder the supplemental briefing schedule so that briefs to be filed simultaneously, or he be granted extension of time.

09–08–93—State's Response to Smith's motion to reorder briefing/for extension of time.

09–09–93—Order by Fourth Circuit extending time for Smith to file his supplemental brief until 9–17–93, and directing that any responsive brief by the State be filed on or before 9–24–93.

09–20–93—Smith's Supplemental Brief received by Fourth Circuit.

09–21–93—State was notified by Henderson Hill of North Carolina Resource Center that Kenneth J. Rose, counsel for David Huffstetler, would be submitting a motion for leave to file an *amicus curiae* brief in Smith's appeal.

09–22–93—State was served with copies of Huffstetler's motion, *amicus curiae* brief, and attachments, along with a motion for leave to file the attachments to the *amicus curiae* brief.

09–23–93—State's Supplemental Brief forwarded to Fourth Circuit by facsimile, with originals sent to Fourth Circuit by Federal Express.

09–23–93—State filed motion for leave to file attachments to its Supplemental Brief, and Attachments under separate cover.

09–24–93—State filed Response in Opposition to Huffstetler's motions for leave to file *amicus curiae* brief and for leave to file attachments.

09–24–93—Smith's Letter of Additional Authorities.

09–28–93—Argument on Rehearing *in Banc*.

01–21–94—Fourth Circuit decision reversing district court's grant of rescentencing, 9–to–5, *Smith* v. *Dixon*, F.2d. (4th Cir., Jan. 21, 1994) (*In Banc*).

02–04–94—Smith's Petition for Rehearing.

02–28–94—Fourth Circuit Order denying Smith's Petition for Rehearing.

03–93–94—Smith's Motion for Stay of Mandate.

03–14–94—Fourth Circuit Order granting Smith's Motion and staying issuance of mandate for 30 days.

05–27–94—Smith's Petition for Writ of Certiorari filed in United States Supreme Court seeking review of Fourth Circuit's *en banc* decision on appeal. No. 93–9353.

08–22–94—State's Brief in Opposition to Petition for Writ of Certiorari filed in United States Supreme Court.

10–03–94—Certiorari denied by the United States Supreme Court. *Smith* v. Dixon, U.S. , 115 S.Ct. 129, 130 L.Ed.2d 72 (1994).

10–27–94—Hearing held in Halifax County Superior Court, and Superior Court Judge James C. Spencer, Jr. Rescheduled Smith's execution for Tuesday, January 24, 1995.

12–09–94—Smith's filed Motion for Consideration of untimely Petition for Rehearing, along with Petition for Rehearing in United States Supreme Court.

12–19–94—Smith filed Third Motion for Appropriate Relief in Halifax County Superior Court.

12–29–94—State filed Answer to Smith's Third Motion for Appropriate Relief.

01–03–95—Hearing held before Superior Court Judge J.B. Allen, Jr. in Halifax County Superior Court on Smith's Third Motion for Appropriate Relief, and Memorandum Opinion and Order Denying Motion.

01–04–95—Clemency Hearing held before Honorable James B. Hunt, Jr., Governor of North Carolina.

Mr. Chairman, I yield to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding. He is my colleague from North Carolina. Both of us represent different parts of the State, and I have the utmost respect for him. He has been involved in law enforcement for a number of years.

I am not going to try to take issue with the fact that everybody could come to this floor and bring an example where the process has been abused.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. HEINEMAN] has expired.

(On request of Mr. WATT of North Carolina, and by unanimous consent, Mr. HEINEMAN was allowed to proceed for 1 additional minute.)

Mr. HEINEMAN. Mr. Chairman, I yield to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, there is one part of what the gentleman said that I just want to make sure that everybody understands. He talked about being a father and being a grandfather and doing what is necessary to protect his children and grandchildren.

I want to make sure that I am clear that the gentleman would not go out, a father and grandfather, and avenge a crime committed against his child or his grandchild by shooting somebody who is innocent. And that is what this amendment deals with.

I have no problem with the gentleman taking out whatever animosity or whatever frustration he has against victims, against a person who is guilty. But if a person is innocent, we do not sanction in this country going out and taking the life of somebody else just because the gentleman is frustrated.

Mr. WYNN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Watt amendment and perhaps unlike

some other supporters, I am not, I repeat, not an opponent of the death penalty. But I felt I had to rise today to remind my colleagues, some of whom are on the other side, that the issue is not speed, the issue is justice. And the distinguished gentleman from Florida said that in looking at this amendment, we are creating another way to get to court. And the only way that the defendant ought to get to court is if he alleges under current law that there is some sort of constitutional infirmity with his conviction.

I understand that. I have practiced a little law in my time. But the point, Mr. Chairman, is this, that, yes, you ought to be able to get into the courthouse if you have a constitutional infirmity in your case. You ought to be able to make your case. But you also ought to be able to get into the courthouse if you are innocent.

If you have evidence of probable innocence, our American judicial system ought to say, the courthouse door swings open for you. You can come through the door and present that evidence.

Now, the gentleman may suggest, well, that is a radical change. I am not going to debate that point. I would suggest, maybe it is. In the State of Maryland we recently had a man who sat on death row for 8 years for a rape-murder, probably as tragic and horrific as any of my colleagues can imagine. After 8 years, through DNA evidence, it was determined he was in fact not the perpetrator. Thankfully, he had not been executed.

That evidence should be available to the court. That at least ought to get him in the courthouse door.

There have been other cases throughout the country in which recantations of testimony have resulted in the determination that the accused sitting on death row was in fact an innocent man.

As I said, Mr. Chairman, it is not a question of speed, it is a question of justice. And justice demands that if someone can prove or establish the probability of their innocence, they ought to at least be allowed to come through the courthouse door. There will be time to conduct the execution, if that is merited, if that is the case, but certainly, we ought to seek justice before we seek speed.

Mr. Chairman, I yield to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, just for the brief purpose of assuring the gentleman that this is not a radical change. January 1995, January 23, 1995, this year, the Supreme Court said that this is the law. And all I am trying to do is stop them from changing the law.

I want them to put the law in as the Supreme Court has said it is. This is not a change from existing law. I assure the gentleman.

Mr. WYNN. Reclaiming my time, Mr. Chairman, I want to thank the gentleman for pointing that out and also commend him for the thoroughness of his research. To the extent it is not a radical change, I do not even believe the opposition can rely on that argument.

We are simply attempting, according to the sponsor, to codify existing law which has been well reasoned by the higher courts in determining that once again justice takes precedence over expediency.

Mr. CHABOT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the gentleman from North Carolina is very articulate and obviously feels very strongly about this particular subject. Many of us on this side of the aisle, however, feel very strongly as well.

To address the issue of habeas corpus, the allegation is made that many on this side of the aisle want to attack the Constitution and that we are not really conservative because we are attacking the constitution. That is inaccurate. And there is a report that I would like to refer to at this time, the Supreme Court Justice Lewis Powell recently chaired an ad hoc committee of Federal habeas corpus in capital cases. I would like to read a couple of sentences from that, because I think it really clears up some of the things that have been said here today.

What it says is that, ''contrary to what may be assumed, the Constitution does not provide for federal habeas corpus review of state court decisions.''

The Constitution does not provide that.

''The writ of habeas corpus available to state prisoners is not that mentioned in the Constitution. It has evolved from a statute enacted by Congress, now codified in section 28 U.S.C. section 2254.''

So it is not an attack on the Constitution. What we are talking about is a revision, a change in statute that was enacted by this body. So this body is now taking appropriate action to change a previous statute.

□ 1710

Mr. Chairman, let us look at what is really happening here. The people of this country feel very much the way I do, that the death penalty in this country is not being used to the degree that most people want it to be used. We have a death penalty on the books. There are many people, particularly of a liberal persuasion, who will say that the death penalty is not a deterrent to murder, it is not a detterent to crime.

I would submit, Mr. Chairman, that if that is true, and I do not agree that that is true, but if it is true, it is because of the way the death penalty in this country has been carried out. That is, that people remain on death row for years and years and years.

Let us just look at the case of John Wayne Gacy in Chicago. John Wayne Gacy, the killer clown who killed dozens of people and was stuffing them underneath his porch, underneath his basement, this man was on death row for 16 years, so for 16 years the taxpayers are keeping this gentleman alive, providing him with television, providing him with food, providing him with an attorney. It took 16 years to execute this individual. That is not that unusual in this country. People are on death row for 10 years, 12 years.

The last execution we have had in my State, the State of Ohio, was in the early sixties. It has been over 30 years. I will sometimes have people in Ohio say, generally, again, of the liberal persuasion, they will tell me that the death penalty is not a deterrent. If it is not, it is because of the way that it has been carried out in this country.

Mr. Chairman, I would submit that what we need to do is to have a fair appeals process, but an appeals process that is much shorter than what we have right now. I would submit that sometime in the near future I would like to see the death penalty process dramatically reduced to a year, 2 years, something like that. Even whether with what we are proposing here today it is still going to be much longer than what I would like to see it, but it is an improvement over what we have now. That is why I strongly support this measure and believe that it is time that we made the death penalty work in this country. If it does not work right now, it is because of the length of time that people remain on death row at taxpayer expense. The people in this country are sick and tired of paying for cable TV and paying for the food and lawyers for those that have killed innocent people.

One final point I would like to make. The people it is really not fair to are the victims, those families of the people that were murdered, those innocent victims that have the appeals process come up, they have to go in and testify. It is like ripping open that wound, until the person is finally executed. It is time we had a fair and fast appeals process so that the death penalty really will be a deterrent. Then we are really protecting life in this country.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. CHABOT. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I appreciate the gentleman yielding.

Mr. Chairman, I want to make sure the gentleman is clear. This is not about whether we support the death penalty or not. There is nothing in this that deals with the death penalty. It is not about the length of appeals. It is about how you get your foot in the door to raise an issue, whether if you have credible evidence that you did not commit the crime, credible evidence of innocence, that you can go through the same process that you go through that you set up in the bill.

Mr. CHABOT. Reclaiming my time, let us also be clear as to what has happened. A jury of one's peers has already

convicted this person beyond reasonable doubt.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. CHABOT] has expired.

(By unanimous consent, Mr. CHABOT was allowed to proceed for 1 additional minute.)

Mr. CHABOT. Mr. Chairman, let us also be clear that the person who is on death row, if we are talking the death penalty, and I am in this particular instance, that person was already convicted by his or her peers at a fair trial beyond a reasonable doubt. It has already gone through a fairly extensive appeals process.

We are talking about another layer after they have gone through the State appeals, they are at the Federal appeals. I think the gentleman from North Carolina [Mr. WATT] would probably agree that it does not make any sense for people to remain on death row for 10, 12, 16 years.

Mr. WATT of North Carolina. If the gentleman will continue to yield, Mr. Chairman, I just want to make sure that the process that the gentleman has set up for raising constitutional issues is the same process within which this language would fit.

It does not change that process. It does not prolong it any longer than raising a constitutional claim prolongs it.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. CHABOT] has expired.

(At the request of Mr. MCCOLLUM and by unanimous consent, Mr. CHABOT was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. If the gentleman will continue to yield, Mr. Chairman, it is not about the death penalty procedure, it is about somebody coming in with credible evidence of innocence. I just wanted to make sure the gentleman understands.

Mr. CHABOT. Reclaiming my time, Mr. Chairman, I yield to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the point of this is that by doing this new procedure that the gentleman wants us to put into this law today, the gentleman would extend the opportunity for delay, because he would extend the opportunity for another bite at the apple.

Granted, it is not a constitutional right. The gentleman is creating a new one here, to come in under a probably innocent standard of some sort to get into the door for another appeal.

As the gentleman from Ohio [Mr. CHABOT] has stated, somebody might have had 10 or 15 appeals already on a constitutional basis and then they come up with new affidavit, some missing aunt or uncle comes in and says ''At 10 o'clock that night, by golly, I saw him down on Park Avenue, instead of where the crime was committed.''

Here is new evidence. If it had been admitted, maybe a Federal judge will say it is probably something the court would have considered and found the guy innocent for. By golly, they have a new appeal, and it does delay the carrying out.

That is why the District Attorney's Association nationally has said that the Watt amendment would dramatically expand death row inmates' opportunities to relitigate their convictions, and opposes this. That is why they say that the amendment of the gentleman from North Carolina [Mr. WATT] would make it easier for death row inmates to reopen their cases and delay the caseload of death row inmates, delaying their sentences.

Mr. Chairman, I think the gentleman has made a point, the gentleman from Ohio [Mr. CHABOT]. I understand the point of the gentleman from North Carolina [Mr. WATT], but I think the gentleman's point is equally and I believe preferentially made, and I believe this amendment should be defeated, because it would delay further the carrying out of sentences on death row inmates, and not do anything more than add a new door, a new avenue to that appellate process.

Mr. FATTAH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was not going to participate in this discussion, but I think it is important that voices be raised on this subject. Seemingly, to me, since I have come to Washington, people have spent a lot of time trying to make simple things complex.

The gentleman from North Carolina [Mr. WATT] has offered a very simple amendment that says that if there is evidence of innocence that an objective court would consider as a circumstance in which the person would probably be found innocent, then that should allow them an opportunity to bring that matter before the court.

We are off talking about how quickly people should be put to death and all these other matters. Now we have the gentleman who just previously spoke talking about aunts and uncles.

We should not trivialize the matter of innocence in terms of people who should not be victimized in terms of imprisoned in our land, or suffer the ultimate penalty, the death penalty, if in fact they are innocent.

Mr. Chairman, just as the case has been made that there are people who have strung these things out who were obviously guilty, I think that in almost every state of the union we could find examples of people who have been found innocent who have been in prison for long periods of time, and who have been put under the death penalty.

Whether we come to the floor and parade horrendous crimes that have been committed on one hand, and people seemingly have not suffered the appropriate punishment, or rather, whether we would take the time and look at the cases of people who have been jailed year in and year out, some for decades, almost lifetimes, who were absolutely innocent, that the same D.A. associations and others would be just as concerned for innocent Americans being wrongfully convicted and being locked out of an opportunity to present their cases to the court.

Mr. Chairman, the preamble to our Constitution requires us to, in part, participate in the process of creating a justice system in our land. That is our responsibility. It is not our responsibility to join the mob out in front of the jailhouse asking that someone be hung, or killed that night, before a trial and a jury have found them to be absolutely guilty beyond a reasonable doubt.

Mr. Chairman, I would say, finally, being not a lawyer, I am constantly interested in these matters, nonetheless. Reading the trade journal of the American Bar Association in January 1994, January a year ago, there were two interesting articles.

One was about a young man in one of our 50 States who was on death row, and because of some procedural circumstances, could not get his case back before the court, who appeared to be innocent based on all of the evidence now available.

□ 1720

There was another case this same magazine had in it in the same month of a young man who admitted, confessed that he had killed two people in the process of a drug transaction who had now served some 10 years and had been let go and was then a student at that time in law school in another one of our 50 States.

This is an interesting circumstance that now the Congress tonight, after disposing, after voting against the notion of competent counsel for people would now suggest that even if there is probable cause of innocence that that is not in and of itself enough to give them an opportunity to present their case.

Ms. PELOSI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from North Carolina [Mr. WATT] and in opposition to H.R. 729, the Effective Death Penalty Act. I do not believe that this debate is whether we should have a death penalty under circumstances under which it should be imposed. Rather it is about whether a person who is innocent can be spared from having a capital punishment exacted upon them.

The amendment of the gentleman from North Carolina [Mr. WATT] is more necessary now than before, because this crime bill, the series of bills being put together now continues what I consider to be the unfortunate trend of last year's crime bill which made more crimes punishable by the death penalty.

One would think that if one were a strong advocate for capital punishment

that one would also be a strong advocate for competent counsel, as the amendment offered by the gentleman from New York [Mr. SCHUMER] proposed, or the amendment offered by the gentleman from North Carolina [Mr. WATT] to make sure that an innocent person did not receive the death penalty.

A majority of the people in this House clearly believe that procedures governing habeas corpus may need reform, Mr. Chairman, but this bill goes too far in limiting the fundamental right of appeal which is to protect innocent people from being executed and that is why it is so very important that the Watt amendment be given every consideration by this body, hopefully favorable.

What it says, and I think it is very important for our colleagues to understand, as the gentleman from North Carolina [Mr. WATT] has explained what it says, and that it is very important for all of the people of our country to understand what it says, because it affects each and every one of them, every person sitting at home watching this debate has to know that if he or she or any member of their families is ever convicted unjustly and incorrectly of a crime, especially a crime that calls for capital punishment, that he or she would not be able to have recourse should a witness come forward, or DNA evidence prove, or a confession come forward to prove that person's innocence.

The Watt amendment says, and it relates to credible, newly discovered evidence, which had it been presented to the trier of fact or sentencing authority at trial would probably have resulted in the acquittal of the offense for which the death sentence was imposed.

So, my friends, if you are sitting at home on your sofa and one of your children is accused and convicted of a crime and sentenced to the death penalty and has exhausted his habeas corpus procedures, and someone confesses to that crime, tough luck. That is not the American way.

Mr. Chairman, I would like to engage the gentleman from North Carolina [Mr. WATT] in a colloquy to ask him precisely these questions. if someone is convicted of a capital offense and sentenced to death, and a witness comes forward who can prove, who can give credible evidence that the person is probably innocent, would that person not have that opportunity for that witness to come forward?

Mr. WATT of North Carolina. Will the gentlewoman yield?

Ms. PELOSI. I am happy to yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. If this bill passes they would not have that opportunity.

Ms. PELOSI. And if someone made a confession to the crime?

Mr. WATT of North Carolina. Let me go back because the gentleman from New York [Mr. SCHUMER] has reminded me that under present law they actually would have the right to raise it, but once this bill is passed, they will not have the right to raise it.

Ms. PELOSI. The same thing for any advances in technology; for example, what is happening with DNA, et cetera, that kind of evidence and that opportunity would not be available to the person convicted?

Mr. WATT of North Carolina. Under current law they would have the right to do it, but under this bill they would not have the right to raise it.

Ms. PELOSI. Mr. Chairman, I ask the gentleman from Florida [Mr. MCCOLLUM], would he answer those same questions? If this bill passes would a person not be able to use DNA evidence or new evidence, new technology?

Mr. MCCOLLUM. Mr. Chairman, will the gentlewoman yield?

Ms. PELOSI. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Of course he could if it was clear and convincing evidence, he could. That is the standard in our bill, if he could present them with the situation where it would be unquestionable innocent status; if that were the case.

Mr. WATT of North Carolina. If the gentlewoman would yield, before he can ever get to the clear and convincing standard, he has to get into court by raising some constitutional claim, different from innocence. So the gentleman from Florida [Mr. MCCOLLUM] is right, that would be the ultimate standard, but it would not even be able to get into the court.

The CHAIRMAN. The time of the gentlewoman from California [Ms. PELOSI] has expired.

(At the request of Mr. MCCOLLUM, and by unanimous consent, Ms. PELOSI was allowed to proceed for 2 additional minutes.)

Mr. MCCOLLUM. Mr. Chairman, will the gentlewoman yield?

Ms. PELOSI. I do have something else I want to say because I contend what the gentleman is putting forth here today in this rush for 100 days, in your 100-day agenda, is trampling on over 200 years of the rule of law in our country, protecting the rights of the innocent, and people can get up here all day and talk about anecdotes that are devastating and terrible and we all have those stories to tell about people who are guilty, and who abuse the process.

This is not what the Watt amendment is about. The Watt amendment is about protecting the innocent, and the overwhelming number of people in our country I believe want to protect the innocent.

Mr. MCCOLLUM. Mr. Chairman, would the gentlewoman yield?

Ms. PELOSI. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, I just want to make the point that the gentleman from North Carolina is incorrect that we have to have a constitutional infirmity. You have to have clear and convincing evidence and be able to show ultimately that you have an unquestionable innocence and you can get in. You do not have to have both. It is one or the other; it is not both.

It is basically current law that we have established in here with respect to what we have done in this bill, and the gentleman wants to retreat a little bit from it. We have changed one standard to clear and convincing. There is doubt whether it would be preponderance or clear and convincing. So, we have lowered the standard a little. The gentleman lowers the standard on present law considerably on how you get in on the innocent.

Mr. WATT of North Carolina. Mr. Chairman, would the gentlewoman yield?

Ms. PELOSI. I am pleased to yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I want to be clear on exactly what the gentleman from Florida [Mr. MCCOLLUM] said. The standard is convincing evidence, he says.

Mr. MCCOLLUM. Clear and convincing.

Mr. WATT of North Carolina. That is the ultimate standard we are talking about; that is not the standard for review. The standard for review, based on the Supreme Court's recent ruling, is the standard that I have picked up in my amendment.

Ms. PELOSI. I thank the gentleman from North Carolina for his leadership on this issue.

I urge my colleagues to support the Watt amendment.

The CHAIRMAN. The Chair wishes to inform Members that all remarks are to be addressed to the Chair and not to anyone outside of the Chamber.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the Watt amendment.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, the problem with the Watt amendment is it vitiates the very purpose of habeas corpus reform. It makes an already endless, interminable process increasingly subject to more and more delay.

The fair administration of justice means these matters have to finally come to closure.

John Wayne Gacy spent 14 years appealing, appealing, appealing from the time of his conviction of murdering 27 young men until the time he was executed. These matters have to be brought to closure, not as a matter of statistics, but as a matter of justice to the families of the victims and as a matter of justice to the law itself.

□ 1730

One of the weaknesses of the Watt amendment is there is no requirement of showing due diligence in discovering this new evidence. If one sleeps on his or her rights and years go by and then

something turns up that probably would result, probably, in an acquittal, it seems to me that does not rise to the level of the deprivation of the constitutional right such as would make the reopening of these trials appropriate. This goes on endlessly, endlessly, endlessly; and so without a showing of due diligence that you looked for all the evidence you could and there was a reason why you could not find this—which is not a requirement in this amendment—and probably would be acquitted by virtue of that evidence, rather than unquestionably just does not seem just.

We have Supreme Court cases, Herrera versus Collins, and Schlup versus Delo, both capital cases, that stand for the principle that if you do not show a constitutional error then you have to show that you would unquestionably be released. But, bring these habeas corpus matters to closure. Have the trial as good as you can and then exercise due diligence.

If there is evidence that was not presented at the trial but just across 15 years later and say here is new evidence that probably would result, means there is never any finality to these matters and that in and of itself is unjust.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to my friend, the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for yielding. I understand his frustration with the law, and the Gacy case has been cited by both the gentleman from Ohio and the gentleman from Illinois, the chairman.

And I agree with them on the Gacy case, and I agree with them that there have been too many appeals. What I would simply say to the gentleman is the law that you are proposing, other parts of it that deal with the 1 year and the timeliness of appeal and all of these other things deal with cases like Gacy.

Whether the Watt amendment were accepted or not, the Gacy case could not exist if the bill, H.R. 729, were to pass, and, in fact, as I understand it, and the gentleman can correct me, Gacy was from his State and he probably has more familiarity with the specifics of the case than I do, new evidence showing innocence was never one of the reasons that Gacy was able to extend the appeal after appeal after appeal.

Mr. HYDE. My recollection is he had 52 separate appeals.

Mr. SCHUMER. None were on the issue of the Watt amendment. All were on other issues.

Mr. HYDE. Is my figure too high? A staff person of the gentleman from North Carolina [Mr. WATT] was shaking her head.

Mr. WATT of North Carolina. If the gentleman will yield, I was not responding to that. I do not know how many appeals he had. None of them were based on a claim of innocence. That is the point the gentleman from New York [Mr. SCHUMER] is making, and if a person is probably innocent, which is, I mean, that is what your words are, probably innocent, I submit to you he should be given a shot, and that is all this amendment says.

Mr. HYDE. I submit to you he should exercise diligence in finding this new evidence, and absent a showing of due diligence, it is an imposition on the whole judicial system and on justice itself because there is merit, real merit, in bringing these matters to finality and to closure. They would endlessly be open under the gentleman's amendment.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

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

Mr. SCHUMER. I agree with that. Maybe the gentleman from North Carolina [Mr. WATT] does not. I do. Many do, even on this side of the aisle.

But that is not the issue of the Watt amendment, and what I would say to the gentleman, in all due respect, is the Gacy case and the endless appeals are not what Watt is trying to do. If somebody knew that they had new evidence relating to innocence——

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has expired.

(At the request of Mr. SCHUMER and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. SCHUMER. If the gentleman will continue to yield to me, I would say why, in God's name, would someone who had been convicted and was waiting on death row delay bringing up the fact that there was new evidence that they were innocent. There have been too many appeals. I do not dispute that. But I would say that there are certain exceptions.

I make one other point to the gentleman, the Schlup case was decided January 23, 1995, after the contract was issued, and the election, and I do not mean this as political, but I mean, after all of this happened.

The case, in my judgment, reading the case, requires a standard of probable, probably resulting in conviction of one who is innocent.

To quote on page 28 of the case, ''the Carrier Standard,'' which is what the court decided should be used not the more stringent Sawyer standard, ''Requires the habeas petitioner to show that 'a constitutional violation has probably resulted in the conviction of one who is actually innocent.' ''

On page 24, the court states that, ''This is, indeed, a constitutional standard.''

So in addition to the practical arguments I would make to the gentleman, who is a fine constitutional lawyer, that the Schlup case, in a sense our new evidence, would render this part of H.R. 729 unconstitutional, and the Watt standard, by simply just reechoing what is existing law as newly done by the Schlup case, does not do damage to the gentleman's general claim that, A, there have been too many appeals, and, B, that we ought limit it.

Mr. HYDE. Let me just say this: I wish you would help us bring these cases to closure. When you have had a trial, a trial that is error free, when you have been convicted beyond all reasonable doubt, and then years later evidence turns up and you are not required to even show that you diligently did everything you could to get whatever evidence you could, it seems to me you are opening the door for never ending these appeals.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has again expired.

(At the request of Mr. ACKERMAN and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. FOGLIETTA. Mr. Chairman, will the gentleman yield?

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

Mr. FOGLIETTA. I think our objective here in passing this legislation is not to expeditiously execute people but to execute only those that we are sure are guilty of the capital crime.

Mr. HYDE. How many years does it take? How many years do we wait to find out?

Mr. FOGLIETTA. I do not care how long it takes. We should not be executing innocent people because we want to do it expeditiously.

Mr. HYDE. Do you support the death penalty?

Mr. FOGIETTA. Yes, I do, in certain cases.

Let me ask you, is it correct, I understand your position is that if a person is, or it is determined that a person who is facing execution has cause to believe that he or she is probably innocent that that person should not have an opportunity to present that evidence in court.

Mr. HYDE. I am saying the rule ought to require you to have exercised due diligence to get all of the evidence that leads to your innocence. That is my point.

Mr. FOGLIETTA. Suppose you have not exercised due diligence but you are probably; probably an innocent person should go to jail, should be executed because they did not execute due diligence?

Mr. HYDE. I do not want any innocent person to go to jail, but it seems to me——

Mr. FOGLIETTA. How about a probably innocent person?

Mr. HYDE.. The rule of right reason would say at some point we have to have finality.

Mr. FOGLIETTA. Even if the person is probably innocent?

Mr. HYDE. I do not think it is fair to impose on the system and the families of the victims to have an open-ended appeals process, and that is what the Watt amendment does.

Mr. ACKERMAN. Mr. Chairman, will the gentleman yield?

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

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has again expired.

(At the request of Mr. ACKERMAN and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. ACKERMAN. The gentleman from Illinois is no doubt among the fairest Members that I have ever seen in this House, and certainly one of the most compassionate. It seems to me we are talking sort of at different levels over and each other on different issues here.

Whether one is for or against the death penalty, I think most people would agree that this is not a debate on whether or not there are endless appeals and there should be limits for the kinds of the appeals that are going on and things of that nature. I think you could find some general agreement on all sides here.

The question really is this: Supposing somebody has been found guilty and is on death row, who has been convicted and suddenly some evidence does appear that did not exist; there are all sorts of scientific things now, and suppose you and I and somebody with the wisdom of Solomon, maybe even JERRY SOLOMON——

Mr. HYDE. How many years would you permit to elapse between the trial and surfacing of this newly discovered evidence?

Mr. ACKERMAN. If the person is still alive, living, breathing, innocent human being and you would look at the evidence, and you and I and a thousand judges unanimously would say, ''My God, look what happened here, this man is innocent,'' and he was condemned to death.

□ 1740

And he was condemned to death. How would you propose that he get back before the court? That is really the question. The gentleman put closure to nothing but executing an innocent person.

Mr. HYDE. I yield to the gentleman from Florida.

Mr. MCCOLLUM. I thank the gentleman from Illinois for yielding to me.

Mr. Chairman, I think we need to come up with some clear explanation; that is, here is this section. It says, first of all, that on the first appeal, that you take under habeas corpus, you do not have to have the probable cause certificate that the gentleman from North Carolina wants to amend. You do not have to have it at all the first time. So, if have a guilt or innocence question the first time you go to Federal court after you finish your State lines of appeal or other lines and you petition the first time, guilt or innocence, you do not have to have—guilt or innocence—you do not have to have prerequisites that are in the bill. In addition to that——

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has expired.

(On request of Mr. MCCOLLUM and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. HYDE. I yield further to the gentleman from Florida.

Mr. MCCOLLUM. I thank the gentleman for yielding further.

Mr. Chairman, it is only when you get into the successive petitions after you have already had regular appeals and you have already had your first-time shot at this on guilt or innocence or anything else that the issue arises that the gentleman is making all the noise about.

And in that situation, for the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth appeal, whatever it is, there are three things you have to show. You have to show the basis for the stay and request for relief is not a claim, not previously presented in State or Federal courts. That would certainly qualify if you have new evidence. Or you have to show the failure to raise the claim is, (A) the result of State 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 for State or Federal prosecution review.

That is where that point comes in. Reasonable diligence on the second, third, fourth, fifth petitions. And there is a third condition, that facts underlying this claim of new facts, new evidence, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the petitioner guilty of the underlying offense.

The problem here is real clear. We want to stop these successive petitions. If you go through it on newly found evidence for second, third, fourth, or fifth, you have to go through what I just described. It seems eminently fair. It involves clear and convincing evidence, et cetera. The first time around, you do not have the same standard. And that is not what the gentleman is amending.

Mr. HYDE. Reclaiming my time, in the Herrera case, the accused's relative 6 years later came up with an affidavit that said, ''He was with me that night.'' So that was supposed to reopen the case, and that would fit in with Mr. WATT'S amendment. The court said, ''No, that is not enough.''

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has again expired.

(On request of Mr. ACKERMAN and by unanimous consent, Mr. HYDE was permitted to proceed for 2 additional minutes.)

Mr. HYDE. I will yield to the gentleman from New York.

Mr. ACKERMAN. Mr. Chairman, we are trying to work together to remedy some inequities in the system. I think that the frustration of the American people, as has been expressed here, goes to the point that so many technicalities are raised wherein guilty people are extended indefinitely on death row. And that has caused a major frustration, which many of us can understand; that is, guilty people who are finding technicalities.

What is happening here, in trying to remedy that, we have an amendment that goes to a court issue. What happens when it is an innocent person? What we are doing here is not addressing that problem.

Mr. HYDE. The gentleman from Ohio will address that problem.

Mr. ACKERMAN. The question, if I can phrase it, is: Why are we looking to put technicalities in the way of an innocent person coming before the court? That is just as wrong. That is even worse because you are taking away a life.

Mr. HYDE. You would think it is the exclusionary rule, with all these technicalities getting in the way.

Mr. Chairman, I yield to the gentleman from Ohio.

Mr. CHABOT. Mr. Chairman, one point—and many points have been made on both sides—one point that has not been made is that every State has a Governor and the Governors have the final ability to commute a sentence. So if, in fact, one is arguing that at some point there is clearly an innocent person, the Governor can always commute the sentence.

I would also submit that in many instances these folks that are dragging out this death penalty process kill other inmates, kill guards, and ultimately end up on the streets, sometimes, and kill innocent people.

Mr. ACKERMAN. If the gentleman would make a leap of faith and say that we have one innocent person, how does that one innocent person present his case that you and I might agree and everybody might agree is innocent? You are going to kill somebody because we are dealing with other cases that say this is not expedient now——

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has again expired.

Mrs. MINK of Hawaii. Mr. Chairman, I move to strike the requisite number of words.

(Mrs. MINK of Hawaii asked and was given permission to revise and extend her remarks.)

Mrs. MINK of Hawaii. Mr. Chairman, this amendment which has been offered expresses the fundamental belief that people in this country have about our courts and the judicial system. And that goes to the belief that somehow the system of justice will protect those who are innocent. And what we are doing here today is trying to insert

into legislation which has been proposed that fundamental principle of making sure that no matter how we tamper with the law, no matter what restrictions we put on the right of habeas corpus, no matter what limits we put to it, that if the defendant has newly found evidence that goes to prove his innocence, he ought to have an opportunity to raise that issue before the court and to take it back for a trial. That is all we are saying.

This is not a debate about the death penalty. This is not a debate about whether or not we ought to have greater restrictions on the use of the writ of habeas corpus. This is not even about a question of abuse.

This admits all of the necessities that have been found in the majority's legislation and says, ''Yes, but wait a minute, if we put all of these new restrictions into the law, what is going to happen to an individual who might be found innocent because of newly found evidence?''

We are not saying that these defendants have a right to try the case all over again de novo. We are just saying that if there is newly found credible evidence, it gives the courts a point to decide whether this issue is genuine or not genuine, is a technicality or contrived. And that is why the importance of the word ''credible'' evidence, newly discovered.

Certainly, every one of us has a firm understanding of what the court system is, what the guarantees of due process are in this country and what the symbol of justice is for every American. And that is, if you are innocent, no law, no contrived limitation, no restrictions put on by the Congress is going to take that life if there is credible evidence that that individual is innocent.

So I am saying to the majority that has put forth this bill, accept this amendment. It does no harm to the basic tenets that you are trying to impose for all of these other criminals that you do not want to have these endless appeals on technicality.

Innocence is not a technicality. It is basic to our understanding of what the courts are supposed to protect.

Individuals, perhaps, could not come before the courts of law in a timely way. Due diligence for a defendant is not the same as due diligence for the prosecutor or for the State. It is extremely difficult to come up with evidence to prove your innocence. But when they do, they ought to have their day in court.

So I urge this House to accept the Watt amendment and perfect it so that we do not have to go back and say we passed a law today in the Congress that does not protect the rights of the innocent in this country.

Mr. Chairman, I rise in opposition to habeas corpus reform in the Effective Death Penalty Act, H.R. 729, which would severely diminish the constitutional rights of State prisoners. Habeas corpus is the only means by which State prisoners who believe they have been wrongly or unconstitutionally convicted may appeal to the Federal courts to review their convictions. Particularly in cases where the death penalty is rendered, it is unquestionable that full opportunity for judicial review must be conferred upon the accused.

I am particularly concerned that H.R. 729 would strictly limit the time period during which habeas corpus petitions could be filed, and confines each individual to a single appeal. With the intricacies and numerous requirements in capital cases, 1 year is an inadequate period of time for recruitment of attorneys willing to handle Federal death penalty cases and subsequent preparation and filing of habeas petitions. To additionally limit those convicted to a single appeal unrightfully circumscribes the fairness of the judicial process in these cases. I agree that valuable time in the courts must not be occupied by unreasonably persistent cases, but discretion should remain with the courts with regard to availability of habeas corpus appeals.

The reasoning behind these unnecessary provisions is that prisoners on death row allegedly delay the filing of habeas petitions and file petitions that are frivolous. However, facts from the Judiciary Committee show that from 1976 to 1991, Federal habeas courts granted relief in more than 40 percent of death penalty cases on the basis of serious constitutional error. These decisions reconfirm our essential constitutional rights.

If the problem is that habeas appeals hamper the business of Federal courts, why does H.R. 729 fund the use of competent counsel in postconviction proceedings and not actual death penalty trials? Federal funding to States for counsel in death penalty cases should compel States to appoint attorneys proficient and experienced in death penalty cases. To require quality representation only after the death penalty has been rendered presents a grave inequity that harms the judicial process.

I am also concerned that H.R. 729 narrows the claims that a Federal court can consider in death penalty cases to claims previously raised and rejected in State courts, even if State decisions were incorrect. Eliminating Federal review of such claims would result in differential enforcement of constitutional rights from State to State, potentially producing 50 different explanations of Federal constitutional provisions. The American Bar Association has lodged its ''vigorous opposition'' to this provision which it predicts will ''insulate virtually all State criminal proceedings from Federal review.'' It is paramount that Federal court access to meaningful review in death penalty cases be preserved.

H.R. 729 will greatly compromise constitutional rights of prisoners, judicial fairness, and jurisdiction of Federal courts in serious death penalty cases. This bill would irresponsibly speed up habeas corpus appeals without ensuring that those on death row have full access to judicial review, safeguards against wrongful executions, and access to qualified counsel. I strongly urge my colleagues to cast a vote in opposition to H.R. 729.

Mr. SCHUMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just would like to make a couple of points on this debate, just to take up where we left off before.

I think, again, just to reiterate: The issue in the Watt amendment is not endless appeals. There are other parts of H.R. 729, a bill I supported when we voted it out of subcommittee, that deal with the endless appeals.

□ 1750

In my judgment I would concede the point. I think it is right that defense lawyers have used appeal, after appeal, after appeal. They are morally opposed to capital punishment, and so they feel they should use every means to prevent it from happening, something I disagree with, and that is why I support 729.

But the issue the gentleman from North Carolina brings up is not related to that. It is not related to endless appeals. It deals with the rare instance where there is new evidence, and not just any new evidence, not just something out of a lawyer's head, but something that on initial review by a judge would probably change the result of the trial. Therefore, the new evidence cannot be relatively immaterial, nor can it be not credible. It has to be credible evidence that is material so that the jurors would have said, ''When the judge looks at the new evidence, there would be a reversal.'' That is a pretty high standard.

In fact, and this is the point I would like to make to the gentleman from Florida, the gentleman from Ohio and the others, it is such a relatively tough standard that a recent case, the Schlup case, said that that was the standard based on not any statute, but based on the Constitution. The standard that the gentleman from North Carolina has wisely incorporated in his amendment is the exact standard found in the Carrier case as cited in Schlup. I ask, ''Do you know what that means, ladies and gentlemen? It means we could reject the Watt amendment, and it would still be required constitutionally.''

This is not an issue up for legislative discretion. This is an issue in the Constitution.

I say to my colleagues, ''I don't blame the other side for not putting the Watt amendment in their bill. Their bill was first drafted before this case, but, fellows and ladies, show a little flexibility. The Supreme Court has made a ruling. You shouldn't be fighting a ruling that is going to exist whether you like it or not, and I don't think, as somebody who believes that there have been too many appeals, I don't think it's going to do damage to that. But don't fight it for the sake of fighting it.''

There is a case. There is something that was issued only—today is February 8? It was 3 weeks ago, on January 23, 1995, an opinion by Judge Stevens joined in by the majority of the court that says, quote, the Carrier standard requires the habeas petition to show that, quote, a constitutional violation has probably resulted in the conviction of one who is actually innocent.

The point made by the gentlewoman from Hawaii [Mrs. MINK] and my colleague, the gentleman from New York [Mr. ACKERMAN], and others is this: If the new evidence is significant enough that it would probably change the jury.

I say to my colleagues, ''You can't make this stuff up. It's got to be real. Then why not?''

Those of us who believe in capital punishment; I am among them; were criticized last year for putting in a bill that had 60 new capital punishments. Those who believe in capital punishment want to make sure that it is done fairly and equitably, want to make sure that, if there is overwhelming new evidence, say the DNA evidence that the gentleman talks about, so it is almost crystal clear that the wrong person is on death row; it does not happen that often, but it does happen; is not executed. Those of us who believe that the ultimate sanction is sometimes called for should want to make sure that, when there is credible new evidence that would in a judge's mind, and most of the judges are appointees of Ronald Reagan and George Bush, in that judge's mind mean that the jury would probably, not possibly, but probably, overturn the case, would support this simple amendment. It would eliminate most of the endless appeals. The amendment would not eliminate most of the endless appeals; you know that, and I know that; it would simply provide a small, tightly constructed and constitutionally required window when there is new evidence.

Mr. CUNNINGHAM. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I just heard my good friend, the gentleman from New York [Mr. SCHUMER] talk about that they do not make it up. In California, we had a judge named Rose Bird who was opposed to the death penalty and found every single thing that she could to stop the death penalty, even of those that were guilty.

I have also heard the gentleman from Florida [Mr. MCCOLLUM] state that there are processes which, if they find new evidence, that they can bring this forward. I have heard him state it on the floor, and I also heard that the have a Governor that can take a look at the case, and so there are several mechanisms that enable, if someone is innocent, either new evidence, or the Governor, or due process, that that can be brought forward.

And I agree. We did have the Alton Harris case of a person who was guilty, and I appreciate it because of the sympathy, because it does drag out a process where the guy admitted, yet we kept on going, and I understand that is not what we are talking about.

But this gentleman feels that we do have a process in which someone that is innocent could bring that new evidence forward and that, if we allow the gentleman's amendment, we have got a hundred Rose Birds out there that will oppose any death penalty.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

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

Mr. SCHUMER. Mr. Chairman, I just make two quick points.

First, if there is a judge who is opposed to the death penalty and refuses to implement the law of the land, we should not eliminate any change that an innocent person has a right to some appeal. We should get rid of the judge, and, as I understand it, that is just what the people in California did in the case of the judge the gentleman is talking about. That was the appropriate remedy. Because there are some judges who either go too far one way or the other, Mr. Chairman, we should not change the law for them. We should change them.

The second point I will make to the gentleman is this one:

If there is no Watt amendment, and if 729 passes, there will be no route after the first appeal for evidence of innocence to enter into the case.

Mr. CUNNINGHAM. Reclaiming my time, Mr. Chairman, I would like to have the gentleman from Florida [Mr. MCCOLLUM] explain again. As I understand it, there is that route.

Mr. SCHUMER. Not after the first appeal.

Mr. MCCOLLUM. Mr. Chairman, will the gentleman yield?

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

Mr. MCCOLLUM. Mr. Chairman, there is a way after the first appeal and successive petition. I read it earlier in the RECORD. I am not going to reread the whole thing again, but:

> If you can demonstrate there is newly discovered evidence which you couldn't have easily and reasonably discovered the first time around, and if it's clear and convincing evidence that if it goes before a court would result in innocence, then you can go produce that.

Mr. Chairman, it is clearly written into our bill.

What we say here is based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal postconviction review the first time around, and the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error no reasonable factfinder would have found the petitioner guilty of the underlying offense.

Mr. CUNNINGHAM. I have a question for the gentleman from Florida, and let me ask a question.

If, say, for example, DNA results came up of just recent technology that proved that the individual was innocent? Would they have a right to retrial or to be——

Mr. MCCOLLUM. Mr. Chairman, would the gentleman yield?

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

Mr. MCCOLLUM. Certainly they would, if it is clear and convincing evidence.

Mr. CUNNINGHAM. What happens if someone comes up and admits to the crime? Would that person also have the same rights?

Mr. MCCOLLUM. If that was clear and convincing evidence, it was very clear that would have found the petitioner, would not have found the petitioner, guilty the first time around.

Mr. CUNNINGHAM. So there is surely a way in which, if a person is innocent and evidence appears, that person has many motives to——

Mr. MCCOLLUM. Absolutely and unquestionably so, and in addition to that I might add to the gentleman that a Governor of a State could always commute. That power exists.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

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

Mr. SCHUMER. We are back where we were in the discussion previously, I believe, between the gentleman from North Carolina and the gentleman from Florida.

I say to my colleagues, It is true, as the gentleman from Florida states, that if you were already in the door, he had appealed for some other reason that was recognized, the clear and convincing standard would be allowed.

But I would ask the gentleman to pose the question this way:

If we found the petitioner had undergone the first appeal, had been found guilty, and let us say a year later, because under the new law it would not be 10 years or 8 years; a year later they found the DNA evidence, but there is no route——

The CHAIRMAN. The time of the gentleman from California [Mr. CUNNINGHAM] has expired.

(On request of Mr. SCHUMER and by unanimous consent, Mr. CUNNINGHAM was allowed to proceed for 1 additional minute.)

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

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

□ 1800

Mr. CUNNINGHAM. Mr. Chairman, I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, if there was no other way for this person to get back into that court, then it is my understanding that the capital sentence would have to be taken, even with the DNA evidence, even with the clear and convincing evidence, for the very reason that the standard for review which the gentleman from North Carolina [Mr. WATT] puts in his amendment is not in H.R. 729 or existing law.

So there would be no way, I must sincerely disagree with my friend from Florida, there would be cases where this new evidence would occur.

Mr. CUNNINGHAM. Say Elton Harris, who admitted to his guilt after 14 years and said that he admitted he was

guilty, and all of a sudden it proved that he was not guilty. You are telling me there is no way that if we had DNA evidence or if someone admitted to the guilt, that he would not be protected?

Mr. SCHUMER. I am not familiar with the details of the Harris case. But, yes, I would say to the gentleman that if in that case Harris had no other way to beg back into court, then, yes.

Ms. NORTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to respond to a number of issues that have been raised in this debate. First of all, the Watt amendment does not talk about innocence, but uses a word which is much stricter in the law, and that is that the matter would probably have resulted in an acquittal. That is a very high standard. We are not using the more amorphous word ''innocent'' here.

Moreover, you have just rejected the Schumer amendment. More than half of all attorneys handling capital trials have had no previous death penalty experience. So the probability of finding newly discovered evidence is great, and we are not even willing to say that a man or woman standing on trial for his or her life should have competent counsel.

At the very least then we ought to say if incompetent counsel has not found evidence, newly discovered evidence can be brought forward.

There was discussion of due diligence here. It may be in the bill, but the fact is it is a judge-made rule in any case, and probably the court would find, based on the way courts have looked at these matters in the past, that if due diligence had not been exercised, the court would be more likely to find this was not newly discovered evidence at all.

We are dealing with a situation where 40 percent of death penalty cases heard in the Federal courts have been granted relief because of significant constitutional error. I submit to you, Mr. Chairman, judges have been sitting all these years, where they detest these cases and would love not to find relief, and have been easily finding relief.

We have a problem here. The problem we have is that these cases have been tried, often by people who are not competent to try them. At the very least you would think if newly discovered evidence overlooked by such counsel could be found, that the person would get a second petition.

The 40 percent of the cases I speak of where significant constitutional error was found have been found in the last few years, since 1976. And we are talking about judges appointed by the two previous Presidents.

We are talking in the last 10 years about petitions representing only 4 percent of all civil filings. Whatever is the problem in the Federal courts, it is not presented by habeas corpus petitions. And while I can understand the need to reduce the number, surely given this new rule for truly exceptional cases, for cases that can find their way through this narrow hole where the person probably would have been acquitted—and we are not talking about innocence, we are talking about acquittal, and that has a fixed meaning in the law—surely, that person should be able to get into court.

This does not open a large hole. I am left to ask, what are the Federal courts for if not for looking at cases where newly discovered evidence means that the person would probably have been acquitted?

As to Governors, I say to you, this is not a country where Governors or Members of Congress ought to judge whether constitutional rights have been violated. So it is certainly not the appropriate remedy to move from the courts to the Governor, who will look to the polls and decide whether he ought to exercise a remedy that is almost never exercised. That is no remedy. That is not a remedy at law; that is a political remedy. There should not be a political remedy for a constitutional right.

This is the death penalty we are talking about. This is the great habeas corpus remedy we are talking about. The bill more than protects the rights of the victims and their families. We create here the kind of right that I believe the average American would want us to protect.

Mr. GUTIERREZ. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, my colleague, the gentleman from North Carolina [Mr. WATT], has offered a reasonable and sensible amendment to this very unreasonable bill today, and I congratulate my friend and colleague for his spirited defense of the Constitution.

Standing up for the Constitution puts you in a minority in this body these days. Standing up for the ideas of our forefathers is considered a radical idea in this body these days.

Looking to the sacred document that has guided our ideas for what is right and wrong for more than 200 years is apparently no longer part of our contract with the people anymore.

So I thank the gentleman from North Carolina [Mr. WATT], for this important amendment, and for reminding us that the Constitution still matters.

This amendment simply states that prisoners sentenced to death will be able to file a second habeas petition if newly discovered evidence shows that the person is likely to be found innocent.

Let me repeat, because this should sound so logical to everyone that you might think that I have somehow misstated the Watt amendment: newly discovered evidence that shows that a person is likely to be innocent.

Now, I understand the desire to get tough on crime and criminals. I share the desire to crack down on crime. I believe we should get tough on criminals. I was proud to support a crime bill during the last session that moved our Nation toward that goal. It made it harder to get military-style weapons. It increased funding for prisons. It increased preventive measures. It was an important start, Mr. Chairman.

We should continue to build on that start. I think we should do more to make criminals pay for their crimes. I think we should do more to protect our families from criminals.

That is the real purpose, or should be, of anticrime legislation. Yet my colleagues have lost sight of the true goal of anticrime legislation. The goal is to protect our families, Mr. Chairman, to protect our homes, to protect our neighborhoods. I challenge any of my colleagues who support this measure to demonstrate to me how this bill helps us reach any of those goals I just stated.

How have we reached a point in our anticrime debate that we have lost interest in the Constitution? Have we reached a point in our anticrime debate that newly discovered, clear, credible evidence of innocence does not win you the opportunity in America, just the opportunity for a new trial, in this, the greatest country in the world?

□ 1810

How does denying the possibility, the mere possibility of a new trial for a person who may be innocent, Mr. Chairman, help us make our families and streets safer? How does it make our families feel safer in their homes? How does it make our kids feel safer on the way to school? We all know the answer. Denying habeas when new evidence suggests innocence does not protect our communities. We all know it. It merely gives us a sound bite for the news this evening. It gives us a headline to cheer about tomorrow morning. It merely allows us to pat ourselves on the back and convince ourselves that we are doing something to protect the neighborhoods that we are all so concerned about.

But we are not, Mr. Chairman. This is not, and I repeat, this is not about the right of criminals. This is about the right of all of us, including the Members in this body, all of us in this room, all of our families, all of the people that we represent, their right, their fundamental right, their constitutional right as Americans not to be punished for a crime that they did not commit. Their right, our right to have a chance, a fair chance to prove our innocence.

Justice and fairness can be frustrating at times. Sometimes justice and fairness takes a little more time than we want it to take. But what separates us from nations that value vengeance over justice, revenge over fairness? It is this, that we have a way of doing things differently in this country. That is what this amendment is all about.

Mr. FOX of Pennsylvania. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the call has come out as to how we make the streets safer in the United States. We make the streets

safer by making sure we have swift justice with certainty when it comes to capital offenses. The U.S. citizens are asking who protects the victims from murder? The deceased victims cannot speak but their families can. And they have told us in great numbers that they want to make sure there is certainty that sentences, especially where dealing with a capital offense like murder.

As a former Montgomery County assistant district attorney in Pennsylvania, I can tell my colleagues when I worked on the crime victims bill of rights in Pennsylvania, the people of this country and of my commonwealth want to make sure there is certainty when it comes to the offense of murder.

Habeas corpus relief is a concept whose time has arrived. The endless appeals are inappropriate. The proposed amendment would drastically expand the possibilities for death row inmates to reopen cases where there was no trial that had any kind of constitutional error.

I urge my colleagues to adopt this habeas corpus reform. It is a step in the right direction to protect crime victims.

Mr. CONYERS. Mr. Chairman, there is a major omission in the bill that goes to the heart of due process and fundamental fairness: An innocent man should never be executed.

The McCollum bill gives a criminal defendant ''one bite at the apple'' but would not permit any appeals after the 6-month deadline has passed except in the difficult-to-imagine situation where there is clear and convincing evidence of innocence and no reasonable juror would find the petitioner guilty.

The amendment that we are considering will substitute preponderance of the evidence instead of the more restrictive standard in the McCollum bill.

This amendment simply states that the Federal courts should always be available to hear claims of innocence when based on newly discovered evidence. Representative MCCOLLUM's standard is far better suited to judge and dispose the claim rather than a standard of whether to really hear the claims in the first place.

If this is intentional, then it is a sly smokescreen to cut off all claims based on innocence. I would hope that is not the case and that the majority is willing to support this amendment.

Claims of innocence in habeas proceedings are not part of a far-fetched scenario that can never happen in this day and age. The truth is this is all too common. In fact, the Supreme Court decided a case just this January 23, 1995, that shows how easily this can occur.

The facts in Schlup versus Delo are that a prison inmate accused of murder argued that a videotape and interviews in the possession of prosecutors showed he could not have committed the murder but in the information was not revealed to him until 6 years after his conviction. The Court ruled that Mr. Schlup should be allowed to raise his claims of innocence.

There is case after shocking case of similar horror stories:

James Dean Walker had served 20 years in prison when one of his codefendants confessed that he had pulled the trigger that killed a Little Rock police officer. Walker's gun had not been fired but he had been convicted on the testimony of a witness who said she had seen him shoot the officer. The eighth circuit, which had denied his first habeas petition 16 years earlier, agreed in 1985 that he should be freed.

Rubin ''Hurricane'' Carter was convicted of murder in 1967 and served in prison for 18 years even though the witnesses whose identification led to their convictions later recanted their identifications. The conviction was reversed after a Federal judge ordered prosecutors to turn over evidence, including failed polygraph tests, which showed the witnesses were lying. Carter was set free.

Robert Henry McDowell was almost executed for a crime that the victim initially told police was committed by a white man. McDowell was black. The North Carolina supreme court reversed a trial court order granting him a new trial but the fourth circuit ordered him to be released after the police reports were made public.

False identifications, witnesses recanting, death-bed confessions, these are all too familiar to those who defend death row inmates. Access to Federal courts is vital.

This bill may achieve the goal of speedier executions but the cause of justice will not be served. It is an admission of failure to pursue one without the other. Support the amendment that prevents executing an innocent person.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The question was taken; and the Chairman announced that the ayes 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 151, noes 280, not voting 3, as follows:

[Roll No. 105]

AYES—151

Abercrombie
Ackerman
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Dixon
Doggett
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
LaFalce
Lantos
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Matsui
McCarthy
McDermott
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pomeroy
Rahall
Rangel
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wynn
Yates

NOES—280

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
Mascara
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand

Sensenbrenner	Stump	Wamp
Shadegg	Tate	Watts (OK)
Shaw	Tauzin	Weldon (FL)
Shays	Taylor (MS)	Weldon (PA)
Shuster	Taylor (NC)	Weller
Skeen	Thomas	White
Skelton	Thornberry	Whitfield
Smith (MI)	Tiahrt	Wicker
Smith (NJ)	Torkildsen	Wilson
Smith (TX)	Torricelli	Wolf
Smith (WA)	Traficant	Wyden
Solomon	Upton	Young (AK)
Souder	Volkmer	Young (FL)
Spence	Vucanovich	Zeliff
Stearns	Waldholtz	Zimmer
Stenholm	Walker	
Stockman	Walsh	

NOT VOTING—3

Andrews	Sisisky	Talent

□ 1831

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COX of California: Strike section 104 and insert the following:

SEC. 104. EFFECT OF PRIOR STATE CONSIDERATION.

(a) EXHAUSTION OF REMEDIES.—Section 2254(b) of title 28, United States Code, is amended to read as follows:

''(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State. A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless through its counsel it waives the requirement expressly.''.

(b) STANDARD OF DEFERENCE TO STATE JUDICIAL DECISIONS.—Section 2254 of title 28, United States Code, is amended by adding at the end the following:

''(g) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was decided on the merits in State proceedings unless the adjudication of the claim—

''(1) resulted in a decision that was based on an arbitrary or unreasonable interpretation of clearly established Federal law as articulated in the decisions of the Supreme Court of the United States;

''(2) resulted in a decision that was based on an arbitrary or unreasonable application to the facts of clearly established Federal law as articulated in the decisions of the Supreme Court of the United States; or

''(3) resulted in a decision that was based on an arbitrary or unreasonable determination of the facts in light of the evidence presented in the State proceeding.''.

In the proposed new section 2259(b) of title 28, United States Code, added by section 111, strike ''section 2254(d)'' and insert ''subsections (d) and (g) of section 2254''.

Mr. COX of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. COX of California. Mr. Chairman, I also ask unanimous consent that debate be limited on both sides, for purposes of this amendment and any amendment thereto, to 10 minutes on each side.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. WATT of North Carolina. Mr. Chairman, reserving the right to object, I am trying to figure out why we want to limit debate. Could the gentleman enlighten us? I just want to find out what the amendment does and what is the justification for limiting debate on it.

Mr. COX of California. Mr. Chairman, if the gentleman will yield, in informal discussions on the floor prior to offering the amendment, our side was asked whether we would be agreeable to a limitation on debate. It is not my personal intention in any way to limit debate, but there were Members on the Democratic side who were interested in proceeding in a timely fashion. That is the only purpose for the unanimous consent request that is now on the floor.

Mr. WATT of North Carolina. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. CONYERS. Mr. Chairman, reserving the right to object, could I ask, are there more than two amendments on the gentleman's side? It seems to me that there is only one amendment on our side. Can the gentleman give us an idea on that?

Mr. COX of California. Mr. Chairman, if the gentleman will yield, for that purpose I would defer to the gentleman from Florida [Mr. MCCOLLUM].

Mr. CONYERS. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, if the gentleman will yield, I believe there are two amendments altogether. There may be three. It seems to me the gentleman from Texas, Mr. FIELDS on our side, and also the gentleman from Texas, Mr. LAMAR SMITH, each had amendments. I do not know of any others, and I do not know their intent about offering those amendments.

Mr. CONYERS. If they are going to offer them, would the gentleman just ask them to provide copies to this side, please?

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The gentleman from California [Mr. COX] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

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

Mr. COX of California. Mr. chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to offer a simple common sense amendment to H.R. 729. My amendment, which I am calling the Harris amendment, provides that a habeas writ will not be granted when State court decision reasonably interprets and Federal law reasonably interprets the facts of the case and reasonably applies the law to the facts, or to put it simply, State decisions that are reasonable on the law and the facts will be upheld by a habeas review.

The purpose of my amendment is to prevent the use of endless appeals to frustrate the punishment of already convicted criminals, including first degree murders. We do not have a Federal Criminal Code. We have, in chief, a State criminal justice system. When one commits murder, rape, robbery, and so on, all of these are offenses against State law.

Our Federal criminal jurisprudence is a gloss on that State criminal justice system. The Federal procedural rules, in fact, operate in many cases as a frustration to the State system. So we find that there are egregious cases, and all too many of them, of convicted first degree murderers who have run all of their appeals in the State criminal justice system, who then get another bite, and another bite at the apple, seemingly endlessly in the Federal system, and who have been able, through the abuse of the habeas device, to postpone their executions, seemingly indefinitely.

I said I am calling this the Harris amendment. It is so named after Robert Alton Harris, the notorious first degree murderer who postponed for well over a decade his own execution through the abuse of the device of Federal habeas corpus, statutory habeas corpus.

Harris, even before the murder conviction that was the subject of that long legal odyssey, was already a murderer. He had been convicted of murdering a 19-year-old boy in California. For this he served 2 years and 5 months, and he was out on parole, went out on parole, and he and his brother decided that they ought to rob a bank.

They went after the San Diego Trust and Savings Bank. They decided they needed to steal a getaway car. So they headed out for the Jack-in-the-Box, in San Diego, and they spotted two high school sophomores, John Mayeski who was 15, and Michael Baker was 16, sitting in their Ford LTD eating Jack-in-the-Box hamburgers.

Let me quote from the January 17, 1990, San Francisco Chronicle article about this terrible crime.

Armed with a 9mm Luger automatic pistol, Robert Harris commandeered Mayeski's car and ordered the two boys to drive him to a

wooded area near Miramar Lake. He promised them no one would be hurt.

Daniel Harris, who later became the chief prosecution witness against his brother, followed in another car. He testified that they drove to the lake, where Robert Harris fired two rounds into Mayeski, then went after Baker, who was running for his life.

''I went over to John after he was shot. I looked at him for three or four seconds, I guess. I heard some screaming from the bushes, then three or four shots,'' said Daniel, who served three years in Federal prison for his role. Later after he was arrested, Robert Harris boasted to his cellmate that he told the terrified Baker boy to quit crying and die like a man. When the boy started to pray, Harris said, ''God can't help you now, boy. You're going to die.'' After the murders, Robert Alton Harris and his brother finished the boys' half-eaten hamburgers. They then went on to rob the bank. In one of the great ironies of this case, one of the police officers who ended up apprehending Robert Alton Harris was the father of one of their murdered boys.

□ 1840

Unfortunately, this case is not unique. There are many, many cases like this. But Robert Alton Harris' case took a long time to lead to his conviction.

It was 1979, a year later, when the Superior Court pronounced judgment on him. It was years later when finally the Governor denied his application for clemency. It was years later when he filed his ninth State habeas corpus petition, and he was already then on his fourth Federal habeas corpus petition. In 4 days, Harris filed a fifth and sixth Federal habeas corpus petition. He was not executed, even though this crime occurred in 1978, until 1992.

To repeat, this crime that I have described in some detail occurred in 1978. The judgment was pronounced in 1979, but it was not until 1992, a total delay of 13 years from judgment, that Robert Alton Harris finally finished abusing Federal habeas corpus and was executed. That made him only the second person executed in California under our death penalty since 1978.

We have 400 prisoners sentenced to death in California since the State reinstated the death penalty in 1978. Only two, Robert Alton Harris and David Mason, have been executed.

Today there are 125 California death penalty cases before the Federal courts, and because of the abuse of Federal statutory habeas corpus and this device of endless appeals, we will never perhaps be able to execute these convicted first-degree murderers.

As the Powell Commission wrote, ''The relatively small number of executions as well as the delay in cases where an execution has occurred makes clear that the present system of collateral review,'' referring to statutory habeas corpus, ''operates to frustrate the law.''

Opponents of reform correctly state that our whole system of criminal justice rests on the premise that it is better for 10 guilty men to go free than for one innocent man to suffer, and for that reason, the Constitution requires the States and the Federal Government to provide every criminal defendant the full panoply of protections assured by the Bill of Rights, an unrivaled arsenal of procedural and substantive rights. And that is why, after cases have been fully litigated through the State judicial system, habeas corpus review is available in Federal court, a duplicative system of review that, as Justice Lewis Powell has written, ''is without parallel from any other system of justice in the world.''

The question before us today is not the availability of that habeas review, but, rather, the standard that the Federal courts will use so that we can avoid the kind of repetition and abuse that we saw in the Robert Alton Harris case and that we see in so many cases throughout the country.

The reasonableness standard that I am proposing is already used for factual determinations in habeas cases pursuant to statute and for legal determinations in many cases. This reasonableness standard respects the coordinate role of the States in our constitutional structure, while assuring ample Federal review of State determinations of law and fact.

It strikes a sensible balance that is consistent with the interests of defendants, victims, and States. It is supported by crime victims and law enforcement professionals around the country, including the National District Attorney's Association, which has written to all of us in this Chamber about urging our support for what they call the Cox amendment, what I am calling the Harris amendment, the California District Attorneys' Association, my home State, DA's around the country through the National DA's Association, and as I mentioned, Citizens for Law and Order, and victims' rights groups from across the country and coast to coast, Democrat and Republican attorneys general alike, including the AG's in Texas and California, Democrat and Republican.

I urge your strong support for this strong habeas reform.

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

The CHAIRMAN. Is there a Member who wishes to speak in opposition to the amendment?

Mr. CONYERS. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] is recognized for 10 minutes in opposition of the amendment.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

What we have here in this full and fair concept is a throwback to an outmoded idea first advanced in the other body that would effectively end all rights of habeas corpus, if minimal State guarantees are satisfied. In other words, there would be no right of Federal review unless the State court decision is totally arbitrary. This makes the previous one-bite-of-the-apple position of the gentleman from Florida [Mr. MCCOLLUM] of which we argued about and against, look absolutely great.

This is probably the throwback amendment to habeas corpus of all throwbacks. I mean, this would effectively end habeas corpus today at the Federal level. It almost says that: Let each State do their own thing on habeas corpus and forget Federal habeas review. That's a totally untenable position that I am surprised my friend, the gentleman from California, would even drag it out on the floor at this late hour.

This would end even the very modest advances in the McCollum bill, which are very few, indeed.

The CHAIRMAN. The Committee will rise informally in order that the House may receive a message.

MESSAGE FROM THE PRESIDENT

The SPEAKER pro tempore (Mr. LIGHTFOOT) assumed the chair.

The SPEAKER pro tempore. The Chair will receive a message.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

PARLIAMENTARY INQUIRY

Mr. WATT of North Carolina. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WATT of North Carolina. How can we rise out of the Committee of the Whole without a motion to that effect? I did not hear anybody make a motion. It is strictly a technical point, but there are some procedural rules that apply in this body, I thought.

The SPEAKER pro tempore. The Chair will inform the gentleman from North Carolina the Committee of the Whole can rise informally just for the purpose of receiving a message.

Mr. WATT of North Carolina. Informally.

The SPEAKER pro tempore. Yes. A motion is not required just for the purpose of receiving a message.

Mr. WATT of North Carolina. I thank the Chair for enlightening me.

The SPEAKER pro tempore. The Committee will resume its sitting.

EFFECTIVE DEATH PENALTY ACT OF 1995

The Committee resumed its sitting.

Mr. CONYERS. Mr. Chairman, in continuing my opposition against the biggest throwback amendment of all, I must express my shock and disappointment at the gentleman from California for really attempting to end Federal habeas corpus, if even the most minimal State guarantees are satisfied.

Presumably the bill, the crime bill, has been reported by the subcommittee, the full committee, it is now on the floor, and now from the Republican ranks we now have another amendment that even vitiates the provisions, the very modest provisions, in the McCollum bill, and so we would end up with not even one bite at the apple which I thought was awfully scarce, no right to counsel even in a postconviction proceeding.

So the result with the 50 States would have 50 different standards for protecting Federal constitutional rights. I do not think that we would want this kind of provision put in the bill under any circumstances.

□ 1850

The full and fair issue was deadlocked in the other body last year, and this amendment is another attempt to pass it again.

I urge overwhelming rejection of this amendment.

Mr. Chairman, I yield 4 minutes to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. I thank the gentleman for yielding this time to me, although I doubt I will take 4 minutes.

I do not know what I can say about this. I just want to make sure people understand what it is we are doing here.

All of my colleagues and the American people are getting, if this amendment passes, the Federal courts completely out of the habeas business. You will not have any Federal habeas rights if this bill passes, because in order for you to get in the Federal court, the Federal court would have to find that a decision that was rendered in the State court was arbitrary or unreasonable interpretation of clearly established Federal law, resulted in a decision that was based on an arbitrary and unreasonable application to the facts, resulted in a decision that was based on an arbitrary and unreasonable determination of the facts in light of the evidence presented in the State proceeding. And what you are doing, really, is inviting rock-throwing between the Federal courts and State courts.

Now, we know how gentlemanly and cordial the courts have been with each other. Federal courts never ever say to a State court that, ''Court, you have been arbitrary and unreasonable.'' That would not even be gentlemanly, would not even be proper protocol, almost, in a Federal court.

I have never seen a Federal court say to a State court, ''Judge, you have been arbitrary and unreasonable.'' That is the kind of stuff that we say to claimants when they file lawsuits.

So here we are now inviting the Federal courts to start throwing rocks at the State court and the State court to start throwing rocks back at the Federal court and doing away with even the one opportunity that was guaranteed, or at least provided in the underlying bill. And we are doing it, I would add, without the benefit of one iota of discussion in committee about it.

I have been banging my head against this wall all day, and I am sure you are going to do whatever you want to do. But at least if you are going to do this, have somebody came in and present some evidence that it makes sense. Ask Federal judges if they think it is a good idea for them to start saying to State judges that, ''You are arbitrary and unreasonable.'' It just does not happen.

So the practical effect of what you are doing is to say that you are never going to have any rights in the habeas arena in Federal court.

I encourage my colleagues to be reasonable and defect this proposed amendment.

Mr. CONYERS. I thank the gentleman from North Carolina, my colleague.

Mr. Chairman, may I remind my friends on the other side on the Committee on the Judiciary that this matter has never come up before that I can recall, before the Committee on the Judiciary. The gentleman from California [Mr. COX] has never appeared before the committee.

Mr. MCCOLLUM. Not in this Congress, but it certainly came up in other Congresses.

Mr. CONYERS. Just a minute, please. I will be happy to yield time. We have never considered this matter in this 104th Congress. It has never come up, was never the subject of an amendment.

Mr. Chairman, I will give the gentleman from Florida [Mr. MCCOLLUM] a chance to correct anything he would like to correct. But this has never been put before the Committee on the Judiciary for a vote, and the gentleman from California [Mr. COX] has never presented this subject matter before, and we are literally blind-sided in the last hour of this debate on this very important part where you have advanced the habeas part of the Contract With America, and now we have another amendment that goes in a completely different way.

Mr. MCCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I would yield to my friend, the chairman of the Subcommittee on Crime.

Mr. MCCOLLUM. I thank the gentleman for yielding.

Mr. Chairman, I would just like to point out to the gentleman that at hearings of the subcommittee, on January 19, 1995, we had two panels on habeas corpus reform, and both panels addressed this question. One panel involved the Attorney General of California, Daniel Lungren. Attorney General Lungren spent a great deal of time discussing and arguing for the full and fair concept that Mr. COX is advocating here tonight.

Mr. CONYERS. Mr. Chairman, I was there. He did mention, it was rather fulsome testimony on a great range of subjects. But I could hardly consider that that was the notice that we needed to come here tonight. In the markup, it was never mentioned at all. As a matter of fact, it was the gentleman's provisions on habeas that we gave great attention to.

Mr. Chairman, I yield further to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Chairman, I would like to inquire of the gentleman from Florida [Mr. MCCOLLUM] if, in fact, testimony was presented and the committee then dealt with this and thought it was a wonderful idea, why was it not in the original bill? Why are we coming to the floor with it at the 99th hour on this bill and dealing with it in 10 minutes of debate?

If you all thought it was a great idea, I would have thought you would have incorporated it into the bill.

Mr. MCCOLLUM. If the gentleman will yield further.

Mr. CONYERS. Briefly.

Mr. MCCOLLUM. I thank the gentleman.

Briefly, the idea of 10 minutes of debate was by unanimous consent request. We did not have to follow that.

Second, it has come to the floor the way it has. The gentleman from California [Mr. COX] is not a member of the committee. We did not bring it up, the committee did not bring it up. He has a right to bring it up, to bring it forward, and he has.

The CHAIRMAN. The time is controlled by the gentleman from California [Mr. COX], who has 1½ minutes remaining.

Mr. COX of California. I thank the Chairman.

Mr. Chairman, I just point out that the language of the amendments says reasonable. It also says arbitrary. But a separate standard is reasonable. It is arbitrary or unreasonable.

Obviously, the reasonableness test is the more difficult to meet.

Simply stated, the Federal courts will defer to reasonable decisions on the facts, reasonable decisions on the law, and reasonable decisions on mixed questions of law and fact made at the State courts.

That is exactly what they should do because after all we are already requiring in this bill that criminal defendants exhaust all of their State remedies, if they go through trial, if they have an appeal, if they have another appeal, and so on. All of this within the State court system.

But if habeas corpus, statutory habeas corpus is available simply to throw out the whole State judicial system, why do we have it in the first place? If we are going to look at all of these questions from scratch, de novo, facts, evidence, law, the whole thing, as if the State proceeding had never happened, then Robert Alton Harris would be able to, in the future, to be able to delay his execution for 13 more years.

(The letter referred to by Mr. COX of California is as follows:)

FEBRUARY 8, 1995.

Hon. HENRY HYDE,
Chairman of the House Judiciary Committee, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN HYDE: We would first of all like to thank you for your tireless effort on behalf of habeas corpus reform. As Attorneys General for our respective states we are confronted with a system of federal habeas review that is often intrusive, cumbersome, and time consuming. It also imposes a great cost on victims of crime and undermines finality in our criminal justice system.

The central problem underlying federal habeas corpus review is a lack of comity and respect for state judicial decisions. The lower federal courts should simply not be relitigating matters that were handled properly and reasonably by the state judicial systems. This not in any way a criticism of those who serve in the federal judiciary, but rather a demonstration of the need for Congressional action to reform the federal statutory scheme.

In this regard, we strongly support an amendment that will be offered by Congressman Christopher Cox to title I H.R. 729, which would give deference to state court decisions on federal habeas review, as long as the state courts acted reasonably in their adjudication of the case. Specifically, the amendment would provide:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was decided on the merits in state proceedings unless the adjudication of the claim:

1. resulted in a decision that was based on an arbitrary or unreasonable interpretation of clearly established federal law as articulated in the decisions of the Supreme Court of the United States;

2. resulted in a decision that was based on an arbitrary or unreasonable application to the facts of clearly established federal law as articulated in the decisions of the Supreme Court of the United States; or

3. resulted in a decision that was based on an arbitrary or unreasonable determination of the facts in light of the evidence presented in the state proceeding.

We believe that meaningful habeas corpus reform must contain such a standard of deference to reasonable state court decisions. This is essential if the trial of criminal defendants is to be the ''main event'' rather than a sideshow for ultimate resolution of the case on federal habeas corpus review.

Thank you again for your continued effort on behalf of prosecutors and crime victims. We look forward to working with you on this and other issues in the future.

Sincerely,

Dan Morales, Attorney General of Texas; Grant E. Woods, Attorney General of Arizona; Franie Sue Del Papa, Attorney General of Nevada; Daniel E. Lungren, Attorney General of California; W. A. Drew Edmondson, Attorney General of Oklahoma; Joseph P. Mazurek, Attorney General of Montana; Pamela Carter, Attorney General of Indiana, Jeff Sessions, Attorney General of Alabama; Ernest D. Preate, Jr., Attorney General of Pennsylvania.

THE HARRIS CASE FOR HABEAS CORPUS REFORM

On July 5, 1978, Robert Alton Harris murdered two teenage boys in San Diego. Two days later, he was arraigned.

On March 6, 1979, the San Diego Superior Court pronounced judgment on Harris, following a trial in which the jury convicted him of two counts of first degree murder and returned a death sentence.

Five days before execution, Gov. Wilson denied Harris's application for clemency. Harris filed his 9th state habeas corpus petition and 4th federal habeas corpus petition.

In the next four days, Harris filed his 5th and 6th federal habeas corpus petitions.

Harris was even the named plaintiff in a class action filed in U.S. district court on behalf of all California death-row inmates. The suit alleged that the gas chamber was a cruel and unusual means of execution and sought a stay on Harris' execution.

On April 21, 1992, Harris was finally executed.

The total delay from judgment to execution was 13 years.

In all, Harris filed 6 federal habeas corpus petitions.

69% of the 141 significant events in the Harris proceedings occurred in federal court. Only 31% occurred at the state level.

THE HARRIS CASE IS NOT UNIQUE—THAT'S THE TRAGEDY

One Ninth Circuit Judge has called the Harris case, even before its particularly egregious final rounds of litigation, ''a textbook example'' of the abuse of federal habeas corpus.

While 400 prisoners have been sentenced to death in California since the state reinstated the death penalty in 1978, only Robert Alton Harris and David Mason have been executed.

Today, there are 125 California death penalty cases before the federal courts.

A similar case in Washington state: 4 federal habeas corpus petitions dragged out for 12 years the execution of Charles Campbell. Campbell was a convicted rapist who murdered 3 people while on work furlough from prison. The victims were his earlier rape victim, a neighbor who had testified against him, and her 8-year-old daughter. The 9th Circuit took 5 years to resolve must one of the habeas corpus petitions.

Mr. Chairman, I yield to the gentleman from Florida [Mr. MCCOLLUM] to close.

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding, and I would like to say that everything we are doing here is reasonable. If there is a full and fair review of the provisions by the courts, the Federal courts, of what is going on underneath, and if the lower courts have made this decision, why should one Federal judge overturn the rulings of the State court judge, five State intermediate appellate courts, and perhaps nine Supreme Court justices.?

The CHAIRMAN. All time has expired.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent to proceed for 30 additional seconds.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

□ 1900

Mr. CONYERS. Mr. Chairman, I just want everybody in this Chamber to know that, as opposed as I am to this Draconian amendment offered by the gentleman from California [Mr. COX], ironically, if adopted, it may be the kiss of death for any habeas corpus reform since we know that the Senate is almost sure to deadlock.

So, Mr. Chairman, I say to my colleagues, Have it your way, gentlemen. The McCollum habeas and the Cox habeas are in direct contradiction, and you——

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from California [Mr. COX].

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 291, noes 140, not voting 3, as follows:

[Roll No 106]

AYES—291

Allard	Dickey	Johnson (SD)
Archer	Dooley	Johnson, Sam
Armey	Doolittle	Jones
Bachus	Dornan	Kanjorski
Baesler	Doyle	Kaptur
Baker (CA)	Dreier	Kasich
Baker (LA)	Duncan	Kelly
Ballenger	Dunn	Kim
Barcia	Edwards	King
Barr	Ehlers	Kingston
Barrett (NE)	Ehrlich	Klink
Bartlett	Emerson	Klug
Barton	English	Knollenberg
Bass	Ensign	Kolbe
Bateman	Everett	LaHood
Bereuter	Ewing	Lantos
Bevill	Fawell	Largent
Bilbray	Fields (TX)	Latham
Bilirakis	Flanagan	LaTourette
Bliley	Foley	Laughlin
Blute	Forbes	Lazio
Boehlert	Fowler	Leach
Boehner	Fox	Lewis (CA)
Bonilla	Franks (CT)	Lewis (KY)
Bono	Franks (NJ)	Lightfoot
Borski	Frelinghuysen	Lincoln
Boucher	Frisa	Linder
Brewster	Frost	Lipinski
Browder	Funderburk	Livingston
Brownback	Gallegly	LoBiondo
Bryant (TN)	Ganske	Longley
Bunn	Gekas	Lucas
Bunning	Geren	Manzullo
Burr	Gilchrest	Martini
Burton	Gillmor	Mascara
Buyer	Gilman	McCollum
Callahan	Goodlatte	McCrery
Calvert	Goodling	McDade
Camp	Gordon	McHale
Canady	Goss	McHugh
Castle	Graham	McInnis
Chabot	Green	McIntosh
Chambliss	Greenwood	McKeon
Chapman	Gunderson	Menendez
Chenoweth	Gutknecht	Meyers
Christensen	Hall (OH)	Mica
Chrysler	Hall (TX)	Miller (FL)
Clement	Hancock	Minge
Clinger	Hansen	Molinari
Coble	Harman	Montgomery
Coburn	Hastert	Moorhead
Coleman	Hastings (WA)	Moran
Collins (GA)	Hayes	Morella
Combest	Hayworth	Murtha
Condit	Hefley	Myers
Cooley	Heineman	Myrick
Costello	Herger	Nethercutt
Cox	Hilleary	Neumann
Cramer	Hobson	Ney
Crane	Hoekstra	Norwood
Crapo	Hoke	Nussle
Cremeans	Holden	Ortiz
Cubin	Horn	Orton
Cunningham	Hostettler	Oxley
Danner	Hunter	Packard
Davis	Hutchinson	Parker
Deal	Hyde	Paxon
DeLay	Inglis	Payne (VA)
Deutsch	Istook	Peterson (FL)
Diaz-Balart	Jefferson	Peterson (MN)

Petri	Seastrand	Tejeda
Pickett	Sensenbrenner	Thomas
Pombo	Shadegg	Thornberry
Porter	Shaw	Tiahrt
Portman	Shays	Torkildsen
Poshard	Shuster	Torricelli
Pryce	Sisisky	Traficant
Quillen	Skeen	Upton
Quinn	Skelton	Vucanovich
Radanovich	Smith (MI)	Waldholtz
Ramstad	Smith (NJ)	Walker
Regula	Smith (TX)	Walsh
Richardson	Smith (WA)	Wamp
Riggs	Solomon	Watts (OK)
Roberts	Souder	Weldon (FL)
Roemer	Spence	Weldon (PA)
Rogers	Stearns	Weller
Rohrabacher	Stenholm	White
Ros-Lehtinen	Stockman	Whitfield
Roth	Stump	Wicker
Roukema	Stupak	Wilson
Royce	Talent	Wolf
Salmon	Tanner	Wyden
Sanford	Tate	Young (AK)
Saxton	Tauzin	Young (FL)
Scarborough	Taylor (MS)	Zeliff
Schaefer	Taylor (NC)	Zimmer

NOES—140

Abercrombie	Gutierrez	Pallone
Ackerman	Hamilton	Pastor
Baldacci	Hastings (FL)	Payne (NJ)
Barrett (WI)	Hefner	Pelosi
Becerra	Hilliard	Pomeroy
Beilenson	Hinchey	Rahall
Bentsen	Houghton	Rangel
Berman	Hoyer	Reed
Bishop	Jackson-Lee	Reynolds
Bonior	Jacobs	Rivers
Brown (CA)	Johnson (CT)	Rose
Brown (FL)	Johnson, E. B.	Roybal-Allard
Brown (OH)	Johnston	Rush
Bryant (TX)	Kennedy (MA)	Sabo
Cardin	Kennedy (RI)	Sanders
Clay	Kennelly	Sawyer
Clayton	Kildee	Schiff
Clyburn	Kleczka	Schroeder
Collins (IL)	LaFalce	Schumer
Conyers	Levin	Scott
Coyne	Lewis (GA)	Serrano
de la Garza	Lofgren	Skaggs
DeFazio	Lowey	Slaughter
DeLauro	Luther	Spratt
Dellums	Maloney	Stark
Dicks	Manton	Stokes
Dingell	Markey	Studds
Dixon	Martinez	Thompson
Doggett	Matsui	Thornton
Durbin	McCarthy	Thurman
Engel	McDermott	Torres
Eshoo	McKinney	Towns
Evans	McNulty	Tucker
Farr	Meehan	Velazquez
Fattah	Meek	Vento
Fazio	Mfume	Visclosky
Fields (LA)	Miller (CA)	Volkmer
Filner	Mineta	Ward
Flake	Mink	Waters
Foglietta	Moakley	Watt (NC)
Ford	Mollohan	Waxman
Frank (MA)	Nadler	Williams
Furse	Neal	Wise
Gejdenson	Oberstar	Woolsey
Gephardt	Obey	Wynn
Gibbons	Olver	Yates
Gonzalez	Owens	

NOT VOTING—3

Andrews	Collins (MI)	Metcalf

□ 1919

Ms. FURSE, Mr. POMEROY, and Mr. RAHALL changed their vote from ''aye'' to ''no.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1920

The CHAIRMAN. Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. FIELDS OF LOUISIANA

Mr. FIELDS of Louisiana. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FIELDS of Louisiana: In the matter proposed to be inserted in section 3593(e) of title 18, United States Code, by section 201, insert ''or a sentence of life imprisonment without the possibility of release'' after ''shall recommend a sentence of death''.

Strike subsection (b) of section 201 and eliminate the subsection designation and heading of subsection (a).

Mr. FIELDS of Louisiana. Mr. Chairman, I ask unanimous consent that time on my amendment and all amendments thereto be limited to 10 minutes, equally divided on both sides.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The CHAIRMAN. The gentleman from Louisiana [Mr. FIELDS] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

Does the gentleman from Pennsylvania [Mr. GEKAS] wish to manage the opposition to the Fields amendment?

Mr. GEKAS. I do, Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GEKAS] will be recognized for 5 minutes.

The Chair recognizes the gentleman from Louisiana [Mr. FIELDS].

Mr. FIELDS of Louisiana. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Illinois [Mrs. COLLINS].

(Mrs. COLLINS of Illinois asked and was given permission to revise and extend her remarks.)

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, today my Republican friends continue along with their stampede to undo over 200 years of constitutional rights and protections afforded all of our citizens. I have decided that the GOP should rename their 100-day legislative agenda the Assault on America.

I am truly disturbed with the short-sighted and politically misguided attempts by those on the other side of the aisle to limit individual liberties and establish an eye-for-an-eye justice system in the United States. Their irrational cries for vengeance as a form of crime control do nothing but blind society to the real solutions to the problems with which we are confronted and inevitably heighten divisiveness among varying races and socioeconomic classes across our Nation.

We have a perfect example of this, Mr. Chairman, in the bill before us, H.R. 729, the Effective Death Penalty Act. The title of this legislation is an absolute oxymoron. No study that I am aware of has ever proven the deterrent effect of the death penalty, and yet the leadership wants to accelerate the rate of executions in this country while at the same time greatly curtailing the rights of defendants to receive not only adequate representation and fair trials, but also sufficient protections against wrongful executions.

No matter what your stance on the death penalty, I firmly believe that few in America wish to run the risk of putting an innocent person to death. However, this bill clearly heightens that risk.

Not only does H.R. 729 fail to require that States provide defendants with competent lawyers at the critical trial stage of death penalty cases, it also effectively bars defendants from second habeas corpus petitions even where newly discovered evidence shows that the defendant is most likely innocent of the charges leveled against him or her.

I am particularly alarmed because, as Supreme Court Justice Harry Blackmun stated last year, ''the death penalty experiment has failed * * * it remains fraught with arbitrariness, discrimination, and caprice, and mistake.'' Given that this is the case, why in the world would the GOP want to expand its use?

It is becoming increasingly clear, Mr. Chairman, that the Republicans believe the Constitution applies only selectively to those individuals and groups that they deem acceptable or deserving—poor, underserved, minority Americans need not apply.

Mr. Chairman, the fate of our system of justice rests on the citizenry believing that it is fair. Whenever that fairness is lost, so follows the justice. Unfortunately, the bill before us would only bring greater unfairness to the system.

I urge my colleagues to vote no on this nonsensical attempt to accelerate government-sanctioned executions in the United States.

Mr. FIELDS of Louisiana. Mr. Chairman, I yield myself such time as I may consume. Let me briefly explain the amendment.

The amendment under the present piece of legislation that is before us—it provides in no uncertain terms that the jury or, if there is no jury, the court shall recommend a sentence of death. What this amendment simply would do is not take out, it would not take out the sentence of death, as much as I would want to do that, but it would maintain that language, but it would add to, to give the jury and the court the opportunity of not only being able to recommend a sentence of death but give them the option to either recommend a sentence of death or a sentence of life in prison without the possibility of release.

That is all the amendment does.

Now, philosophically, I am very strongly and adamantly opposed to capital punishment, but it does not do away with capital punishment in the bill. But I do think if we leave the bill as it is in its present form, we will have a bill that would give the judge and would give the jury no option whatsoever. Due to the fact that many of the people who are victims of capital punishment are the people who do not have capital, many times he who does not have the capital normally get punished.

So this amendment certainly gives us an opportunity to give the judge and the jury the option of either imposing capital punishment or giving a person life in prison without parole.

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

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, if the gentleman's amendment should be accepted by the House, it would in effect make the

present bill that calls for instructions to the jury to carry a certain essence with them, would make those provisions unconstitutional.

We have to recall that in the crime bill that is now the law of the land the flawed language, which we consider to be flawed, calling for instructions to the jury that no matter what the aggravating circumstances and mitigating circumstances might be, no matter what weight is placed on them allowing the jury to find life or the sentence of death is clearly unconstitutional.

What we do is implant language into the bill which makes it mandatory to find the death penalty, if a jury, in the second hearing, in the bifurcated hearing, determines that the aggravating circumstances outweigh the mitigating circumstances.

That conforms with many of the States who have crafted death penalties of their own with respect to the jury instructions, and the Supreme Court has blessed the language of at least 15 States who have similar mandatory language, finding that the aggravating circumstances outweighing the mitigating circumstances requires a death penalty.

Now, what this gentleman's amendment does is allow another alternative to the jury, as I understand it, life imprisonment without patrol, which means that the mandatory feature, that which the Supreme Court has found to be constitutional and which forms the bedrock of the provisions in the present legislation, which we are offering to the House, would render it unconstitutional.

We have gone through this road many times. In a strange way, adopting this amendment would be like repeating last year's error in the crime bill, which itself took us back to prior to 1974, before the Supreme Court struck down the death penalty. And provides for a jury deliberation on the death penalty that allows for so much discretion that discrimination or racial or gender basis or age or any of those things could enter into the picture, where in our language, in our bill, because of the mandatory features, if aggravating circumstances outweigh mitigating, the chances for discrimination, bias, gender, race, all of those are eliminated.

So we would ask that the gentleman's amendment be defeated.

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

Mr. FIELDS of Louisiana. Mr. Chairman, this amendment has nothing to do with race. There is not race in the bill. It has nothing to do with race.

Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Chairman, I thank the gentleman for yielding time to me.

I think the Fields amendment is eminently sensible.

At a time when many of our friends are saying, get the big, bad Federal Government off the backs of local communities, what the Fields amendment says to judges and juries all over America, if they understand what the circumstances are in the case and if they want to rule for the death penalty, OK, they can do that, but if they want to rule for life imprisonment, they also have that right.

□ 1930

It is flexible, it is consistent with local control.

In a more general sense, Mr. Chairman, I get a little bit nervous with the fervor that we hear here about the death penalty. I would point out to my friends that to the best of my knowledge, the United States of America remains the only major industrialized nation on Earth that allows for the death penalty in all circumstances other than war crimes and in treason. Our friends in Canada do not have the death penalty. Our friends south of us in Mexico do not have the death penalty.

What the amendment of the gentleman from Louisiana [Mr. FIELDS] says is, give juries and give judges the option. I think it is a sensible proposal.

The CHAIRMAN. The Chair will inform the gentleman from Louisiana [Mr. FIELDS] that he has 2 minutes remaining, and the gentleman from Pennsylvania [Mr. GEKAS] has 2 minutes remaining.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

It is well-known, and it is so well-embedded in the CONGRESSIONAL RECORD in previous sessions and in newspaper reports, television reports, and in every poll known to mankind that the American people, by a wide margin, 75, 80 percent, favor the imposition of the death penalty in a proper case. They do not exactly favor the imposition of the death penalty, they favor the concept of allowing a jury that hears the facts to have the option of listening to whether aggravating circumstances appear in a particularly vicious case to determine that a death penalty is the proper sentence.

Mr. Chairman, the amendment that we have here returns us to the stone age of the death penalty, where discretion was so freakishly applied by the jury, and that word ''freakishly'' is in the Supreme Court opinion that struck down the death penalty, that we cannot be certain that bias and prejudice would not enter into the final decision made by the jury.

The amendment that we have at hand would do much of the same. In giving unfettered discretion to the jury to determine, regardless of the aggravating circumstances or the mitigating circumstances, that they could find death or life throws us back to the unconstitutional days of the death penalty, which we are trying to avoid, and which this bill corrects and brings into play language already approved by the Supreme Court. Thereby we avoid the possibility of the death penalty. The Supreme Court has said that this language, as it appears in the State criminal statutes in 10, 12, 15 States, is sound, is constitutional, is proper, and we are lifting it from a Supreme Court opinion already in existence, so that we would be safe in assuming that this language cures our constitutional problems with the imposition of the death penalty.

Mr. SANDERS. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. GEKAS] has expired.

Mr. FIELDS of Louisiana. Mr. Chairman, I yield 30 seconds to the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Chairman, the gentleman is correct, I think, in saying that polls in America support the death penalty. People want judges and juries to have the option to use the death penalty. I think the gentleman will not disagree with me that polls and studies also indicate that the public wants judges and juries to have the option to use the death penalty or not to use the death penalty to allow for life imprisonment. That is precisely what the Fields amendment is.

Mr. FIELDS of Louisiana. Mr. Chairman, I yield 1½ minutes to the gentleman from Illinois [Mr. DURBIN] to close the debate.

Mr. DURBIN. Mr. Chairman, I thank my colleague, the gentleman from Louisiana, for yielding time to me.

Mr. Chairman, I would say to the committee that I have a different position on the death penalty than the gentleman who has offered the amendment. I favor the death penalty, he opposes it, but I still believe he offers a valuable amendment.

If Members believe in the bedrock of the American judicial system, it is trial by jury. It is a decision by America's citizens as to the guilt or innocence of an individual.

What the gentleman from Louisiana [Mr. FIELDS] is suggesting is that that jury, under the most heinous crimes and heinous circumstances, would be given two options and not one. Under the bill, they have only one option, the death penalty. Under the amendment offered by the gentleman from Louisiana [Mr. FIELDS], they have a second option of life in prison without parole.

It strikes me we are dealing with factors that are somewhat subjective, aggravating and mitigating factors. I think that if we believe in the Constitution and the bedrock of our judicial system, we give to that jury these two options.

Both options protect society from those individuals who have committed such violent crimes that we no longer want to see them on the streets or in our neighborhoods, but I think it is reasonable to offer this option. I salute my colleague, the gentleman from Louisiana, for offering that option.

I hope that my colleagues, despite their fervor over the death penalty, will understand that this gets to the

bedrock principle of justice in this country, whether or not a decision is to be made by a jury of a person's peers.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Louisiana [Mr. FIELDS].

The question was taken; and the chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GEKAS. Mr. Chairman, I demand a recorded.

A recorded vote was ordered.

The CHAIRMAN. This is a 15-minute vote.

The vote was taken by electronic device, and there were—ayes 139, noes 291, not voting 4, as follows:

[Roll No 107]

AYES—139

Abercrombie
Ackerman
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Boucher
Brewster
Brown (CA)
Brown (FL)
Brown (OH)
Chapman
Clay
Clayton
Clyburn
Collins (IL)
Conyers
Coyne
de la Garza
DeFazio
Dellums
Dingell
Dixon
Doggett
Duncan
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Furse
Gejdenson
Gonzalez
Green
Gutierrez
Gutknecht
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Jacobs
Jefferson
Johnson, E. B.
Johnston
Kennedy (MA)
Kennelly
Kildee
Kleczka
LaFalce
LaTourette
Laughlin
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney
Markey
Martinez
Matsui
McCarthy
McDermott
McKinney
McNulty
Meek
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pomeroy
Rahall
Rangel
Reynolds
Rivers
Roemer
Rose
Roth
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Scott
Serrano
Shays
Skaggs
Slaughter
Smith (MI)
Spratt
Stark
Stokes
Studds
Thompson
Thornton
Thurman
Torkildsen
Torres
Towns
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wynn
Yates

NOES—291

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Browder
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Coleman
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dooley
Doolittle
Dornan
Doyle
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Hall (OH)
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (RI)
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Lantos
Largent
Latham
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lucas
Manton
Manzullo
Martini
Mascara
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
Meehan
Menendez
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Reed
Regula
Richardson
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torricelli
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Wyden
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—4

Andrews
Collins (MI)
Metcalf
Wilson

□ 1951

Mr. SMITH of Michigan changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. SMITH OF TEXAS

Mr. SMITH of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SMITH of Texas: Proposed section 2257 of title 28, United States Code, in section 111 of H.R. 729, is amended—

(1) in subsection (b)—

(A) by striking '', or fails to make a timely application for court of appeals review following the denial of such a petition by a district court'' in paragraph (1);

(B) by striking paragraph (2);

(C) by redesignating paragraph (3) as paragraph (2);

(D) by striking the period at the end of paragraph (2) as so designated and inserting ''; or''; and

(E) by adding a new paragraph (3) as follows:

''(3) a State prisoner files a habeas corpus petition under section 2254 within the time required in section 2258 and fails to make a substantial showing of the denial of a Federal right or is denied relief in the district court or at any subsequent stage of review.''; and

(2) in subsection (c), by striking ''If one of the conditions in subsection (b) has occurred, no Federal court thereafter'' and inserting ''On a second or later habeas corpus petition under section 2254, no Federal court''.

Proposed section 2260 of title 28, United States Code, in section 111 of H.R. 729, is amended to read as follows:

''§ 2260. Certificate of probable cause

''An appeal may not be taken to the court of appeals from the final order of a district court denying relief in a habeas corpus proceeding that is subject to the provisions of this chapter unless a circuit justice or judge issues a certificate of probable cause. A certificate of probable cause may only issue if the petitioner has made a substantial showing of the denial of a Federal right. The certificate of probable cause must indicate which specific issue or issues satisfy this standard.''.

In the table of sections for proposed chapter 154 of title 28, United States Code, in section 111 of H.R. 729, the item relating to proposed section 2260 of title 28, United States Code, is amended by striking ''inapplicable''.

Mr. SMITH of Texas (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SMITH of Texas. Mr. Chairman, I ask unanimous consent that debate on my amendment and all amendments thereto be limited to 10 minutes, 5 minutes per side.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The gentleman from Texas [Mr. SMITH] is recognized for 5 minutes.

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the committee bill provides for an automatic stay of execution throughout all stages of federal review for the first federal habeas petition for states that provide counsel on state collateral review. Some States had raised concerns that this provision may have the unintended effect of prolonging litigation by allowing a stay of execution even where the federal habeas petition presents no substantial claim for the federal court to consider.

This amendment has bipartisan support.

I would like to read an excerpt from a letter from the attorney general of Texas, a Democrat, Dan Morales. This letter reads in part,

Providing for an automatic stay regardless of the merit of the issues raised is inconsistent with the purpose of federal habeas review, and as a practical matter, will lead to unwarranted delay in the imposition of valid sentences. The goal of affording death sentence inmates ''one bite of the apple'' should at the very least be accomplished without staying an execution while a petitioner pursues frivolous appeals.

Mr. Chairman, the amendment before us provides that the automatic stay will terminate once State court review is completed if that petitioner fails to make a substantial showing of the denial of a Federal right or a denied relief on his petition in the Federal district court or at a later stage of Federal habeas review. Under current law, Federal courts routinely must evaluate whether an issue exists to warrant review in granting of a stay, so the rights of the inmate are still protected.

This amendment improves the legislation, Mr. Chairman, and I urge its adoption.

OFFICE OF THE ATTORNEY GENERAL
Austin, TX, February 7, 1995.

Hon. LAMAR S. SMITH,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE SMITH: The recently introduced House of Representatives Bill 729 raises significant concerns for the State of Texas in the post-conviction litigation of capital cases. Specifically, I am concerned with the provision of proposed §2257 for an automatic stay of execution while a death-sentenced inmate litigates a complete round of federal habeas review, from district court through the circuit courts of appeals and the Supreme Court and the provision of proposed §2258 eliminating the certificate of probable cause requirement for appeals. Providing for an automatic stay, regardless of the merit of the issues raised, is inconsistent with the purpose of federal habeas review and, as a practical matter, will lead to unwarranted delay in the imposition of valid death sentences. The goal of affording death-sentenced inmates ''one bite of the apple'' should at the very least be accomplished without staying an execution while a petitioner pursues frivolous appeals. I urge you to support a floor amendment eliminating these two provisions.

As I'm sure you are aware, death-sentenced petitioners pursuing federal habeas review have, virtually without exception, pursued a direct appeal to the state's highest court of the review, and, in most instances, sought certiorari review of the state court's disposition of the direct appeal. Further, most if not all such petitioners have litigated at least one complete round of state habeas review. Under these circumstances, if a petitioner cannot satisfy the standard of *Barefoot* v. *Estelle,* 463 U.S. 880 (1983), which requires a substantial showing of the denial of a federal right, then a stay is unwarranted. As demonstrated by existing practice, United States district courts, circuit courts of appeals and the Supreme Court are fully able to evaluate whether there exists an issue which warrants review and a stay.

Notably, the certificate of probable cause requirement was originally enacted to eliminate or reduce the number of unwarranted stays of execution entered while death-sentenced inmates pursued frivolous appeals. *Barefoot* v. *Estelle,* 463 U.S. at 892 n.3 (and citations therein). Thus, the proposed automatic stay, which would extend through the appeal and disposition of a petition for certiorari review, represents a step backward rather than forward in the goal of expediting post-conviction review. Indeed, the automatic stay is an unwarranted step in the opposite direction from the ''full and fair'' provisions that have garnered so much support in the past. Rather than deferring to a state court's reasonable disposition of constitutional issues, the automatic stay provisions disregard the significant amount of review that precedes federal habeas review. The ''full and fair'' concept aside, the current practice of allowing each federal court from the district court through the Supreme Court to determine whether a stay is warranted is preferable.

The effect of the automatic stay is not ameliorated by the time limits imposed on adjudication at each stage or by the designation of a finite period of time to go from state review into federal habeas review. The time limits imposed do very little, if anything, to streamline the process of the United States District Courts in Texas, the Fifth Circuit Court of Appeals, or the Supreme Court. For example, a death-sentenced inmate has normally delineated his grounds for relief in state court and exhausted state remedies with respect to those grounds. It simply does not require 180 days to transform a state petition into a federal petition founded on the same legal bases and, in practice, federal district courts in Texas normally require a petition to be filed if the petitioner has been allowed, on the average, 60 or more days following state habeas review. Similarly, the time limits imposed for adjudication at each stage do not impose real limitations. For example, allowing the district court 60 days after argument to rule does not limit the time a petition may languish on the court's docket before argument.

Finally, by staying an execution until the Supreme Court denies a petition for certiorari review, the legislation almost assures additional litigation by death-sentenced inmates. Capital litigation will expand to fill anytime allowed. If an execution date cannot be set until after the Supreme Court's disposition of a certiorari petition, the time between the vacating of the stay and the scheduled execution date will afford a petitioner the opportunity to formulate a second round of review, which will have to be resolved regardless of the limitations imposed on successive petitions. By contrast, if a state is able to schedule an execution date to coincide approximately with the filing of a certiorari petition, the initial round of review is likely to be the only round.

In short, I urge you to support an amendment to the expedited procedures providing for the retention of the certificate of probable cause requirement for the first tour of federal habeas review and eliminating the automatic stay. The provisions of the ''expedited'' federal habeas procedures would lengthen the time between conviction and imposition of sentence beyond the current 8.5 year average for Texas. Indeed, although it is expected that the Texas legislature will, in the immediate future, enact habeas reform that fully complies with the requirements of proposed §§2256–2262, federal habeas review would be expedited by Texas choosing not to ''opt in'' to those provisions.

In addition, I urge you to support the amendment sponsored by Representative Cox which would require federal habeas courts to defer to state court decisions as long as the state courts acted reasonably in their adjudication of the case and application of federal law. As I noted earlier, the State of Texas expends considerable judicial and law enforcement resources assuring that capital convictions comply with the constitutions of the United States and Texas. Relitigation of issues fully and fairly resolved by the state courts is unnecessary and inappropriate unless those issues have not been reasonably resolved by the state courts in accord with federal constitutional principles.

Very best wishes,

Sincerely,

DAN MORALES,
Attorney General.

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

The CHAIRMAN. Is there a Member who wishes to speak in opposition to the amendment?

Mr. CONYERS. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] is recognized for 5 minutes.

Mr. CONYERS. Mr. Chairman, I yield myself 1½ minutes.

The gentleman from Texas, with this amendment, has unerringly gone to the one part of the McCollum habeas reform matter that we could have complimented him on, because he institutes an automatic stay of execution while the habeas petition is pending.

By honing in on this one provision, we are now saying that there will not be any need for Federal habeas because the petitioner may be executed while his petition is pending. He might not ever live to find out that he was granted habeas.

This is the most ultimately inhumane proposal that we have heard tonight.

It is amazing that we have had these contradictory provisions coming from the side of the aisle that wrote the habeas bill that we do not like, and now we have these worsening amendments as the night goes on.

I urge the strong strenuous rejection of this proposal by the gentleman from Texas.

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

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume.

As has been the case so often this evening, the real question is whether we are going to allow those who have been convicted of capital crimes to indulge themselves in almost endless appeals. I think the American people would answer ''no'' to that question. I think Congress should answer ''no'' to that question.

Mr. Chairman, I yield the balance of my time, 3 minutes, to the gentleman from Florida [Mr. MCCOLLUM], the chairman of the subcommittee.

Mr. McCOLLUM. Mr. Chairman, I thank the gentleman for yielding me this time.

I simply wanted to point to everybody here, and I will not consume the entire 3 minutes, but the amendment before us provides the automatic stay that we are going to routinely have in the bill underlying will terminate once

State court review is completed, if the petitioner fails to make a ''substantial showing of the denial of a Federal right'' or is denied relief on his petition in the Federal district court or at a later stage of Federal habeas review.

It really is only a statement of what the law truly is and is intended to be in a codified form. If somebody does not make a substantial showing after denial of a Federal right, there should not be any stay. It seems self-evident, but we have had problems technically with this during the courts and the process.

If there is an appeal ongoing and there obviously is a request for a stay, if the appeal has any meaning at all, the Federal court is going to grant the stay.

This does not say you cannot have it. It just is not going to be automatic. There can be somebody who stops that stay along the process before you go through a whole bunch of hoops to go in there and say, ''Look, this is not a substantial showing of the denial of a Federal right. Let's go on and get the execution carried out'' instead of having automatic stuff that the statute would otherwise require.

I think what we did when we wrote this bill was probably err in going overboard on these automatic stays, so the gentleman from Texas is correcting a flaw in the underlying bill.

I urge my colleagues to vote for it.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield for a question?

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

Mr. SCHUMER. Mr. Chairman, the question here is, and again being mindful of the fact that we do not want to allow endless appeals, but let us say that the defendant is in the process of going to the judge to ask for an appeal, can the State rush him to execution before that appeal is adjudicated one way or another?

□ 2000

As I understand it, that is the purpose of the automatic stay, that you do not have this sort of very obscene sort of beat-the-clock game, ''we can rush him to do it before you can rush to the judge.'' An automatic stay, my understanding has always been, usually works for a very short period of time. Again, the great length of appeals that we have heard in the cases has been dealt with in the main body of the bill, something that I agree with. Now answer that question.

Mr. MCCOLLUM. Reclaiming my time, I would simply say the difference is that the stay is not automatic.

Mr. Chairman, I yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for his continued generosity in yielding.

My specific question is that: While the defendant's attorney is making a petition to the judge, a motion to the appellate judge for appeal, could the State execute that gentleman while they are trying to get that appeal, under the gentleman from Texas' amendment?

Mr. MCCOLLUM. Theoretically, I suppose that could occur, but it would be an awfully fast execution because you could certainly get that effort up there very quickly to the courts. That is the way that things work. You have people working the midnight oil in all the courts in the country and certainly in that State during the time under consideration.

I urge a ''yes'' vote on the gentleman's amendment.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. I thank the gentleman for yielding. I will not take a minute.

I would just rise in opposition to this amendment and say that this bill already speeds up the appeals process. My amendment that I offered that would have tried to redeem people who come forward with evidence of innocence was defeated, and now we are going to rush to judgment without any stay, and this is just criminal.

I urge strongly that this amendment be defeated.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to my colleague, the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. I thank the gentleman for yielding.

Mr. Chairman, just summing up to my colleagues on both sides of the aisle what the gentleman from Florida, Mr. MCCOLLUM's answer to the question would mean: It would indeed mean that there could in case after case be a sort of rush, petitioners' attorneys rushing to get a judge to authorize a stay and the State, in many cases, rushing to execute the defendants.

That kind of result, those of us who are for the death penalty, those who are against the death penalty, that is not the kind of result we would want. And there are better ways to cure the endless appeals that have gone on than this. I think this amendment deserves to be defeated in a bipartisan way. It just besmirches some of the food efforts the gentleman from Florida [Mr. MCCOLLUM] is trying to do.

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] has 1½ minutes remaining and is entitled to close debate on this amendment.

Mr. CONYERS. Ladies and gentlemen, we are now taking out the one redeeming feature in McCollum habeas reform. I want to just point out that the section providing for automatic stays of execution while a habeas is pending was a much needed improvement on the current system where the fate of a condemned man hangs in the balance while lawyers scramble at the last minute to find a judge that will stay the execution. We had corrected that.

Why on Earth he got talked into having that undone at the last minute of the final minutes of debate on the floor amazes me. It was the gentleman's amendment all the time. Mr. MCCOLLUM literally wrote this bill. He put in the stay. Now it is being taken out.

Did we do something wrong? Have we disappointed you in some way?

Please let us keep the automatic stay feature in. It will not make this habeas bill much better, but it will certainly be a lot better than going back to the system of lawyers scrambling around looking for judges before a person is executed, who may find out or who may never find out that his habeas was in fact granted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. SMITH].

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 241, noes 189, not voting 4, as follows:

[Roll No. 108]

AYES—241

Allard	Doyle	Kelly
Archer	Dreier	Kim
Armey	Duncan	King
Bachus	Dunn	Kingston
Baesler	Ehrlich	Klink
Baker (CA)	Emerson	Klug
Baker (LA)	English	Knollenberg
Ballenger	Ensign	Kolbe
Barr	Everett	LaHood
Barrett (NE)	Ewing	Largent
Bartlett	Fawell	Latham
Barton	Fields (TX)	LaTourette
Bass	Flanagan	Lazio
Bateman	Foley	Leach
Bereuter	Forbes	Lewis (CA)
Bilbray	Fowler	Lewis (KY)
Bilirakis	Fox	Lightfoot
Bliley	Franks (CT)	Linder
Blute	Franks (NJ)	Livingston
Boehlert	Frelinghuysen	LoBiondo
Boehner	Frisa	Longley
Bonilla	Funderburk	Lucas
Bono	Gallegly	Martini
Brewster	Ganske	McCollum
Brownback	Gekas	McCrery
Bryant (TN)	Geren	McDade
Bunn	Gilchrest	McHugh
Bunning	Gillmor	McInnis
Burr	Goodlatte	McIntosh
Burton	Goodling	McKeon
Buyer	Goss	Metcalf
Callahan	Graham	Mica
Calvert	Green	Miller (FL)
Camp	Greenwood	Molinari
Canady	Gutknecht	Montgomery
Castle	Hall (TX)	Moorhead
Chabot	Hancock	Myers
Chambliss	Hansen	Myrick
Chenoweth	Hastert	Nethercutt
Christensen	Hastings (WA)	Neumann
Chrysler	Hayworth	Ney
Coble	Hefley	Norwood
Coburn	Heineman	Nussle
Collins (GA)	Herger	Ortiz
Combest	Hilleary	Oxley
Condit	Hobson	Packard
Cooley	Hoekstra	Parker
Cox	Hoke	Paxon
Crane	Holden	Peterson (MN)
Crapo	Horn	Petri
Cremeans	Hostettler	Pombo
Cubin	Hunter	Porter
Cunningham	Hutchinson	Portman
Davis	Hyde	Pryce
Deal	Inglis	Quillen
DeLay	Istook	Quinn
Diaz-Balart	Johnson (CT)	Radanovich
Dickey	Johnson, Sam	Ramstad
Doolittle	Jones	Regula
Dornan	Kasich	Richardson

Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Wyden
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—189

Abercrombie
Ackerman
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clement
Clinger
Clyburn
Coleman
Collins (IL)
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Durbin
Edwards
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilman
Gonzalez
Gordon
Gunderson
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Houghton
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pickett
Pomeroy
Poshard
Rahall
Rangel
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Smith (NJ)
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wynn

NOT VOTING—4

Andrews
Collins (MI)
Frank (MA)
Yates

□ 2021

Messrs. DEFAZIO, BEVILL, and JOHNSON of South Dakota changed their vote from ''aye'' to ''no.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there other amendments to the bill? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Pursuant to the order of the House of yesterday, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. QUINN) having assumed the chair, Mr. DREIER, 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. 729) to control crime by a more effective death penalty, pursuant to the order of the House of Tuesday, February 7, 1995, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the order of the House of yesterday, the previous question is ordered.

The previous question was ordered.

The SPEAKER pro tempore. Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The CHAIRMAN. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 297, noes 132, not voting 5, as follows:

[Roll No. 109]

AYES—297

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Coble
Coburn
Coleman
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kanjorski
Kasich
Kelly
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lucas
Manton
Manzullo
Martini
Mascara
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Wyden
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—132

Abercrombie
Ackerman
Baldacci
Barrett (WI)
Becerra
Beilenson
Berman
Bishop
Bonior
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clyburn
Collins (IL)
Conyers
Coyne
DeFazio
DeLauro
Dellums
Dixon
Doggett
Durbin
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson, E. B.
Johnston
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
LaFalce
Lantos
Levin
Lewis (GA)
Lofgren

Lowey	Obey	Skaggs
Luther	Olver	Slaughter
Maloney	Owens	Stark
Markey	Pallone	Stokes
Martinez	Pastor	Studds
Matsui	Payne (NJ)	Thompson
McCarthy	Pelosi	Thornton
McDermott	Pomeroy	Thurman
McKinney	Rahall	Torres
McNulty	Rangel	Towns
Meehan	Reed	Tucker
Meek	Reynolds	Velazquez
Mfume	Rivers	Vento
Miller (CA)	Rose	Visclosky
Mineta	Roybal-Allard	Ward
Minge	Rush	Waters
Mink	Sabo	Watt (NC)
Moakley	Sanders	Waxman
Mollohan	Sawyer	Williams
Nadler	Schroeder	Wise
Neal	Scott	Woolsey
Oberstar	Serrano	Wynn

NOT VOTING—5

Andrews	Collins (MI)	Yates
Clinger	Houghton	

☐ 2041

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 665, THE VICTIM RESTITUTION ACT OF 1995, H.R. 666, THE EXCLUSIONARY RULE REFORM ACT OF 1995, AND H.R. 729, THE EFFECTIVE DEATH PENALTY ACT OF 1995

Mr. MCCOLLUM. Mr. Speaker, I ask unanimous consent that in the engrossment of the bills, H.R. 665, H.R. 666, and H.R. 729, the Clerk be authorized to make such clerical and technical corrections as may be required.

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

There was no objection.

GENERAL LEAVE

Mr. MCCOLLUM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 666 and H.R. 729, the bills just considered and passed.

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

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 667, THE VIOLENT CRIMINAL INCARCERATION ACT

Mr. SOLOMON, from the Committee on Rules, submitted a privileged report (Rept. No. 104–25) on the resolution (H. Res. 63) providing for the consideration of the bill (H.R. 667) to control crime by incarcerating violent criminals, which was referred to the House Calendar and ordered to be printed.

PERSONAL EXPLANATION

Mr. DIXON. Mr. Speaker, during rollcall vote 103 of H.R. 666, I was unavoidably detained. Had I been present, I would have voted ''no.''

NOTICE OF CONTINUATION OF NATIONAL EMERGENCY WITH RESPECT TO IRAQ—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC NO. 104–29)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations:

To the Congress of the United States:

I hereby report to the Congress on the developments since my last report of August 2, 1994, concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 of August 2, 1990. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c).

Executive Order No. 12722 ordered the immediate blocking of all property and interests in property of the Government of Iraq (including the Central Bank of Iraq), then or thereafter located in the United States or within the possession or control of a United States person. That order also prohibited the importation into the United States of goods and services of Iraqi origin, as well as the exportation of goods, services, and technology from the United States to Iraq. The order prohibited travel-related transactions to or from Iraq and the performance of any contract in support of any industrial, commercial, or governmental project in Iraq. United States persons were also prohibited from granting or extending credit or loans to the Government of Iraq.

The foregoing prohibitions (as well as the blocking of Government of Iraq property) were continued and augmented on August 9, 1990, by Executive Order No. 12724, which was issued in order to align the sanctions imposed by the United States with United Nations Security Council Resolution 661 of August 6, 1990.

Executive Order No. 12817 was issued on October 21, 1992, to implement in the United States measures adopted in United Nations Security Council Resolution 778 of October 2, 1992. Resolution No. 778 requires U.N. Member States temporarily to transfer to a U.N. escrow account up to $200 million apiece in Iraqi oil sale proceeds paid by purchasers after the imposition of U.N. sanctions in Iraq, to finance Iraqi's obligations for U.N. activities with respect to Iraq, such as expenses to verify Iraqi weapons destruction, and to provide humanitarian assistance in Iraq on a nonpartisan basis. A portion of the escrowed funds will also fund the activities of the U.N. Compensation Commission in Geneva, which will handle claims from victims of the Iraqi invasion of Kuwait. Member States also may make voluntary contributions to the account. The funds placed in the escrow account are to be returned, with interest, to the Member States that transferred them to the United Nations, as funds are received from future sales of Iraqi oil authorized by the U.N. Security Council. No Member State is required to fund more than half of the total transfers or contributions to the escrow account.

This report discusses only matters concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 and matters relating to Executive Orders Nos. 12724 and 12817 (the ''Executive orders''). The report covers events from August 2, 1994, through February 1, 1995.

1. There has been one action affecting the Iraqi Sanctions Regulations, 31 C.F.R. Part 575 (the ''Regulations''), administered by the Office of Foreign Assets Control (FAC) of the Department of the Treasury, since my last report on August 2, 1994. On February 1, 1995 (60 Fed. Reg. 6376), FAC amended the Regulations by adding to the list of Specially Designated Nationals (SDNs) of Iraq set forth in Appendices A (''entities and individuals'') and B (''merchant vessels''), the names of 24 cabinet ministers and 6 other senior officials of the Iraqi government, as well as 4 Iraqi state-owned banks, not previously identified as SDNs. Also added to the Appendices were the names of 15 entities, 11 individuals, and 1 vessel that were newly identified as Iraqi SDNs in the comprehensive list of SDNs for all sanctions programs administered by FAC that was published in the *Federal Register* (59 Fed. Reg. 59460) on November 17, 1994. In the same document, FAC also provided additional addresses and aliases for 6 previously identified Iraqi SDNs. This *Federal Register* publication brings the total number of listed Iraqi SDNs to 66 entities, 82 individuals, and 161 vessels.

Pursuant to section 575.306 of the Regulations, FAC has determined that these entities and individuals designated as SDNs are owned or controlled by, or are acting or purporting to act directly or indirectly on behalf of, the Government of Iraq, or are agencies, instrumentalities or entities of that government. By virtue of this determination, all property and interests in property of these entities or persons that are in the United States or in the possession or control of United States persons are blocked. Further, United States persons are prohibited from engaging in transactions with these individuals or entities unless the transactions are licensed by FAC. The designations were made in consultation with the Department of State. A copy of the amendment is attached to this report.

2. Investigations of possible violations of the Iraqi sanctions continue to be pursued and appropriate enforcement actions taken. The FAC continues its involvement in lawsuits, seeking to prevent the unauthorized transfer of blocked Iraqi assets. There are currently 38 enforcement actions pending, including nine cases referred by FAC to the U.S. Customs Service for joint investigation. Additional FAC civil penalty notices were prepared during the reporting period for violations of the International Emergency Economic Powers Act and the Regulations with respect to transactions involving Iraq. Four penalties totaling $26,043 were collected from two banks, one company, and one individual for violations of the prohibitions against transactions involving Iraq.

3. Investigation also continues into the roles played by various individuals and firms outside Iraq in the Iraqi government procurement network. These investigations may lead to additions to FAC's listing of individuals and organizations determined to be SDNs of the Government of Iraq.

4. Pursuant to Executive Order No. 12817 implementing United Nations Security Council Resolution No. 778, on October 26, 1992, FAC directed the Federal Reserve Bank of New York to establish a blocked account for receipt of certain post August 6, 1990, Iraqi oil sales proceeds, and to hold, invest, and transfer these funds as required by the order. On October 5, 1994, following payments by the Governments of Canada ($677,756.99), the United Kingdom ($1,740,152.44), and the European Community ($697,055.93), respectively, to the special United Nations-controlled account, entitled ''United Nations Security Council Resolution 778 Escrow Account,'' the Federal Reserve Bank of New York was directed to transfer a corresponding amount of $3,114,965.36 from the blocked account it holds to the United Nations-controlled account. Similarly, on December 16, 1994, following the payment of $721,217.97 by the Government of the Netherlands, $3,000,891.06 by the European Community, $4,936,808.84 by the Government of the United Kingdom, $190,476.19 by the Government of France, and $5,565,913.29 by the Government of Sweden, the Federal Reserve Bank of New York was directed to transfer a corresponding amount of $14,415,307.35 to the United Nations-controlled account. Again, on December 28, 1994, following the payment of $853,372.95 by the Government of Denmark, $1,049,719.82 by the European Community, $70,716.52 by the Government of France, $625,390.86 by the Government of Germany, $1,151,742.01 by the Government of the Netherlands, and $1,062,500.00 by the Government of the United Kingdom, the Federal Reserve Bank of New York was directed to transfer a corresponding amount of $4,813,442.16 to the United Nations-controlled account. Finally, on January 13, 1995, following the payment of $796,167.00 by the Government of the Netherlands, $810,949.24 by the Government of Denmark, $613,030.61 by the Government of Finland, and $2,049,600.12 by the European Community, the Federal Reserve Bank of New York was directed to transfer a corresponding amount of $4,269,746.97 to the United Nations-controlled account. Cumulative transfers from the blocked Federal Reserve Bank of New York account since issuance of Executive Order No. 12817 have amounted to $157,542,187.88 of the up to $200 million that the United States is obligated to match from blocked Iraqi oil payments, pursuant to United Nations Security Council Resolution 778.

5. The Office of Foreign Assets Control has issued a total of 533 specific licenses regarding transactions pertaining to Iraq or Iraqi assets since August 1990. Since my last report, 37 specific licenses have been issued. Licenses were issued for transactions such as the filing of legal actions against Iraqi governmental entities, legal representation of Iraq, and the exportation to Iraq of donated medicine, medical supplies, food intended for humanitarian relief purposes, the execution of powers of attorney relating to the administration of personal assets and decedents' estates in Iraq, and the protection of preexistent intellectual property rights in Iraq.

6. The expenses incurred by the Federal Government in the 6-month period from August 2, 1994, through February 1, 1995, lthat are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Iraq are reported to be about $2.25 million, most of which represents wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the U.S. Customs Service, the Office of the Under Secretary for Enforcement, and the Office of the General Counsel), the Department of State (particularly the Bureau of Economic and Business Affairs, the Bureau of Near East Affairs, the Bureau of Organization Affairs, and the Office of the Legal Adviser), and the Department of Transportation (particularly the U.S. Coast Guard).

7. The United States imposed economic sanctions on Iraq in response to Iraq's illegal invasion and occupation of Kuwait, a clear act of brutal aggression. The United States, together with the international community, is maintaining economic sanctions against Iraq because the Iraqi regime has failed to comply fully with United Nations Security Council resolutions. Security Council resolutions on Iraq call for the elimination of Iraqi weapons of mass destruction, the inviolability of the Iraq-Kuwait boundary, the release of Kuwaiti and other third-country nationals, compensation for victims of Iraqi aggression, long-term monitoring of weapons of mass destruction capabilities, the return of Kuwaiti assets stolen during Iraq's illegal occupation of Kuwait, renunciation of terrorism, an end to internal Iraqi repression of its own civilian population, and the facilitation of access of international relief organizations to all those in need in all parts of Iraq. More than 4 years after the invasion, a pattern of defiance persists: a refusal to account for missing Kuwaiti detainees; failure to return Kuwaiti property worth millions of dollars, including weapons used by Iraq in its movement of troops to the Kuwaiti border in October 1994; sponsorship of assassinations in Lebanon and in northern Iraq; incomplete declarations to weapons inspectors; and ongoing widespread human rights violations. As a result, the U.N. sanctions remain in place; the United States will continue to enforce those sanctions under domestic authority.

The Baghdad government continues to violate basic human rights of its own citizens through systematic repression of minorities and denial of humanitarian assistance. The Government of Iraq has repeatedly said it will not be bound by United Nations Security Council Resolution 688. For more than 3 years. Baghdad has maintained a blockade of food, medicine, and other humanitarian supplies against northern Iraq. The Iraqi military routinely harasses residents of the north, and has attempted to ''Abrabize'' the Kurdish, Turcomen, and Assyrian areas in the north. Iraq has not relented in its artillery attacks against civilian population centers in the south, or in its burning and draining operations in the southern marshes, which have forced thousands to flee to neighboring States.

In 1991, the United Nations Security Council adopted Resolutions 706 and 712, which would permit Iraq to sell up to $1.6 billion of oil under U.N. auspices to fund the provision of food, medicine, and other humanitarian supplies to the people of Iraq. The resolutions also provide for the payment of compensation to victims of Iraqi aggression and other U.N. activities with respect to Iraq. The equitable distribution within Iraq of this humanitarian assistance would be supervised and monitored by the United Nations. The Iraqi regime so far has refused to accept these resolutions and has thereby chosen to perpetuate the suffering of its civilian population. More than a year ago, the Iraqi government informed the United Nations that it would not implement Resolutions 706 and 712.

The policies and actions to the Saddam Hussein regime continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, as well as to regional peace and security. The U.N. resolutions require that the Security Council be assured of Iraq's peaceful intentions in judging its compliance with sanctions. Because of Iraq's failure to comply fully with these resolutions, the United States will continue to apply economic sanctions to deter it

from threatening peace and stability in the region.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 8, 1995.*

FIRST REPORT ON THE OPERATION OF THE ANDEAN TRADE PREFERENCE ACT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Ways and Means and ordered to be printed:

To the Congress of the United States:

I hereby submit the first report on the Operation of the Andean Trade Preference Act. This report is prepared pursuant to the requirements of section 203 of the Andean Trade Preference Act of 1991.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 8, 1995.*

MAJOR LEAGUE BASEBALL RESTORATION ACT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 104–30)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Economic and Educational Opportunities:

To the Congress of the United States:

I am pleased to transmit for your immediate consideration and enactment the ''Major League Baseball Restoration Act.'' This legislation would provide for a fair and prompt settlement of the ongoing labor-management dispute affecting Major League Baseball.

Major League Baseball has historically occupied a unique place in American life. The parties to the current contentious dispute have been unable to resolve their differences, despite many months of negotiations and the assistance of one of this country's most skilled mediators. If the dispute is permitted to continue, there is likely to be substantial economic damage to the cities and communities in which major league franchises are located and to the communities that host spring training. The ongoing dispute also threatens further serious harm to an important national institution.

The bill I am transmitting today is a simple one. It would authorize the President to appoint a 3-member National Baseball Dispute Resolution Panel. This Panel of impartial and skilled arbitrators would be empowered to gather information from all sides and impose a binding agreement on the parties. The Panel would be urged to act as quickly as possible. Its decision would not be subject to judicial review.

In arriving at a fair settlement, the Panel would consider a number of factors affecting the parties, but it could also take into account the effect on the public and the best interests of the game.

The Panel would be given sufficient tools to do its job, without the need for further appropriations. Primary support for its activities would come from the Federal Mediation and Conciliation Service, but other agencies would also be authorized to provide needed support.

The dispute now affecting Major League Baseball has been a protracted one, and I believe that the time has come to take action. I urge the Congress to take prompt and favorable action on this legislation.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 8, 1995.*

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will now take 1 minute requests.

CONGRESSIONAL INVOLVEMENT IN BASEBALL'S LABOR DISPUTE

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

Mr. LUCAS. Mr. Speaker, I would like to step to the plate and take a few swings at the baseball strike. The Natural tendency for all baseball fans is, I think, to urge Congress to involve itself in this labor dispute which impacts all of us beyond the Major Leagues.

Unfortunately, I am not inclined to believe it is our place to send these players back to their Field of Dreams.

As it stands now, if something is not done, we may have a 1995 Rookie of the Year from the Little Big League.

I would strongly urge that both sides stop slinging the Bull Durham that we have endured for the past several months, and send Eight Men Out to negotiate a workable agreement, or The Pride of the Yankees will be playing for the Bad News Bears this summer.

REQUEST FOR CERTAIN COMMITTEES AND SUBCOMMITTEES TO SIT ON TOMORROW DURING THE 5-MINUTE RULE

Mr. FOX of Pennsylvania. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule.

Agriculture; Banking and Financial Services; Commerce; Economic and Educational Opportunities; International Relations; Resources; Transportation and Infrastructure; and Veterans Affairs.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

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

Mr. BONIOR. Mr. Speaker, reserving the right to object, we have in the last couple of weeks, I think, worked with the minority in a cooperative manner to facilitate the needs of the committees meeting.

In every case, we have been able to come up with an agreement, a bipartisan agreement, I might add, to the issues that we face. However, we are troubled here on this side of the aisle over what occurred today in the Committee on Science.

Mr. Speaker, the members of that committee, we believe, were not provided in a timely manner with the bill which they marked up, a very important bill. Secondly, we were not accommodated in terms of voting.

There were votes going on in the Committee on Science while there were votes going on directly here on the floor. Of course, without proxy voting and the other reforms that we initiated at the beginning of the Congress, it is impossible for people to be in two places at one time. In fact, Mr. Speaker, there were a number of votes today, I understand, that were taken in that committee that occurred while Members were on the floor here, and they were not able to register their votes when they returned back to the committee.

Therefore, Mr. Speaker, I just mention that for the second time on the floor, and I did it earlier this afternoon, just to alert my friends in the majority that if this type of activity continues, we will be constrained to object in the future. I hope, Mr. Speaker, that this type of behavior will be corrected and that we can work amicably so we can move this agenda, which I do not agree with in many instances, but nonetheless, take it up and discuss it in a fair and open manner in which the American people can have some pride and respect for our work.

With that, Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

□ 2050

CONGRATULATIONS TO THE MIGHTY MARYLAND TERRAPINS

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

Mr. HOYER. Mr. Speaker, This morning there is a cloud in the Carolina blue sky. Last night, as the final buzzer sounded and the frenzied fans spilled onto the basketball court, the scoreboard flashed—number one North Carolina 73, and the mighty Maryland Terrapins 86.

With Smith slam-dunking, Simpkins soaring, Booth blasting-off, Hipp hopping and Rhodes rising to the occasion, the Terps beat an equally impressive North Carolina team.

Under the amazing coaching of Gary Williams, the Terrapins beat the top-ranked team in the Nation for the first time since 1986. We play them at least two times every year. They beat a North Carolina team, coached by the legendary Dean Smith, who, year after year, has produced champion basketball players.

From last year's sweet sixteen team to this year's top ten rankings and a tie for first place in the Atlantic Coast Conference, there is only one word to describe Maryland basketball—awesome.

Michael Wilbon of the Washington Post called it a night to remember. If last night's caliber of play by the mighty Maryland Terrapins is any indication of what we will be seeing in the near future, there are going to be many nights to remember for the players and fans of Maryland basketball.

Mr. HAYES. Mr. Speaker, if the gentleman will yield, is this an apology to the District for redistricting Mr. McMillen out of Congress?

Mr. HOYER. Mr. McMillen has been redistricted out of Congress, but he was five seats from me cheering on the Terrapins.

Mr. WATT of North Carolina. Mr. Speaker, will the gentleman yield?

Mr. HOYER. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Speaker, I move that these slanderous words be immediately taken down.

Mr. Speaker, I withdraw my motion.

THE TRUTH ABOUT FEDERAL PAYMENTS TO ALABAMA

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

Mr. BROWDER. Mr. Speaker, I know it is difficult to correct a piece of misinformation once it is published, but I am going to try. Much attention has been directed in recent weeks to the impact of the balanced budget amendment on the finances of the various States. In that vein, several national publications have reported that my home State of Alabama led the nation, with 58 percent of its 1993 budget coming from the Federal Government.

That figure is amazing, but it is not true. The confusion results from a difference in Alabama's accounting system that was not adequately explained when the State's budget figures were reported in the national survey.

Mr. Speaker, I will include for the RECORD a letter from the Department of Finance of the State of Alabama showing that Federal funds accounted for 32 percent, not 58 percent, of Alabama's budget for fiscal year 1993.

STATE OF ALABAMA,
DEPARTMENT OF FINANCE,
Montgomery, AL, January 27, 1995.

Hon. GLEN BROWDER,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN BROWDER: Recent news articles published by Newsweek and by Time on January 23, 1995, analyzed the Federal Balanced Budget Amendment and its effects on state finances. Both articles reflected that 58% of Alabama's Budget for fiscal year ending 1993 was received from the Federal Government. This information is not correct. Actual Federal revenues received by Alabama for the fiscal year ending in 1993 were $2.74 billion and compared to total revenues received (from all sources) of $8.52 billion is approximately 32 percent.

This confusion has been brought on by the data supplied to Newsweek and Time by the National Association of State Budget Officers in their ''NASBO 1994 State Expenditure Survey—Fiscal Years 1992–94.'' Alabama provided data for the referenced NASBO survey, but our data was not adequately explained. Alabama included in the section for Federal Funds, expenditures from Federal funds, local funds, state earmarked funds, tuition, fees, grants and, contracts with a footnote to that effect. This footnote was included because expenditures are made from fund accounts made up of these various revenue sources thus precluding actual identification of each expenditure by source of funding. A reasonable estimation of the Federal percentage can be made from the revenue perspective of Alabama's accounting system and for FY 1993 is approximately 32 percent.

I wanted to clarify this data for you, so you would not base your vote on this issue on incorrect data.

Sincerely,

BILL NEWTON,
Assistant Finance Director.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. QUINN). Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members are recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. KOLBE] is recognized for 5 minutes.

[Mr. KOLBE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. GUTIERREZ] is recognized for 5 minutes.

[Mr. GUTIERREZ addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey [Mr. MARTINI] is recognized for 5 minutes.

[Mr. MARTINI addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio [Ms. KAPTUR] is recognized for 5 minutes.

[Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

CRIME LEGISLATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. FOX] is recognized for 5 minutes.

Mr. FOX of Pennsylvania. Mr. Speaker, as a former prosecutor in Pennsylvania, I found today's discussions about addressing crime most illuminating. I have spent much of my life battling criminals in our courts and trying, in my own way to make the streets of my home—Montgomery County, PA—a little bit safer.

I have had the opportunity to witness the frustration of police officers, prosecutors, and judges as skillful defense attorneys have manipulated the system to place violent repeat criminals back on the streets despite overwhelming evidence against them.

I've seen families terrorized by the very memory of the unspeakable crimes against them and the reality that the perpetrators may be released by the system.

The bills considered by this body today will take a dramatic step forward to end the terror of victims and the frustration of law enforcement officials who are hamstrung by technicalities. H.R. 666, the Exclusionary Rule Reform Act is important and long-overdue legislation which will ensure that those guilty of violent crimes against other persons get exactly what they deserve, and that is time in prison.

Current law provides that a guilty defendant may be set free to again terrorize innocent victims based upon the exclusion of evidence seized by law enforcement officers who have acted in the good faith belief that their conduct did not violate the defendant's constitutional rights.

In such cases, the conduct of a police officer does not involve coercion of a confession or other wrongful conduct, but technical errors that have nothing to do with the defendant's guilt or innocence. The release of guilty defendants on technicalities makes a mockery of our society's laws. We need to place the rights of the victims above all else. When I served in the district attorney's office I prosecuted a case where a 12-year-old young lady was viciously and forcibly raped. She and her family were so traumatized by the violence of the crime that they never returned to that house.

My fellow members, I do believe that a person is innocent until found guilty but I don't believe in placing impediments to prosecution which have no basis in fact or law. H.R. 666 removes those impediments.

Finally, I would say the Effective Death Penalty Act H.R. 729 has been

strongly endorsed by the National District Attorneys Association. It will provide the kind of habeas corpus reform that will stop the endless appeals of capital cases where a defendant has been found guilty of murder, the death penalty sentence was issued, and there was no trial error or constitutional infirmity.

By passing this kind of tough anticrime legislation like the exclusionary rule modifications and habeas corpus reform we will send a clear message to those who would break our laws that crime does not pay, and the victims will find a measure of protection that can come from Congress.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Colorado [Mr. SKAGGS] is recognized for 5 minutes.

[Mr. SKAGGS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. HORN] is recognized for 5 minutes.

[Mr. HORN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

INCREASING THE MINIMUM WAGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Alabama [Mr. HILLIARD] is recognized for 5 minutes.

Mr. HILLIARD. Mr. Speaker, I rise today to address the issue of increasing the minimum wage.

We the Members of the United States Congress have a moral obligation simply to ensure that the working men and women of this country are granted the ability to live on the wages that they earn. We are speaking about Americans who have chosen to live and to work and to try to raise a family.

I tell my colleagues we are not talking about the wealthy, we are not talking about the corporate executives. We are talking about people who are common like I am, like you are, people who should have the opportunity to live the American dream.

The ones who end up losing, of course, when the minimum wage does not keep up with the rising costs of inflation are the real Americans. They are the people that make this country as strong as it is today. These are the men and women who have rejected welfare, who have rejected subsidies from this Government like the corporate executives and the farmers. These are men and women who work 8-hour shifts every day, 40 hours a week. These are men and women who truly are the real working poor, the real working Americans. These are the men and women who work sometimes two jobs in order to provide their children with an education. Yes, Mr. Speaker, sometimes they work two jobs in order to meet the minimum necessities of living. Yes, sometimes they work just to be able to put food on the table, to provide a comfortable place for their families. They work two jobs, 12 hours a day, sometimes 16 hours a day.

We must not forget these real Americans.

□ 2100

They have committed themselves to work within the system, and they give all that they have to make sure that their families are taken care of. We should not penalize them.

But today's minimum wage is not sufficient for the needs of today's families. At the current rate, these families can barely make it. If the minimum wage had increased with inflation after the year 1970, the current rate would be $5.54 an hour. That is still low, but it is a long ways from where we are now. It would give them the opportunity to make sure that their children have the right, and perhaps have the opportunity, to live the American dream.

While the wages have lagged behind the times, minimum wage earners have decreased especially when you consider the erosion caused by inflation. Between the years 1979 and 1992, the number of working poor people have increased 44 percent. These are people who live below the poverty level, not because they are on welfare, not because they do not work, but because they do not earn a sufficient amount of money to be classified by this government above the level of poverty.

Yes, we recognize that they make enough money to live below the poverty level. That is a shame and a disgrace, especially for a country as wealthy as this. We must address these issues. We must raise the minimum wage to a livable level. We must index the rate for inflation so that we will take care of these injustices now and make sure that it will not occur ever again in the future, plus it will save us the choice of constantly coming back and trying to keep up with inflation for those real Americans who work every day.

All of the hard-working men and women of this country should be able to live without the woeful poverty on their doorsteps daily. We are talking about men and women who are gainfully employed. They are those who are trying to live and, yes, sometimes they barely make it.

Well, I say to those of you who criticize the welfare state, I say to those of you who criticize those who have not had the opportunity to live the American dream, that we must realize that we cause many of their problems. Since 1970, there have been constant increases in local taxes and, yes, in taxes that we in the United States Congress have passed. We have taken money from them.

Since 1990, we have taken more than $500 billion. The only way we can make up for it is for us to help the working Americans. Mr. Speaker, today we must commit ourselves to raise the minimum wage.

QUESTION ON CONSTITUTIONALITY OF THREE-FIFTHS VOTE FOR TAX RATE INCREASE BILLS

The SPEAKER pro tempore (Mr. QUINN). Under a previous order of the House, the gentleman from New York [Mr. SOLOMON] is recognized for 5 minutes.

Mr. SOLOMON. Mr. Speaker, it is my understanding that a lawsuit is being filed by the former counselor to Presidents Jimmy Carter and Bill Clinton over the constitutionality of the new House rule that requires a three-fifths vote to pass tax rate increases, and I guess we know on whose behalf it is being brought, for the tax-and-spend Democrats of this Congress, no doubt.

Mr. Speaker, while I do not pretend to be a constitutional lawyer, as the chairman of the Committee on Rules, I do have enough understanding of the constitutional rulemaking authority of Congress to assert that this new rule is on all fours with the Constitution. I am not alone in that assertion. I am backed by the Supreme Court itself in previous decisions.

The constitutionality of such lies in article I, section 5, which states that each House may determine the rules of its proceedings. If the House majority decides to adopt rules requiring a super majority on certain classes of bills, it may do so. That same majority at any time can repeal or waive that same rule.

The Supreme Court in the case of the United States versus Ballin, in 1892, way back then, indicated that the only constraints on the rulemaking power of this Congress are that Congress may not ignore constitutional constraints or violate fundamental rights, but within these limitations, all matters of method are open to the determination of the House, that means this House of Representatives. The power to make rules is not one which, once exercised, is exhausted. It is a continuous power always subject to be exercised and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.

Ironically, this case was about what constituted a quorum of the Congress for conducting business. The Court upheld a ruling of the Speaker that as long as a majority of the body was present, it did not matter whether the number of Members actually voted added up to a majority.

Some have used the Court's findings that a majority quorum must be present to assert that nothing more than a simple majority may be required to pass legislation. That is not what the Court said in that case. All the Court said was that the act of a majority of the quorum is the act of the body.

The requirement in the new House rule that a super majority of three-fifths must vote in favor of any income

tax rate increase does not violate the constitutional requirements that a majority must be present to do business.

The bottom line is this: A majority of the House, under the Constitution, may determine the rules of the proceedings including a requirement that a larger majority may be required to do certain things. For instance, for 125 years in this body we have required a two-thirds vote to suspend House rules and pass legislation under this procedure. No one has ever challenged that rule.

This House has also adopted a rule that says it does not even want to have introduced, let alone considered, certain commemorative bills. We banned bills by the rules of this House, and it was a very good rule which I helped to put in.

So long as no basic constitutional principle or rights are being violated, which they are not in any of these rules, a House majority may adopt the rules of its proceedings regarding the introduction, consideration, or passage of legislation.

So, Mr. Speaker, that is something which, according to the Supreme Court, cannot be challenged in any other body or any other tribunal. A court challenge to our new rules will be dismissed on these very grounds, and thank goodness for the American taxpayer.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. LAFALCE] is recognized for 5 minutes.

[Mr. LAFALCE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mr. HOYER] is recognized for 5 minutes.

[Mr. HOYER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

POSSIBLE EFFECTS OF THE PERSONAL RESPONSIBILITY ACT ON THE STATE OF TEXAS

The Speaker pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GENE GREEN] is recognized for 5 minutes.

Mr. GENE GREEN of Texas. Mr. Speaker, I take the floor to discuss again the possible effects of the Personal Responsibility Act, the PRA, on the State of Texas. This measure reforms welfare in many ways. Unfortunately, it also repeals a number of nutrition programs such as the school nutrition program and also the senior citizens lunches which, for Texas, would be disastrous.

A recent USDA study says this PRA reveals Texas would lose over a billion dollars in fiscal year 1996 alone. The reduction in funding for Texas represents a 30-percent reduction in funding for school lunches and senior citizens lunches.

Under the block grant arrangement, Federal funds would first be awarded to the State and then allocated to the programs throughout the State. However, many nutrition programs, such as the school lunch, already go directly to the school districts.

Adding an additional bureaucracy to funnel funds appears contradictory to the premise of the block grants, when everyone agrees we need to cut the layer of bureaucracy not increase, but this Personal Responsibility Act is another layer to take away funding directly to the school children and seniors.

Local school districts could take deep cuts in funding. The Aldine Independent School District, where my children went to school, will have their food budget reduced by over $2 million and require a lunch costing $1.35 now to be increased to $1.75 and maybe even more. This could mean thousands of students in the Aldine area might not to be able to afford a nutritious lunch.

The Pasadena School District in Harris County that I also represent part of, 50 percent of their meals are served this year by a free or reduced price of lunches. The number of free meals have tripled in the past 6 years.

The Houston Independent School District provides 118,797 free or reduced meals every year, and they would be reduced.

Tufts University Center for Hunger states that iron deficiency anemia affects nearly 25 percent of the poor children in the United States and impairs their cognitive development.

The Tufts study further states that the longer a child's nutritional and emotional and educational needs go unmet there is a greater overall cognitive deficit.

While I think we can all agree that reforming welfare is needed, the needs of the school children are of paramount importance. This may not be how the people of Texas thought how welfare reform would begin, but it currently is written into this Personal Responsibility Act and will increase the hunger for Texas children and senior citizens.

I would like to paraphrase a letter from the Aldine Independent School District from our executive director of Food Services that says, ''We are proud of what we do. Last year we received $7,900,000 from the Federal Government for reimbursement for free and reduced, prepaid mails and food commodity programs.''

□ 2110

They serve an average of 12,000 breakfasts a day and 24,000 lunches a day to Aldine children. They are proud of what they do, and many students in Aldine get their nutrition from the school cafeteria which enables them to perform better academically in the classroom. The food served at the schools goes directly to that child. It does not go to their parent. It goes to that child, and a hungry child cannot learn. These children are already here, so we need to nurture them and educate them so they can become healthy and productive members of society. We do not need to turn our backs on society's most least fortunate, our children, our senior citizens. Mr. Speaker, I ask that the House change this Personal Responsibility Act to reflect the needs that are reflected in our children.

FEBRUARY 8, 1995.

The Hon. GENE GREEN,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN GREEN: Aldine ISD provides an excellent education to children in middle to lower income families. There are 46,000 students enrolled in Aldine ISD. The Aldine Food Service department received $7,947,557.71 from the federal government in reimbursements for free, reduced-price, and paid meals and food commodity value in the 1993–94 school year. We serve an average of 12,000 breakfasts a day, and 24,000 lunches a day to Aldine children.

If the block grant proposal is passed as is, with a 30% reduction in the funds provided to Texas, impact on the Aldine Food Service department would be a loss of $2,384,267.30. This reduction in funds would mean a large increase in breakfast and lunch prices, reduction in labor, and reduction in spending to businesses in this area. Many children in Aldine would not be able to afford the increase in price for lunch and breakfast. Our department has always operated in the black with all excess funds being reinvested into the Child Nutrition Program to benefit students. These cuts would most likely throw us into the red.

We are proud of what we do. Many of the students in Aldine get their best nutrition in the school cafeteria which enables them to perform their best academically in the classroom. The food served at schools goes directly to the child, not through a parent or guardian. A hungry child cannot learn!

These children are already here, so we need to nurture and educate them so that they become healthy, productive members of society. Your support in our endeavor will benefit us all.

Thank you!

Sincerely,

JOYCE H. LYONS,
Executive Director of Food Services Aldine ISD.

MELANIE B. KONARIK,
Assistant Director of Food Services Aldine ISD.

UNDER THE CONTRACT WITH AMERICA WORK IS A PENALTY RATHER THAN A PRIZE

The SPEAKER pro tempore (Mr. QUINN). Under a previous order of the House, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized for 5 minutes.

Mrs. CLAYTON. Mr. Speaker, the Contract With America proposes to put 1.5 million welfare recipients to work by the year 2001.

On its face, that proposal is appealing. Many of us support welfare reform.

The current system does not encourage self-sufficiency and does not always work well.

Reform, however, does not mean change for the sake of change. Reform means change for the sake of improvement.

Improvement in our welfare system is best accomplished by rewarding work—by making work a prize rather than a penalty.

Work is a prize when a full-time worker can earn enough to pay for life's necessities. Work is a penalty when a person cannot earn enough to pay for food, shelter, clothing, transportation, medical care, and other basic needs.

That is why any discussion of welfare reform must also include a discussion of minimum wage reform.

Under the Contract With America, work would be a penalty rather than a prize.

The work slots proposed to be created by the Personal Responsibility Act would pay $2.42 an hour for a mother in a family of three.

That hourly wage is almost $2.00 below the current minimum wage of $4.25. In Mississippi, pay under the Contract With America would equal just seventy-nine cents per hour.

That is a penalty. That is not a prize.

It is noteworthy, Mr. Speaker, that the vast majority of those who will be forced to work at below minimum wage earnings are women.

It is also noteworthy that 6 out of 10 of all minimum wage workers are women.

And, contrary to a popular misconception, most minimum wage earners are adults, not young people.

In addition, many of the minimum wage workers are from rural communities. In fact, it is twice as likely that a minimum wage worker will be from a rural community than from an urban community.

Most disturbingly, far too many minimum wage workers have families, spouses, and children who depend on them.

That is disturbing, Mr. Speaker, because a full-time worker, heading a family of three—the typical size of an American family today—and earning a minimum wage, would fall below the poverty line by close to $2,500 dollars.

In this country, a person can work, every day, full-time, and still be below the poverty level. Work, in that situation, is a penalty.

A review of the history of the minimum wage is revealing. First implemented in 1938, with passage of the Fair Labor Standards Act, the minimum wage covers 90 percent of all workers.

Between 1950 and 1981, the minimum wage was raised 12 times. During the 1980's, however, while prices were rising by almost 50 percent, Congress did not raise the minimum wage.

I spoke yesterday, Mr. Speaker, of the impact of a frozen minimum wage during the decade of the 1980's when income dropped and costs escalated.

While the minimum wage stood at $3.34 an hour, the average cost of a domestic automobile increased from less than $9,000 to more than $16,000.

The average cost of local transit went from thirty cents to seventy cents.

While the poor got poorer and the minimum wage stood stagnant, the average per capita cost of health care more than doubled, from $1,064 per person annually to $2,601.

From 1980 to 1990, the average cost of a half gallon of milk went from ninety-six cents to a dollar and thirty-nine cents.

The average retail cost of bread went from forty-six cents to seventy cents during this period.

And, a dozen of eggs, which cost 85 cents in 1980, cost more than $1 by 1990.

In short, Mr. Speaker, while the bottom 20 percent of America lost income and got poorer, the minimum wage was frozen, and cost climbed.

Low income workers are yet to recover from that period. They are still far behind the cost of living and further behind high income workers.

Most importantly, raising wages does not mean losing jobs. Recent, comprehensive study dramatically demonstrates this conclusion.

In my State of North Carolina, for example, a survey of employment practices after the 1991 minimum wage increase is instructive.

That survey found that there was no significant drop in employment and no measurable increase in food prices.

Indeed, the survey found, workers' wages actually increased by more than the required change. The State of Mississippi was also the subject of that study.

When a person works, he or she feels good about themselves. The contribute to their communities, and they are in a position to help their families. Work gives a person an identity.

Our policies, therefore, should encourage people to work. We discourage them from working when we force them to work at wages that leave them in poverty.

When Congress has the opportunity to raise the minimum wage, let's make rewarding work and wage reform an essential part of welfare reform.

Let's encourage people to work. And, let us insure that they can work at a livable wage.

Mr. Speaker, we support a minimum wage that affords every American a livable wage.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from South Carolina [Mr. CLYBURN] is recognized for 5 minutes.

[Mr. CLYBURN addressed the House. His remarks will appear hereinafter in the Extension of Remarks.]

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Ohio [Mr. HOKE] is recognized for 60 minutes as the designee of the majority leader.

REVIEW OF LEGISLATION ALREADY PASSED IN THE 104TH CONGRESS

Mr. HOKE. Mr. Speaker, tonight I have asked some of my good friends in the House to join me in a special order where what we are going to do is review some of the legislation that has already been passed in the 104th Congress, and then we are going to continue to talk about some of the things that have not been passed yet but that we are working on. It is all part of the program that we call our Contract With America.

I have asked the gentlewoman from Washington [Mrs. SMITH] the gentleman from Georgia [Mr. KINGSTON], and the gentleman from Tennessee [Mr. BYRANT] to join me in this, and what I wanted to do first is I have got a nice chart here that is courtesy of the gentleman from Georgia [Mr. KINGSTON], and I want to use this red pen to talk about some of the things that we have done already.

What we have done is on the very first day of Congress we had promised that a Republican House would, first of all, require Congress to live under the same laws as every other American. We have done that.

We also said that we are going to cut one out of every three congressional committee staffs. We have done that.

And we said that we would cut the congressional budget. We did that as well.

In addition, Mr. Speaker, we promised the American people that we are going to pass a balanced budget amendment and a line-item veto, and we said that we would give relief to our States, counties and local cities on unfunded mandates, and we have done that as well.

Now I think one of the things that I want to point out this evening about everything that we have done is because there is so much partisanship that happens on this floor that we see every single day, one would think that there was an open battle going on between the minority and the majority, the Democrats and the Republicans, on a daily basis. Let us review the bidding for just a moment because I think that maybe, Mr. Speaker, you will find these numbers rather surprising:

First of all, the Congressional Accountability Act requiring that every single law of the land also require, be applied, to Congress. Two hundred Democrats joined every single Republican in voting for that.

□ 2120

It was completely unanimous. When it came to the unfunded mandates bill that we passed last Thursday, 130 Democrats joined us to pass that bill. The line-item veto, 71 Democrats joined us. The balanced budget amendment, 72 Democrats joined us. We passed just yesterday and today, three

important crime bills that Mr. BRYANT is going to tell us about, habeas corpus reform, the exclusionary rule reform, and Victims' Restitution Act. We had 71, 71, and 133 Members of the minority join us in that.

What does that prove? Clearly, it proves that this is a bipartisan effort. If you say to yourself as you listen to this, you say, ''If that many Democrats were voting for them, why on Earth did you not bring these things to the floor and pass them previously. What is going on?''

Well, what it does show you is two things: First, there is absolutely bipartisan support, in some cases overwhelming bipartisan support, for all of these bills. The other thing it tells you is that some of these bills were never allowed to come to the floor of Congress because the previous leadership refused to allow them to see the light of day to ever get a vote.

We made the pledges that we would bring these things to the floor. We made pledges that we would have votes on them. And we have in fact passed them all. I am not saying we are going to pass everything that comes up under the Contract With America, but we are going to try to.

It has proven to be a remarkable road map for Republicans and for this Congress to stay very focused on the agenda that America wants. And it has also proven, I think, very importantly to be a way for us to reinstill confidence of the American people in what we are doing as a Congress, and their confidence in their ability to elect officials that will actually deliver what they promise.

One of the ways that you can see that is that in the Washington Post survey or poll that was taken last week, we find that confidence in the Congress has doubled, doubled, just since January 4 when we were sworn in. And that is the first time in the 15 years that that particular polling question, how do you feel about Congress, favorable, unfavorable, that has doubled, it is the first time it has ever happened since they have been doing that kind of polling.

Luckily, we have with us two freshmen Members, Mr. BRYANT and Mr. SMITH, who are part of the revolution, and they are going to be talking to us about the crime bill.

Mr. BRYANT of Tennessee. I appreciate the very fine introduction of what this Congress is about from the gentleman from Ohio. I just wanted to add a remark or two to what you are saying about the popularity increase on the part of the Congress.

I tell you, we are all having trouble getting back to our districts because of the hectic pace that we are involved in. I heard today that we have already voted more than 100 votes in this month of January and the early part of February, and I think last year we reached that mark of 100 votes somewhere in May. So that is some indication to the viewers of the pace at which we are moving.

Mr. HOKE. The gentleman is completely correct. In fact, we are on track for doing more in the first 100 days of this Congress than has ever been achieved in the history of our Congress if we keep up at this rate. We had through the end of January been in session 115 hours. The average for the previous 10 Januarys was 28. We had had 79 votes on the floor up until then. The average had been 9.

Mr. KINGSTON. If the gentleman will yield, I think, though, what is really important is as we talk to our two freshmen that are with us, is that this spirit of change really was affected by your election. It would not have happened. We would be continuing at the status quo of year after year everybody signs the balanced budget amendment, year after year everybody signs the line item veto, and a couple of these other hero bills, and you go back home and tell your Rotary Club, ''I sponsored a bill, but doggone it, those rascals in Washington will not get it to the floor.'' The time for that kind of talk is over with, because of the huge new freshman class, and a freshman class who as candidates went out on a limb, most I think signed the Contract, but they said, ''This is my agenda. If you elect me, this is what I am going to go for.'' And instead of throwing away that brochure on a election night, they are coming back day after day and reminding the voters what they said, instead of waiting for the voters to invite them.

With that, I think we owe them a lot of this credit, just to get the chance to vote. You may want to comment on, you know, what it is like. Because Mr. HOKE and I served under a previous regime, and it was not as fun and certainly it was not as vigorous as what we are doing now.

Mrs. SMITH of Washington. If the gentleman will yield, I think what we have turned the American people into is C–SPAN junkies. I am having friends that didn't even have TV's who are getting up each morning so they can see what we did today. They got rid of the idea of Congress as a slow moving process, and they are saying, ''We want to see what they did today.'' I think the freshmen came with the belief that we would do something everyday, but we did not realize when we got here that people would say, ''Do you realize this is fast?'' And when you look at what they used to do, we would not have barely got started. My understanding is it took way into February before we would actually even gear up very much.

Mr. HOKE. Generally speaking, we did not even come to Washington until the last week of January previously.

Mrs. SMITH of Washington. I was trying to do a summary of what we had done thus far, and I could not do a newsletter with enough in it, it would have had to have been so big. I said, you know, that is really something. I said I was never coming to Congress. My polls were very high for the last 6 years, nearly 90 percent, I said I am not going because those guys are not doing anything. I am pretty glad to say not only are we doing something, but I am actually not sleeping more than 4 or 5 hours a night. It is pretty exciting. We came to a whole bunch of people ready to do action. We might be the steam, the freshmen, but there certainly was a train on its way. We are just pushing it along a little.

Mr. HOKE. We gave a great American a wonderful birthday present on Monday. Mr. KINGSTON, I wonder if I might ask you to talk a little bit about what that birthday present was, how it came about, and what it does for the American people.

Mr. KINGSTON. Of course, the great American you are speaking of is Ronald Reagan, and he was a man even before he was elected President who talked about the concept of the line-item veto. And the analogy that I have given my voters is just imagine if you are in a grocery store and you are buying your meat and potatoes, your fruit and your vegetables, and you are in the checkout line and the cashier says buy some caviar for me. You say I don't owe you any caviar. I don't eat caviar, it is too expensive. He says if you want your meat and potatoes, you have got to buy my caviar.

That sounds bizarre, but that is how the Congress has treated the American people, and the American presidents, for all these years. That anytime the President would go into an area like a flood disaster or something like that, we would always go in there and tack on our latest social program, our new little warm and fuzzy midnight basketball of the month or whatever it was. We say OK, we know you want to take care of the California earthquake victims, but in addition to this I want a little research money for the university back my way.

This gives the President the actual ability to take a pen and line item that out, that pork out of there, and say we do not need it anymore.

Mr. HOKE. Is that something that Governors have in most States or many States?

Mr. KINGSTON. Forty-three Governors have it. We have it in our State of Georgia. It has worked effectively. The Governor does not overuse it. But what it does is it puts him back in the process.

Mrs. SMITH of Washington. That is something that amazed me when I got here. I was in the State Senate and the House and we always had a balanced budget amendment, and we had line-item veto. In fact, we not only had line-item veto for the budget, we had it for every bill, and the Governor could go in and take out pork and things that did not work. Now, sometimes we were a little irritated at the Governor, but the reality was it brought a great balance to some of us that might want to kick in a little pork for our district.

We had to think about a check and balance of the Governor. So I think that most States have something like this. For the Federal Government not to have it, seems a little ridiculous.

Mr. HOKE. Maybe one of the greatest reflections for the need for this is we seem to have an absolute inability to balance our budget. This is one more tool to try to get specifically to that. And Mr. KINGSTON, maybe you could illuminate this a little bit. It seems to me when we saw the people opposing it, were these the fiscal conservatives, the deficit hawks, the tightwads, or the big spenders in Congress?

Mr. KINGSTON. The people who opposed it generally used this philosophical argument that it tipped the balance of power. But what they were really saying is I want my pork. And I think we saw, for example, getting back to the earthquake, on the earthquake we sneaked into the budget or had sneaked in $1.3 million for the Hawaiian sugar cane mills.

□ 2130

We have $1.5 million to convert a nuclear power commercial ship into a museum, or $10 million for a new train station in New York.

Mr. HOKE. Why is that not appropriate as a Federal expenditure?

Mr. KINGSTON. Well, there is certainly a philosophical question that these should probably not be things that the Federal Government is involved in. But more importantly than that, we have got people who have health care emergencies because of the earthquake, business emergencies, lives literally at stake. We need to get the money out to help the earthquake victims. We do not need to be sending it for train stations. The list goes on and on. But remember, it is every single appropriation bill has this little Christmas tree, what is in it for me, and if you want something in Ohio, then you are going to take care of me in Georgia. That is one reason why we have a national debt approaching $5 trillion right now.

Mr. HOKE. And it got nearly 75 percent of the votes in this Congress. It had never previously been allowed to even come to the floor. Yet we got 301 votes.

Mr. BRYANT of Tennessee. One of the things that we, a couple of things that we campaigned on heavily during our election process, were the line-item veto and the balanced budget amendment. And I used to say, after I had signed this Contract With America, one of the hidden pearls in this contract, not necessarily each and every item might be passed, but that we are calling forth from everyone that is in Congress a vote. We are making them vote up or down on each one of these issues. And if an item did not pass, then the people back in the district would understand that and how their Congressman voted. And they would have the opportunity next election to decide if they wanted to retain that Congressman.

But everywhere I went, the people back in west Tennessee felt that these two items, the line-item veto and the balanced budget amendment, were required because of the forced discipline. I have heard that term used an awful lot up here, but I am convinced that not only at the State level but at the Federal level, we need to force discipline by law. But we have to balance the budget.

The Chief Executive, the President, whoever, the Governor has a right to the line-item veto. And I think we have taken the correct steps. And once we got those bills out of the committee, up on the House floor for the first time probably, at least the line-item veto, I think maybe the balanced budget amendment was up a couple times, but we were forced, the Members, to vote and to show our cards. And I think that is why you saw the large amount of votes in support of each of these.

Mr. KINGSTON. One of the many votes on this was rejection of what I would call the light-item veto, l-i-g-h-t.

Mr. HOKE. Line-item veto light.

Mr. KINGSTON. That says that when the President does this, then it comes back to the Congress and we sit on it. And what he actually vetoed out does not take place, but we do not ever have to vote on it again. It is just the same old——

Mr. HOKE. That is pretty much the rescission package that we have got now.

Mr. KINGSTON. We rejected that. This package, what is so different about it, he sends it back to us. We have 20 days to say yes or no or to modify it or pass part of it or not, but if we do not take action, it is automatically in effect. So the ball is in our court.

It is not this, oh, well, we just kind of look the other way and pretend it does not count. The clock starts and we have got 20 days.

Mr. HOKE. I know it is a little technical, but I wonder if you could just share with me how the process works. We pass a bill. The Senate passes a bill, comes out of conference, goes to the President for a signature. What happens next?

Mr. KINGSTON. Let us just say it is an education bill, health care, welfare reform, and we stick in there, as are actual cases in years past, $58 million for the American Shipbuilding Co. in Tampa, FL, $11 million for a powerplant modernization for a naval shipyard that is about to be closed in Philadelphia. And we stick in another $1 million for plant stress studies in Texas.

The President gets the health care bill. He says, wait, these three items, I do not like them. And so he circles them so to speak sends them back to Congress. He has got to do that within 10 days. He cannot just sit on it.

Mr. HOKE. He has 10 days to make those line items, to veto those particular lines.

Mr. KINGSTON. That is right. He sends it back, submits it to us. And incidentally, he can say, look, I do like the New York Yankees, and I am going to give them a little bit of sweetener for the shipyard down in Florida, and there is a relationship. So instead of giving them $50 million, he decides to give them $25 million. He does not even have to zap it out. He can just reduce it.

Then we get it back within 10 days. We have 20 days to vote on it. If we decide not to vote on it, it is law.

One other thing that is important to know, this is on spending, but if we pass a sweetheart tax deal and it only benefits less than 100 people or 100 or less specific corporations, just a clear conflict, because some powerful committee chairman says, look, I want you to take care of my little buddies over here, the President can also veto those out. People complain all the time about tax loopholes. This gives the President and, in this case, the Democrat President the chance to stand up to those.

Mr. HOKE. So let us say, for example, that some of our Democrat friends would put together a loophole to sweeten the pie for some of their fat-cat contributors with a tax loophole. If it is fewer than 100 people, the President can X that out and veto it. The thing that we do joke about Democrats, but you know, we did get into this situation from Democrats and Republicans. And the beauty of this that I like is that we have got a bipartisan Congress with Republican control passing a bill for a Democrat President. So we are giving him a very powerful tool to turn around and use, if he chooses to do so. I hope he will not be partisan about it and will be responsible.

I wanted to get a little bit to the balanced budget amendment, but I see we are running out of time here. I wanted to ask the gentleman from Tennessee [Mr. BRYANT], who is the former U.S. attorney from the western district of Tennessee, and, therefore has, I would say, a fair amount of expertise with respect to crime, to talk about the crime bill.

We passed two things today. One was habeas corpus reform and the other was exclusionary reform. I have to tell you that to most Americans who are not lawyers, of course, you and I are both on the Committee on the Judiciary. We are very much involved with all of this, but to most Americans who are not lawyers, the words ''habeas corpus reform'' mean absolutely nothing. Exclusionary rule reform means absolutely nothing.

What is going on here? Can you bring it down to earth for us?

Mr. BRYANT of Tennessee. Let me try to give a primer on this. As far as the exclusionary rule, that is a judicial court creation. It appears nowhere in the Constitution. We have heard that

bantered about in our arguments, that it violated the Constitution, what our forefathers wrote, those kinds of things. Actually, it is a rule that was crafted by the courts to in effect punish police officers for unlawful conduct. And over the years, there has been a constant balancing act between the rights of society as opposed to the rights of the criminal.

And over the past number of years, many of us feel that that pendulum has swung too far over in favor of the rights of the criminal and, in some cases, has actually resulted in the exclusionary rule being applied in trials that guilty people have gone free or, even before that, you recognized you have got a bad case because of this. You would have to plea bargain out or even dismiss a case.

Mr. HOKE. Where does this name ''exclusionary rule'' come from? What are we excluding?

Mr. BRYANT of Tennessee. Actually, it is excluding evidence from the trial. That is the remedy that the Court has foisted upon us. If it was deemed illegal evidence, then it is actually kept away from the jury.

A classic example is the ongoing trial in California and the issue of the glove that the police officer found at the home of Mr. Simpson. That was the subject of a lengthy suppression hearing to exclude that glove. And in that case, the judge did allow it into evidence.

But there is a great deal of confusion over the law in all these situations involving search warrants and even the warrantless searches. And I used to marvel, as a prosecutor, how, as in the case of Mr. Simpson in California and in other cases where you could spend hours and days, even longer periods of time, with law-school-trained prosecutors and defense counsel and judges arguing over the merits of this issue in a sanitized situation, a courtroom, with law clerks writing briefs and so forth for you.

□ 2140

Yet, on the other hand, we asked police officers, law enforcement officers who were in a tough situation out in the field, in less than sanitary conditions, often life-threatening situations, to make those kinds of decisions on the spot: ''Do I seize this evidence or do I not seize this evidence?'' Again, the lawyers and judges argue over these things for hours and days and cannot reach a conclusion.

Mr. Speaker, for too long I think we have not allowed for a reasonable mistake. Nobody expects perfection from our law enforcement, or from anything in our lives. I mentioned earlier to someone that Ken Griffey hits the ball safely 3 times out of 10 and he is a superstar in baseball.

Mr. HOKE. We certainly hope he will be hitting the ball 3 times out of 10 this summer.

Mr. BRYANT of Tennessee. We hope, soon.

Mr. HOKE. What is it exactly we are talking about reforming here in this exclusionary rule?

Mr. BRYANT of Tennessee. In this body we are talking about following what the courts are already beginning to do as the pendulum swings back toward a fair balance in protecting not only, again, not only the criminals' rights, but the victims' rights.

Mr. HOKE. We are talking about the Supreme Court, now?

Mr. BRYANT of Tennessee. The Supreme Court. We are just expanding what they are doing to allow for this reasonable mistake on the part of the police officer in gathering evidence. If he makes a reasonable mistake in good faith, that is subject to the same exclusionary rule possibility, but a third party, a judge, provides an objective standard and decides whether that comes in or not. But again, it allows for a reasonable mistake and does not punish society by excluding or keeping away that evidence from the jury.

Mr. HOKE. Who has asked that this rule, that this change that has been made by the Supreme Court, actually be codified into Federal law? Who has been supporting this?

Mr. BRYANT of Tennessee. Of course, there has been a number of prosecutors, people involved in the legal system, but I would suspect both JACK and LINDA have seen demands from their constituents, as I did, that we ought to make some changes here in our judicial system and swing that balance back more toward society.

Mrs. SMITH of Washington. Will the gentleman yield?

Mr. BRYANT of Tennessee. I yield to the gentlewoman from Washington.

Mrs. SMITH of Washington. I just reverted into being a mom and a grandma, but I was a senator, too, and I think it seems worse to me than ridiculous rules, letting a rapist off, or letting someone that violently hurt someone off.

I think what we have done in this is common sense. That is the part about the Contract that I liked the most when I saw it, when I was first drafted as a write-in candidate in September. I saw this and I thought why would anybody not support this? It is common sense. That is one of those things that just came up as common sense to me.

Mr. KINGSTON. If the gentleman will yield, I think one of the problems is that the American people just get so frustrated when we cannot get control of everything, and it seems that time after time, we are forgetting the victim, we are forgetting what is in the best interests of society, and we are going to the extreme to protect or defend some thug, and we are beating the law in his favor. As a result, we are not getting the convictions we need. These people are getting out. It is all a case of who can find the best technicality, and it does not really change the fact that this person may have committed murder, may have raped somebody, may have kicked the door in and beat some people up.

That seems to be secondary to finding the technicality to getting them off. I am glad we are correcting this.

Mr. BRYANT of Tennessee. Mr. Speaker, as the gentleman well knows, on the Committee on the Judiciary we are not doing away with the exclusionary rule completely. There are still certain protections out there. The law enforcement, although they do not do this anymore, they may have done this back in 1914 when this was necessary to formulate this rule, but people do not beat folks in back rooms with rubber hoses to extract confessions anymore. However, if they did, certainly the exclusionary rule would still be available.

Mr. Speaker, what we are simply saying is that folks make mistakes. As long as they act in good faith, and a judge has to make that determination from an objective third party standpoint, that evidence ought to come in and not punish society because of a mistake. There are other avenues that that can be addressed in.

However, we did, once we came to the House floor, we had a good, healthy debate, but we had truly bipartisan support on this, and the bill passed, as I recall, overwhelmingly.

Mr. HOKE. Mr. Speaker, the gentleman is absolutely correct. We had, I think, 300 votes or 298 votes, again 75 percent or 70 percent of the House voting in favor of it. Clearly, what we are seeing here is the pendulum swinging back, so that we can take back our streets, so that victims will have the rights that they need and that society will not become the victim of the criminal. If Members will look at the figures on this, fewer than 4 out of 100 crimes at this time, and I'm talking violent felonies, result in incarceration. Now, if the criminal justice system is going to act as a deterrent, then you have to do the time if you commit a crime. Otherwise it simply does not work as a deterrent. That is not the only purpose of the criminal justice system, but that certainly is an important one. For somebody contemplating criminal activity, they have to know that they are going to get caught, that when they are caught they are going to be convicted, and when they are convicted they are going to be incarcerated. They are going to be confined.

Mr. Speaker, let me move, if I could, from the exclusionary rule issue to this thing called habeas corpus. Now, habeas corpus, what on Earth does it mean? What are we doing? What is going on?

Mr. BRYANT of Tennessee. Literally, ''habeas corpus'' means ''you have the body.'' It started out in the 1800s, as I remember reading, where people who were wrongfully convicted, or even perhaps kept in jail without a trial, used that as a mechanism to have a hearing to get out of jail.

What has developed over the years, though, has been a system of, I believe,

abuse by people in the jail who filed habeas corpus petition after petition over a period of years, with the net effect of being able to, particularly in death penalty cases, to delay the implementation of their death sentence effectively.

Mrs. SMITH of Washington. Mr. Speaker, will the gentleman yield? I am confused. Does that mean they just appeal over and over again, based on what statute? How do they do that? ''You have got the body.'' You have me confused. Try that again.

Mr. KINGSTON. Tom, she does not mean you have the body.

Mrs. SMITH of Washington. Remember, we are not all attorneys. I didn't quite understand that.

Mr. BRYANT of Tennessee. There are at least three avenues that people sentenced to the death penalty can travel. Of course, they have their natural State appeals. Then there is a habeas corpus procedure within the State, and then the Federal habeas corpus procedure.

People that are on death row and their attorneys are experts at maximizing these appeals, and in many cases, going back, and not necessarily appealing the same issues, but raising new issues each time to delay, as we all know, and we heard so often on the campaign trail from our constituents, delaying it 15, 20 years or more. That was probably, again, one of the major complaints that I heard.

As I look there on the Contract that you are checking off, on Number 2, we are getting very close, because today not only did we work on the exclusionary rule, and yesterday on victims' compensation, but we did pass this fairly severe modification, changes to the habeas corpus proceedings.

The two things I talked about were limiting the numbers of these appeals and the timeliness of them, and we did exactly that today.

Mr. HOKE. Can you flesh that out a little for us, ED? How much time does somebody have now, after they have been convicted of a capital crime, and I mean convicted through the entire appellate process, so I think people should understand that we are not talking about—habeas corpus does not begin upon conviction at trial.

You are convicted at the trial level, and then typically there is an appeal to the first appellate level, and then there is another appeal to the second appellate level, which would probably be the State Supreme Court. Am I correct on that?

Mr. BRYANT of Tennessee. As there should be.

Mr. HOKE. As there should be, absolutely.

Mr. BRYANT of Tennessee. Like any trial, they are entitled to fair appeal decisions.

Mr. HOKE. Then there is a final order of the highest court in that particular State?

Mr. BRYANT of Tennessee. That is correct. Then they usually begin the habeas corpus process.

Mr. HOKE. At that point they have already had two appeals process. This is not from the trial court, this is already after a final adjudication from the highest court in that particular State?

Mr. BRYANT of Tennessee. That is right. Generally under the law that we passed today, if it is a State appeal, a State conviction they are appealing from, they have 1 year in which to file their habeas corpus petition. If it is a Federal appeal in which they are applying for habeas corpus, then they have 2 years.

It is on a faster track now, and I think as this bill works its way over, up the process, I think you are going to see some improvement.

Mr. HOKE. Right, it is on a faster track, but just so we get a real idea, a faster track, for a U.S. attorney to say that, it may seem like a faster track to you, but I don't know if it seems like a very fast track to the public.

If you are talking about the trial, the trial could take 3 to 6 to 12 months, even, but let's say it just takes 6 months, and then how long would the first appellate procedure usually take?

Mr. BRYANT of Tennessee. Of course, that depends on the States. But I think you are looking, as opposed to the 10 to 15 years that are probably average today, you are looking at a much shorter period of time. If you could keep it under 5 years and work down from that, I think that is a fairly fast track for this type of case.

Mr. HOKE. Who is paying for the attorney's fees for the capital inmates at this point?

Mr. BRYANT of Tennessee. Probably 100 percent of them are being paid by taxpayers at either State expense, or certainly at Federal expense.

Mr. KINGSTON. Mr. Speaker, I would ask the gentleman from Tennessee [Mr. BRYANT], how much are we paying for these guys to stay in jail? I have noticed on my tours, they all have air conditioning, they all have television, they all have weight-lifting rooms and gymnasiums, and they are not required to work, so they get to watch TV. What does that cost?

Mr. BRYANT of Tennessee. You all know, literally it costs millions and millions of dollars.

Mrs. SMITH of Washington. In our State, over $30,000 a year.

Mr. KINGSTON. $30,000 to $50,000 per year per prisoner.

□ 2150

While some wealthy law firm is going around with endless appeals, not worrying about the victim, not worrying about the detriment to society and just having a good time at it.

Mr. BRYANT of Tennessee. They are usually specific lawyer capital resources centers that are publicly funded that are the experts from the defense standpoint and are able to use the system of appeal that we have just talked about in an effort to get a new trial, but also, concurrent with that, to delay the execution of cases.

So again, it is a hot button item. I think what we did do today, I want to commend our leadership, and all of those people who voted for this bill. It is a major step toward alleviating this type of problem and complaint.

Mr. HOKE. The gentleman from Tennessee has worked as a U.S. attorney. That is a big responsibility. I assume the gentleman has prosecuted capital cases.

Mr. BRYANT of Tennessee. I have not, but I have certainly been around those who have.

Mr. HOKE. Are we effectively tightening up the habeas corpus process in a way that will shorten the time frame? Are we doing anything in this process to in any way undermine the rights of defendants in this process? Do they still have the ability to make these appeals in a timely and effective way?

Mr. BRYANT of Tennessee. That is a concern. It is probably not a popular one to talk about on the campaign trail, but you have to look at it from the standpoint too of the person who is charged. And of course, by this point they have been convicted, they have had due process of law, they have had a full, good attorney, full-blown trials and they have had appeals. But they still have certain rights, especially when we are talking about the ultimate penalty, the death penalty.

But as we talked before, this bill that we passed today I think brings the pendulum back, the balance back into the system, particularly in capital cases, particularly in the time and economics of it and the actual deterrence of it. That is something that is very frequently talked about, that really the death penalty is not a deterrent. I do believe it is a deterrent, but to be an even better deterrent it has to be done like any punishment, swiftly. Those are the two things, it has to be certain punishment and swift punishment to be an effective deterrent. We have lost that in our society, particularly with the death penalty, and I think once we get this process going and up to speed, as it should be, while protecting the rights of the defendant, which I think it does, I think we will have an effective deterrent.

Mr. HOKE. I think that is important to emphasize, that defendants' rights are clearly being protected, but at the same time society's rights to have a timely resolution, a final resolution, an execution of its will, of society's will, the carrying out of its will, that that will be possible now with this habeas reform.

Mr. BRYANT of Tennessee. We are not talking about everybody that is convicted of a crime that has to do this, but you know I always talked about on the campaign trail that we had I believe about 300 people on death row in Tennessee. And I told everybody if they could go back and look at each

one of those individual cases and the underlying facts of the case, you know, each one of those is a death penalty case and when you read about it in the newspaper, it just hits you in the stomach, what an atrocious, horrible, heinous crime it is. These are the types of cases we are talking about, not just everything that comes along.

Mr. HOKE. We are talking about the tremendous frustration that society feels as a whole, that the community feels and that victims' families feel with the inability of our justice system to actually come to final resolution in these things, and the anger that is the result of that. So that this thing continues to turn and turn and turn and go on and on. I am glad the gentleman clarified that. I very much appreciate it.

I learned something tonight about the gentlewoman from Washington. I did not know that she only decided to get involved in a race for the U.S. Congress in September, literally 2 months before the election, or it must have been an even shorter time, 6 weeks. How long?

Mrs. SMITH of Washington. Nine weeks.

Mr. HOKE. The gentlewoman is not exactly a newcomer to politics.

Mr. BRYANT of Tennessee. Do I understand that the gentlewoman won by a write-in?

Mrs. SMITH of Washington. I went away for a weekend and came back after Labor Day, and there was a write-in going on, and 2 weeks later I was the person on the ballot with the most votes. But they were write-in votes.

Mr. KINGSTON. I would like to register a protest. That is a little unfair. The rest of us started 2 years, and the gentlewoman just 2 months. I am sure she blitzed it.

Mrs. SMITH of Washington. You know, it is women, they are just more efficient.

Mr. KINGSTON. I will yield the floor then.

Mr. HOKE. The gentlewoman is not exactly a newcomer to politics. But to jump into this with 9 weeks, I wish I had only 9 weeks. That is fantastic.

What was it that motivated the gentlewoman to want to be a part of this, to get involved with the U.S. Congress? We had talked earlier and the gentlewoman said something about welfare. What are your feelings there?

Mrs. SMITH of Washington. First of all, when I first went in office in the early 1980s in the State, what happened was I saw people go on welfare as our State doubled for my business, I ran a corporation, doubled the taxes in 1 year. And I laid people off, and I saw people go on to welfare who used to work for me as secretaries and receptionists, at the entry level mostly, mostly women, and it got my attention that government could put people out of work.

So the point on the contract that I have been focusing on is the item of welfare and job creation. You know, the best welfare is a job. I cannot think of any family, any single mom, any family of any kind that would not just as soon take care of themselves. Welfare is where we do not want to be, or we want to get off.

So when I looked at the contract I saw that they did several things in the contract that I liked. I saw capital gains. I used to teach tax law changes and I saw people not sell because if they sold they lost everyting in taxes, and it tied up their money, and it tied up their jobs. And so I looked at the capital gains portion of the contract which we are coming up against and I saw it as jobs. If that money is released, I had money to hire people.

Then I looked at the small business section.

Mr. HOKE. Could I ask the gentlewoman a question about the capital gains thing, because our friends from the other side of the aisle, as soon as they hear the words capital gains, the accusation is oh, that is for rich people, that is just something that is designed to help them pay lower taxes. Is that what is going on? Who gets, who gains the most from reductions in capital gains?

Mrs. SMITH of Washington. The people I saw were the people I did the tax returns for, and I had about 400 clients as well as the company I ran, and most of them were small business owners. They were families that were investing in property or equipment or whatever. And they would benefit or they would lose everyting. And what I would see is when we had a high capital gains tax they would hold on, and they would not sell, and they would not buy new equipment, and they might not upgrade, they might not do anything with their business to grow, and they would not create jobs. If we had a reasonable capital gains they would turn over equipment, they would buy, they would hire more people, and they would grow. And I did tax returns for 15 years and worked with small businesses and corporations and it never changed. I did not work with the big guys. I worked with the people that provide in my State 80 percent of the jobs, and that was small business.

Mr. HOKE. In Germany there is no capital gains tax. In Japan there is a capital gains tax of 5 percent, which I understand from accountants gets zeroed out with some exemptions, so there is effectively a zero capital gains tax.

It is by creating more jobs, by having that money that would have been locked in because people are afraid to sell, they are reluctant to sell because of high taxes, that money getting recycled through the economy in a way that creates more commerce, creates more enterprise, creates more jobs, that is the bottom line of reducing the capital gains tax, is it not?

Mrs. SMITH of Washington. Yes. And you know what was really something, was for years I sat there running a corporation and not realizing until one day when they doubled my tax, and the Federal Government messed around with the capital gains again and raised it that it was affecting me, and I connected it to jobs like that. And I think what is happening around the Nation, and why November was so significant is small business people all over the Nation really spoke. I really believe that. I know in my district I was a write-in candidate, and in 2 weeks the people, nearly 40,000 came together and wrote in my name.

That was fueled by entrepreneurs. It was not fueled by a Boeing or Weyerhauser, and these people know that they had better change the policymakers here. And when you look at this contract I think it gave them hope.

□ 2200

I see it as a key ingredient to us producing jobs.

Mr. KINGSTON. There is another angle to this, too. In my area, for example, Bulloch County, GA, Statesboro, GA, Georgia Southern University has a lot of growth. There are a lot of ladies who are widows now but they live on a family farm which is in a growth area. The city is sprawling, and they want to sell that property. They have owned it for 30 years. They may have bought it for $10,000. Now it is worth a half-a-million dollars. But they are in their seventies or eighties. They cannot farm it. They have trouble getting somebody to lease it out. They want to sell it. Their fixed income on Social Security and whatever benefits may be $12,000 or $15,000, but if they sell that farm, then all of a sudden they are in the highest tax bracket.

Mrs. SMITH of Washington. Worse than that, they have the inheritance tax in some cases, depending on when their spouse dies.

Mr. KINGSTON. That is right.

Mr. HOKE. Let me ask you a question, if I could, I say to the gentleman from Georgia [Mr. KINGSTON]. What is that tax on from $10,000 to a half-a-million dollars, is that on what is really being taxed there with this capital gains tax?

Mr. KINGSTON. It is not the tax of the income but the 500,000 sales value is treated like income for that year. For that year she might as well be a stockbroker on Wall Street.

Mr. HOKE. She is being taxed on inflation, is she not? Is that not really what is being taxed?

Mr. KINGSTON. That is right. Also what we are doing is we are making her dependent, because she may want to sell that farm so she can go into a long-term care home. We are saying you cannot do that. She wants to be independent. That is why she held onto the property, and now we are denying her that option.

Mrs. SMITH of Washington. You know, what you have also led to is another part of the contract. We deal

with inheritance tax reform in the contract, and I would like to go even further, whether it is a small business person, usually it is, or the tree farmer in my area. They are having to actually sell their small businesses to pay the inheritance tax. By the time they get done, they can pay nearly 70-some percent in taxes, and they literally are often cash poor. In our area now they are mowing down trees on these family farms. We grow trees in Washington. They have to cut them down prematurely so they can pay inheritance tax to barely hold onto the property. That is pitiful.

In the contract we say middle America should not have to give away the farm to the Government. It is unfair. They have paid taxes on that. It goes to their families. It should not be lost to Government.

And so this contract has a great amount of compassion for middle-class America in it, and that is what made it attractive to me as a candidate to be able to talk about it, and now as a policymaker, it is in my mind a gift we can give to the American people that we will be able to be proud of for many years to come.

Mr. HOKE. Did I understand that you, as a freshman Member of this Congress, are chairing a subcommittee in the Small Business Committee?

Mrs. SMITH of Washington. Yes. I think it is fantastic, because my background is taxation and finance for small business. You know, that was my life before this. I ran a tax preparation business and a management business and was a licensed tax consultant, so it fits well, and that is what is wonderful about this contract.

Mr. HOKE. What else do we have in the Contract With America that is designed specifically, aimed at job creation?

Mrs. SMITH of Washington. Regulation, regulation reform. You take a look at it.

Mr. HOKE. You want to regulate more?

Mrs. SMITH of Washington. No. We need to regulate right. When a regulation is needed, it is needed, and sometimes we have to say there needs to be some rules, but the reality is the Federal Government is regulating where it is not necessary. So we put some accountability into this for businesses and communities.

A lot of the regulation is raising people's water bills, and so by the time we get done making it more job friendly, we are also making it more friendly to the families that are trying to get jobs.

I do not see business as anything more than a job creator, and this contract has a section that says we are going to create jobs, and that is our best welfare system.

Mr. HOKE. You know, what I hear in everything that is being said tonight is that it sounds to me like we have got a pendulum that has been way out here, and it is moving back. It is moving back in a lot of different ways. It is moving back with respect to reform of our criminal justice system so that the victim gets an even break instead of just the criminal. It sounds like we are moving back toward the center in our way of regulating enterprise so that the enterprise gets a break, the farmer gets a break, the person that is creating jobs so that he or she can create more jobs, is getting a break, and we are swinging back that way.

And it sounds like with respect to the regulation of Government itself, we are giving tools in this case to our executive branch with the line-item veto, to the Congress itself with respect to the balanced budget amendment. So there can be some fiscal sanity, some basic common sense in the way we spend the taxpayers' money.

And it seems to me that this is a theme that we have seen in terms of what the American people want repeated over and over and over again, and I believe that is why they gave us the honor of having a majority, and it is our job, it is our job to keep the promises that we made to the American people and to fulfill them in a way that gives them confidence in our ability to govern and to bring about the kind of commonsense legislation in governing that they expect, demand, and deserve.

I happen to see the gentleman from California [Mr. CUNNINGHAM], my good friend. It looks like you wanted to say something.

Mr. CUNNINGHAM. I do not want to take a whole bunch of time. We are marking up an education bill tomorrow which is part of the contract. We are not talking too much about that; also the defense side. But we have got the freshmen represented here. Most of them we campaigned for. We have got sophomores.

I just wanted to let you know how proud that we are that for 4 years, many of us sat here on the House floor and were rolled over day after day. The Committee on Rules determined every piece of legislation that came to the floor.

In 20 years, the Republicans only had one motion to recommit passed. The King-of-the-Hill rules, we never won a single one, and for the first time, I heard the gentleman from Georgia [Mr. KINGSTON] bring it up, that there are many of the Members on the other side of the aisle that really want to work and do the people's business, but the leadership, the liberal leadership, in the past has prevented that either from twisting arms or preventing it by the rules on the House floor, and I think we are seeing by the numbers of these votes that we can do these things in a very bipartisan way in which the American people are asking.

You look at 290 votes or 300 votes on an amendment or against an amendment, that I think that shows bipartisanship, and I think that it shows people that this House can work, and after the contract is over in 100 days, I hope we can continue to do the same thing.

I just wanted to thank you. I am over there working on this markup for tomorrow. I want to thank all of you.

Mr. HOKE. Thank you very much.

Mr. KINGSTON. If the distinguished fighter pilot and American hero will yield, what we feel so good about, I think being sophomores, the gentleman from Ohio [Mr. HOKE] and I am, to be on the team with the freshmen, but really to follow in the footsteps of people like you who have been out fighting the battle, yet we seem to add more and more who are concerned about the future of America.

You know, none of us are really career politicians. We are going to try to do this. We are going to try to get the contract passed. We are going to try to change America, but we can also go back home if somebody better can do it, if somebody can do a better job, and you know, we are not up here so that we are going to be here for 30 or 40 years and build our own little empires, and Representatives like you who have helped us along the way have made it possible, I think, for the changes that are taking place to occur.

Mr. HOKE. My hat is absolutely off to every senior Republican Member in this Congress. I am amazed; I mean it, I know what it was like the last 2 years. Never having been in a legislative body before, I know what it is like just getting beat up every day and losing and feeling, frankly, not very proud of that work that is being done in this body, and the difference to have something that we feel we ourselves can feel proud of, of what we are doing, and we hope, we hope to goodness that the American people feel proud of what we are doing.

My indications from what I understand and from my constituents, and if you look at this poll, doubling the approval rating of Congress, I mean, where they are feeling confidence once more.

Mr. CUNNINGHAM. That is Republicans and Democrats, the approval of Congress, what we are doing.

Mr. HOKE. Is bipartisan. As you point out, I said it earlier, we have strong, strong bipartisan support on every single measure we passed. You remember, what was the toughest victory for the Democrats in 1993?

Mr. CUNNINGHAM. The tax package.

Mr. HOKE. The tax package. In August 1993, one vote here, one vote in the Senate. It took the Vice President of the United States to break that vote. That is because Democrats voted against it. The only reason they finally passed it was because they could not abandon their President who then at that point had only been in office for about 8 months.

What have we seen on this package? We have seen a very positive bipartisan cooperative effort notwithstanding the kind of ugly partisanship that you see from time to time on the floor.

The fact is, look at these numbers, and you will see that we have had tremendous bipartisan support on every

single one of these bills. This is Americans thinking of not being Republicans first or Democrats first but being Americans first and doing what is best for America. I am excited. I am proud to be a part of it. I really am proud to be a part of it. I cannot say that I was proud to be a part of the 103d Congress. I made no bones about it. I let my constituents know that as well.

Mr. CUNNINGHAM. You should be proud of what you are doing, but being held down and getting beaten down every day makes it kind of tough.

Mr. HOKE. I wonder if I could ask the gentleman from Tennessee and the gentlewoman from Washington and the gentleman from Georgia if there are any final thoughts you wanted to share?

Mr. BRYANT of Tennessee. Well, I had mentioned in my first remarks that I had not had a chance to be home that much because of this hectic pace here. I have gone home every weekend though for short periods of time, and this Contract With America is great. People are still talking about it. They know what are doing up here. They are pleased with what we are doing. They know we are making progress, and what I tell them is that we are in essence simply doing what we said we would do.

□ 2210

Now I got to admit that is unusual for somebody in politics to do that, but that is our motto, we are actually doing what we said we would do. We are holding ourselves out as responsible, as accountable, to the American public.

We put it down in writing. It was published in TV Guide. People out there know what it is, and I am pleased to stand up and say, ''Yes, hold us accountable, make us do what we said we would do, make us bring these bills up onto the floor, have a full and open debate, which we are having,'' and again, as I say, the hidden peril in this is make us all vote up or down on those, and, if you don't like the way we voted on it, then you can bring us home the next time you have a chance, in 2 years.

So, I, too, am pleased to be with all of you. I cannot imagine what it is like to toil in the trench like you have. We are spoiled, and I would not have it any other way.

Mrs. SMITH of Washington. As my colleagues know, I think he started something that makes me think about the word I used so much in the campaign, short as it was, and that was the word commitment. I was actually—I came home from vacation after 3 days of vacation, and people wanted me to run, and so they did a write-in, and I said,

> I tell you what I'll commit to do: the same thing I've always done, and that's smaller government. I'm going to say no a lot, and I'm going to keep my commitments to you as I always have.

Well, that is the word this contract represents to me, and that is keeping my commitment to the American people. People really like that. They do not seem to expect me to dot every i and cross every t, but they want us to try very hard to keep our commitments.

While I have been here a month, and I did serve in the Senate in Washington State for several years, so I have some experience, I have never had the experience of people working so hard to keep their word to the American people. Because I think we all know that in November people said, ''Go do what you said, and, if you don't, we're going to get some others.''

We know that, but we also are driven by the fact that we understand we are servants, we are messengers from the people, and I think most of us understand it, and I got here in a whole bunch of people that have been here before me, and they were just ready to deliver that message, too.

The freshmen have been the steam, again, but the train was going down the track, and we were able to jump on and be a part, and we have not been excluded. I am not LINDA SMITH, a freshman here. I am LINDA SMITH, an integral part of a complete change that is going to be written in history as a turning point of America.

Mr. HOKE. What do you think, Mr. KINGSTON?

Mr. KINGSTON. I say this, Mr. HOKE and Mr. CUNNINGHAM, we heard Mr. BRYANT and Mrs. SMITH talk tonight. As she said many times, they are the team. I would say they are also the fuel and a little more volatile than steam in many respects.

The changes are real though. We are not turning back. America is going to change, I hope, because Congress has changed. We have left the foxhole. We are advancing. We are going to take the hill or we are going to get shot, and that is still up to the American people, but we cannot turn back at this point.

I will caution this:

There is talk, the Senate today. I understand that the balanced budget amendment might not pass. They are against the line-item veto. We are going to be passing a spending cut bill which the Senate has already said they are not going to do.

So I would say to people, let's keep this revolution going, the revolution is alive and well in the House. Let's wake up the folks over in the other body by phone calls and letters. But we're going to keep moving, and I'm proud to be with you, and I'm proud to be serving with people like Mr. BRYANT and Mrs. SMITH.

Mr. HOKE. Well, we are going to keep moving, and I think it is important, and you are absolutely right. We ought to encourage our constituents to do that.

Mr. CUNNINGHAM, do you want to add anything?

Mr. CUNNINGHAM. I would like to say one thing:

I see my distinguished colleague, the gentleman from New York [Mr. OWENS], here, and even though in many of the economic issues we disagree, I want to point out something, that on the floor, when the leadership of his party was blasting Christians, two of the Members of the Black Caucus came up to me, MAJOR, and they grabbed me by the arm and said, ''DUKE, don't you ever lose your Judeo-Christian values,'' and they stick tight, and they believe in those values, and I would like to thank my friend, Mr. OWENS.

Mr. HOKE. Thank you very much. Thanks for participating. I particularly want to thank the gentleman from Tennessee [Mr. BRYANT] and the gentlewoman from Washington [Mrs. SMITH] and the gentleman from Georgia [Mr. KINGSTON] for their participation tonight. This is great, to be able to share with each other our thoughts on these things and to keep track because I think the fact is that we are right on track, we are right on target. We are using this as a roadmap to stay the course and to do exactly what we said we would do.

We said it before, we will say it again, and you know how true it is in terms of how hard we are working, but we are working hard to keep the promises that we have made for real changes. We are going to continue to do that.

It certainly makes for long days, and it is making for some rings under people's eyes, but it is very exciting.

I appreciate your input, and I appreciate your sharing this special order with me tonight.

WILL WE BE BETTER OFF WHEN THE CONTRACT WITH AMERICA HAS BEEN PASSED?

The SPEAKER pro tempore (Mr. QUINN). Under the Speaker's announced policy of January 4, 1995, the gentleman from New York [Mr. OWENS] is recognized for 60 minutes as the designee of the minority leader.

Mr. OWENS. Mr. Speaker, jobs, the No. 1 concern of the overwhelming majority of Americans. Jobs are the No. 1 concern of the people, but you do not see that same concern reflected here in Washington around the floor of this House. The question that most Americans are asking is will we be better off when the 100 days are ended and the Contract With America has been passed. Does it matter one way or the other with respect to our concern about jobs and income? Will we be better off, those who have lost wages over the last 10 years? They have jobs, but the jobs are not paying as much as they paid before. So, will they have higher paid jobs after the Contract With America is passed? Will they be better off?

No.

There is a tremendous amount of downsizing that is taking place. Corporations are maximizing their profits. Profits are escalating, getting greater

and greater all the time. The wealth of the country is increasing dramatically. You know, we talk about taxes being too high, regulations being too great, and yet corporations are thriving, great profits are being made.

We are the wealthiest country, the wealthiest Nation, that ever existed in the history of the world, and yet people are worried about losing their jobs. Those who have jobs are not being paid enough. Those who have jobs often fear that downsizing is going to lead to an end to those jobs, and there are large amounts who are unemployed. Unemployment now is officially at 5.7 present. That is the official rate.

If you add those people who have been out of work for a long time and stopped looking, it is even higher than that. If you add those people that are working part time, it is even higher than that. Most people calculate the real unemployment rate as between 9 and 10 percent. Millions of Americans are out of work, about 12 million out of work.

The welfare recipients will have to go to work at the end of 2 years. Most of them would love to have jobs. Most of them would be very willing to take jobs, but when they have to go to work in 2 years they will find there are no jobs out there because we have no policies here which are dedicated to dealing with the primary concern of Government that ought to be to manage and to influence the economy in a way that guarantees that every person can survive, and survival means jobs. If you have a job, when you provide jobs, you feed the hungry. But when you provide jobs, you take care of the sick. When you provide jobs, you take certain that people are not homeless. The highest of our Judeo-Christian values, the highest of our family values, are reflected in the way we deal with the provision of jobs in our society.

But here in Washington you do not hear any talk of any great amount of job creation in the Contract of America or even among the Democrats from the White House. We hear no realistic attempt to provide the kind of jobs that must be provided during this very critical period where Americans have expressed great stress.

□ 2220

We hear no realistic attempt to provide the kind of jobs that must be provided during this very critical period where Americans have expressed great stress. They have great anxiety about losing jobs, about jobs that are not paying well, and about the ongoing increase and escalation in the unemployment rate.

Of course, the unemployment does not bother our official agencies like the Federal Reserve Board. The Federal Reserve Board seems to think unemployment is very good for people, it is good for the economy. So they take steps and promulgate policies which encourage unemployment. Whenever we have a great decrease in the amount of unemployment, they see that as a threat to the economy because it may raise inflation, and they cut off the supply of money so that those who create jobs through investment cannot create more jobs. They will hold down the employment so that labor will not be able to bid up its demand for higher wages, and therefore they will curb inflation.

Mr. Greenspan of the Federal Reserve Board is the author of this. I very much strongly would like to recommend to Mr. Greenspan that if he thinks unemployment is good for the Nation's economy, he should do his patriotic duty and take off 1 month every month. Take his turn unemployed along with the millions of others so our economy can prosper.

There are many other ways in which we show a callous disregard for the need to create employment opportunities for Americans. We have tremendous amounts of money that we are wasting that could be used in job creation.

The previous speakers on the floor talked about what they were going to do to cut the budget of the United States. In several ways, they are going to cut it short-term and cut it long-term through a balanced budget amendment. I welcome the opportunity. I would like to join with them in cutting some of the waste out of our Government.

Let us start with the agribusiness. Let us start with the agribusiness, which gets handouts from the Government of billions of dollars: $149 billion over the last 10 years has been poured into crop subsidies; $149 billion over the last 10 years.

Take the State of Kansas alone: $8 billion in the State of Kansas has been received from the Government. A handout, a dole to the farmers; $20,000 to $40,000 annually goes to the average Kansas family.

I welcome the opportunity to join with my colleagues in those kinds of cuts so the money can be transferred into job-creating programs that are being suggested, that are programs that really do something for the economy and for individuals.

If we had a school building program, billions of dollars being spent for school building, instead of paying farmers not to grow grain, then the benefit received from the school would last for decades, because the school would be there to serve as part of the educational facilities network. You know that kind of benefit would be gained.

If you use the money that you are wasting, giving a way to farmers not to grow grain, then of course you could also build some of the roads and the bridges that we need, which could be used for many decades to come, improving our transportation arteries and helping the economy overall.

So we have a problem in that we refuse to look at the problem that is the real and most important problem. The problem should be the No. 1 priority, and that is the creation of jobs so people have the opportunities to earn income and earn a living.

This evening we would like to talk about the job situation from three basic viewpoints. We would like to show that the economic picture is much bleaker than what it shows on the surface. It is important for us to understand the current Bureau of Labor Standard estimates of the unemployment rate, first of all, are way, way off. They underestimate unemployment at least by 3.3 percent. As I said before, instead of a 5.7 percent unemployment rate, if you looked at all of the people out of work and who stopped working, and the people who are working but working only half-time, then you would get an unemployment rate of 9 percent.

The No. 1 priority in America should be the creation of jobs, because we cannot stand a 9 percent unemployment rate. It hurts us in many ways. One of the ways it hurts us is just automatic common sense will tell you when people are working, they pay income taxes. When people are working, they do not have to be using unemployment insurance, they do not have to be using food stamps, or go on welfare. The Congressional Budget Office estimates for every 1-percent reduction in the amount of unemployment, the Government, the Treasury, will benefit by receiving $40 to $50 billion.

In income tax they take in and the money they do not have to send out, it all adds up to a 1-percent increase in employment equals a $40 to $50 billion gain for the Treasury. That is common sense.

But nobody wants to look at that kind of common sense. We are instead ready to propose to $50 billion increase in defense. We declared there is a military threat at this particular time in the history of America and we must have $50 billion more over the next 5 to 6 years. We must build some more *Seawolf* submarines. I see in the budget the President asked for another *Seawolf*. Who needs that? I see we need more F–22's built at Marietta, GA. They may provide some employment, but for every dollar you spend on military spending, you could create twice as many jobs for the dollars spent on military spending. If you take the dollars you spend on military spending and put it into civilian jobs, you would create twice as many jobs. Study after study confirms that.

We look at the picture, and the fact that the situation is such that it demands we take more aggressive action and make jobs the No. 1 priority.

We are also going to examine how the Republican plan for welfare forces people out of work after a 2-year time limit and creates a situation which is inhumane. Because if there are no jobs there, then we are forcing people into involuntary servitude. It is a form of slavery. Every person of African descent like myself will tell you we all

know that slavery provided jobs for everybody. There was no unemployment. In the state of slavery, everybody had a job. But who wants a job at that cost? That is what we are saying when we say that we are going to provide welfare for people.

The highest benefits are received in my State probably and a few others. A family of three may get $6,000 or $7,000 a year from welfare, versus a farm family in Kansas that gets $20,000 to $40,000 a year for not growing grain from the same Government. But never mind. They will get $6,000 a year and be asked to work 40 hours a week in order to receive $6,000 a year. That is not a form of slavery, when you force that kind of situation on people?

So unless we have jobs, unless the whole job market is dealt with so that not only do you have jobs for welfare recipients, but also for the people who have been unemployed for a long time and for people losing their jobs as a result of the downsizing, we cannot create just a group of jobs for welfare people and say we are going to provide jobs for people coming off welfare. That means everybody will want to get on welfare and will line up and be able to get a job. No, you have to improve the situation for the whole economy by creating thousands of new jobs.

The Republican welfare reform proposal, folks, focuses too much attention on one kind of welfare, as I said before, and we missed the point by focusing in and bullying mothers who are taking care of children who receive aid to dependent children. Yes, that is a high cost; yes, most of them who are able-bodied should go to work. Nobody quarrels with that, and neither do the mothers themselves. They would love to go to work if they had a job that would pay a decent wage and also provide health care.

It is the Medicaid, the health care, that keeps most people tied to the welfare system. There is nothing to be gained by accepting a minimum-wage job and losing the health care benefits for your family, and finding that as soon as someone gets sick, you will have to come back and go on welfare again.

So by focusing on the aid to dependent children, you may save $16.5 billion. If every one of them could miraculously be taken off welfare in 2 years, there would be a huge savings. On the other hand, we have far more costly forms of welfare through the dependent corporations, including the agribusinesses which I mentioned before.

Let us deal with the kind of handouts, the doles that are being received by American corporations, and let us deal with the kind of dole that is being received by the American farmers if we really want to deal with waste in Government. I think if we dealt with it realistically, we would have the money we need to create a jobs program which would have an escalating effect. You provide a job opportunity to people who make salaries, and they go forward from there in order to take care of their own needs.

□ 2230

They will feed themselves or clothe themselves and you will have a much healthier economy and a healthy society.

Mr. Speaker, I yield to my colleague, the gentleman from Michigan [Mr. BONIOR].

Mr. BONIOR. I thank the gentleman for yielding, and I thank him for his comments. I look forward to engaging the distinguished gentleman from New York [Mr. OWENS] and the gentleman from Vermont [Mr. SANDERS] who was joined us as well in this discussion as it relates to our economy today.

It was that great statesman Yogi Berra who once said that when you come to the fork in the road, you should take it.

Thank you, Mr. BURTON. The gentleman from Indiana [Mr. BURTON] has a great sense of humor. He is on the other side of the aisle. It is 10:30 in the evening, and he is laughing at my jokes. I appreciate it.

Clearly, I think we have come to the fork in the road in this society. We are living through a time of great change, great change in this country. And I think the theme that my friend from New York has talked about this evening is one which is at the heart of what we as Democrats believe in. And that theme is that if you work hard, if you play by the rules, take responsibility for your own personal actions, you should be rewarded. And that belief is really central to what the Democratic Party is all about. You should be rewarded if you work hard.

There are too many working people in this country today who feel like they are part of that old Abbott and Costello routine, where Bud Abbott says to Lou Costello, if you had 50 cents in one pocket and 75 cents in the other pocket, what would you have. And Costello says, somebody else's pants.

I mean, people feel like they are working hard, but they are not being rewarded.

We pointed with pride during this last campaign, I am going to be self-critical here, if I could, for a moment because I think we need to, as a party, that we created 5 million jobs. Well, we did create 5 million jobs in this country, but what kind of jobs were they? They were not the kind of jobs that the American people wanted; 5 million jobs, and yet 60 percent of the people who were interviewed a week after the election said they thought they were in a recession. To some extent they were right. They were in a recession, because their wages had either been frozen or had declined since about 1985.

None of us can be satisfied with the fact that the job leader in this recovery is not IBM. It is not General Motors; it is not Wal-Mart; it is a company called Manpower Services. Ever hear of Manpower Services? It is a company that offers jobs with no benefits, no health insurance, no retirement.

How does that reward work? Economists like to point with pride to the fact that productivity and profits are reaching all time highs. but you cannot talk increased productivity and explain that as long as stockholders are making money, it is OK for them to ignore the rest of America. And that is exactly what is happening today in American society.

When I grew up as a kid in the Detroit area in the 1950's and 1960's, if you went to work for GM or Ford or Chrysler, like many of my friends did, and you helped boost the profits of those companies, you got a piece of the pie. That is the way it worked. You got decent salary increases. You got decent benefits. But not today. Let me illustrate that.

From 1947, right after the Second World War, to 1973, American workers gave their companies almost 90-percent increase in productivity. From 1947 to 1973, 90-percent increase in productivity. And in turn, they got back 99-percent increase in wages. Look at the figures from 1973 to 1982. Workers only got about half as much. From 1982 to 1994, they got about one-third as much.

So what is happening is that workers are working harder. They are working longer. They are as productive and, in many instances, more productive, and yet they are not seeing their standard of living increase.

In fact, if you look at where all the increase in income has come into America in the last 10 years specifically, you will find that 97 percent of income increases in America have gone to the top 20 percent of the population in terms of income-earning ability.

The rest, 80 percent, the rest, 80 percent of America, has either stayed frozen or their wages have decreased.

Despite a bumper last year in terms of jobs in our society, we have the slowest increase in wages since we have historically begun to keep track.

The fact is, hard work has not been rewarded. And yet we give these people $225 billion a year in corporate welfare, as my friend from New York has pointed out.

If we are really going to renew America civilization, we have got to focus on renewing the contract between employers and workers and not just the Contract With America. We have to renew that basic contract that if you put in a good day's work, you should be rewarded for it. There is some reciprocity there.

Mr. OWENS. We heard previous speakers give us a progress report on the Contract With America. Do you see, after that contract is fulfilled at the level of the House of Representatives, and assuming that they pass most of the legislation related to the contract, do you see any impact on the lives of American working people? Will they be better off then than they are now?

Mr. BONIOR. It is interesting, I listened to their special order, and a couple of things that were mentioned. First of all, not to the point that you mentioned—well, I will get to the point that you mentioned, then I will return to my other point.

I do not. I do not know how these process votes, line item veto, balanced budget amendment, which will not spell out where they are going to go with the balanced budget, some of the amendments that we considered in bills that we considered today, how they will have a specific affect on increasing people's living standards and increasing the spiritual awareness and the spirituality of their lives. I do not see any of that really having a direct effect on people's lives.

The other point I wanted to make, in the special order that our colleagues gave this evening, they talked about how we had bottled up a lost of this legislation. Not so. Four of the pieces of legislation that we have passed so far we had on this very floor. We talked about the Congressional Accountability Act. In fact, it was our bill. We passed it. It was killed in the Senate by a Republican right before the end of the session. We brought line item veto to this House floor last year. We brought the balanced budget amendment to the floor last year. It did not pass. Both of them did not pass. So the question that we have been bottling things up is absolutely inaccurate.

One thing that you will not find in the contract is the word ''jobs.'' Another thing you will not find in the contract, two words, ''good wages.'' You will not find that in their contract. Their contract does nothing to mention the question of minimum wage, which my friend from New York talked about a little earlier this evening. The minimum wage is a very important issue for this country, and it is not just teenagers we are talking about, who are trying to earn a few bucks on the side. We are talking about working people.

Most people on minimum wage are over 26 years of age, and the represent in their earnings about 40 percent of the incomes of their families; 60 percent of these people are mothers. Most of them have kids that they are trying to provide for.

If we are really going to renew this American civilization, we have got to get back to the contract between workers and their employers. And one of the first things we can do is increase the minimum wage.

Now, we are not alone. The gentleman from Vermont [Mr. SANDERS], the gentleman from New York [Mr. OWENS], the gentleman from Michigan [Mr. BONIOR], we are not alone in calling for this. We have about 80 percent of the American people think that we should increase the minimum wage. You will not live on $8,600 a year, especially if you have children.

□ 2240

It is virtually impossible. It is below the poverty level. In fact, the poverty level line in this country has been going up steadily as our society expands, but the cost on the minimum wage has been going down, so there is a deepening gap between those who are working and those who are collecting welfare, in many instances. That is not rewarding work. We have to get back to rewarding work. If you work, you are going to be rewarded for it.

It was a Republican, Christine Todd Whitman, who said it best. The day after she delivered the Republican response to the State of the Union, she said, and I quote, ''Obviously, in my State, if you try to live on a national minimum wage you couldn't do it. It is a sustenance wage.'' The minimum wage in her State is $5 an hour. Nationally, it is $4.25, which is about $8,600 a year. The average Member of Congress makes that much in 28 days. The average CEO of a Fortune 500 company makes that much in 28 hours, 28 hours.

Mr. Speaker, these are the people who work in our hospitals, who change our bedpans, who do tough, often dirty, often demanding work, and they ought to be compensated for it.

Mr. Speaker, as I said before, the average minimum-wage worker is not some pimply faced teenager who is trying to earn money for the weekend. Two-thirds of them are adults, and many of them with families. People have to ask themselves, ''Could you keep a family on $9,000 a year?'' These are the people who are working 40 hours a week, sometimes more, yet they are living in poverty today.

What does that say about rewarding work? We are going to be doing welfare reform soon. It seems to me if we are going to be serious about it, we have to face this basic issue. When we raise this issue, some of our friends on the other side of the aisle say ''Well, we will trade you. We will make you a swap.'' It is like you are collecting baseball cards as kids, I will give you a Mickey Mantle for a Ted Williams, or if you are lucky enough to have a Mickey Mantle or a Ted Williams, it is a swap. What they want to trade, BOB DOLE said it last week on one of those Sunday talk shows, he said: ''We will consider it if they give us a reduction in the capital gains tax.'' So basically he wants to swap raising the minimum wage for the people who make the least in our society for a tax cut for those who are making the most in our society. That is what we are dealing with here.

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

Mr. OWENS. I yield to the gentleman from Vermont.

Mr. SANDERS. Mr. Speaker, it is a pleasure to be here with my friend the gentleman from Michigan [Mr. BONIOR], and my friend, the gentleman from New York [Mr. OWENS].

We have heard a whole lot about the November 8 election and the so-called mandate. I would say that the most interesting aspect of the November 8 election is that 62 percent of the American people did not vote. We do not discuss that. Always, it seems to me that the more important the issues are, the less discussion takes place here on the floor of the Congress. With 62 percent of the people not bothering to vote on election day, Mr. Speaker, with poor people virtually not voting at all, many working people not bothering to participate, what that tells me, Mr. Speaker, is that the ordinary American is by and large giving up on the political process, does not have very much faith that the U.S. Government is capable of responding to the terrible pain and to the terrible problems those people have.

What in fact the ordinary people see, I think, is a lot of talk going on here in Congress, the White House, the Senate, and meanwhile the rich get richer and the poor get poorer, and the middle-class shrinks. Forty million Americans continue not to have any health insurance.

As the gentleman from Michigan [Mr. BONIOR] and the gentleman from New York [Mr. OWENS] said, the minimum wage in terms of real purchasing power continues to decline. More and more of our young people are unable to get a college education. We have the dubious distinction of having the highest rate of childhood poverty in the industrialized world. Twenty-two percent of our kids are living in poverty. Five million of our children are hungry. We hear here on the floor of the House, at a time when the richest 1 percent of the population owns more wealth than the bottom 90 percent, what we are hearing here on the floor of the House, we have to cut back on Medicare, we have to cut back on Medicaid, we have to cut back on veterans' programs, we have to cut back on nutrition programs for the elderly and for hungry children. That is what the Republican contract is about.

In the meantime, as the gentleman from Michigan [Mr. BONIOR] and the gentleman from New York [Mr. OWENS] have indicated, it is absolutely imperative that within that context, with the wealthiest 1 percent owning 37 percent of the wealth in America, obviously what we must do is give them more tax breaks. That is only fair. You cut back on nutrition programs for hungry children and you give the wealthiest people in this country more tax breaks, and of course, at the same time as we significantly expand military spending. That obviously makes sense to somebody, I am not sure to whom, but it must make sense to somebody.

Mr. BONIOR. If the gentleman will yield, I have heard that formula before. Could the gentleman from Vermont maybe refresh our history and tell us, where have we seen that defense increase formula, tax cut formula, and what was the result of that?

Mr. SANDERS. Obviously, that is what Reagonomics was about. That is

what the 1980's was about. During the 1980's, the richest one-half of 1 percent owned 55 percent of the total wealth that was created in that period. In the midst of all of this discussion, however, what frightens me the most is that ordinary people look out, and they are hurting very, very badly, as both of you have already talked about. The new jobs that are being created are low wage jobs, part-time jobs, temporary jobs without benefits. Yet, I do not hear a whole lot of discussion about those issues on the floor of the House. We spend weeks and weeks discussing this, and we discuss that, but suddenly, somehow, we do not talk, in my view, about the most important issue. In my humble opinion, the most important issue facing this country is the role of big money. Big money, and I must say, in all due respect to my friends, controls not only the Republican Party, has tremendous influence over the Democratic Party, has tremendous influence over the mass media.

Interestingly enough, when we hear about the Contract With America and how they want a citizen legislature, they forget to talk about campaign finance reform.

To the best of my knowledge, and maybe my friends here can correct me if I am wrong, my understanding is that today, or before the last election, some 20 percent of the Members of Congress were millionaires. Does that sound right to my friends?

Mr. OWENS. I think the gentleman is correct, but the important thing is that on election day, even though there was a turnover, and the 36 percent or 37 percent who went out to vote did vote for a major change, the exit polls, the interviews at the exit polls, indicated that people were voting because of their anxieties and their concern about their own incomes and their jobs.

We have not addressed that, as you said. Millionaires are obviously the favored concern here. We have just gone through a situation where, you know, when Congress refused to consider or indicated that it would not favorably consider a $40 billion bailout for Mexico, a $20 billion bailout was voted from the White House, and millionaires obviously are a great concern here, because we hear much more talk about a capital gains tax cut than we hear about a program to create jobs.

Millionaires are obviously in favor here, because it took some coaxing to get a proposal on the table for a minimum-wage increase. At least we have that and we are going forward. Most Americans agree, over 80 percent agree, that a minimum-wage increase is very much in order, but there seems to be no great deal of enthusiasm in the leadership of our party.

We are in a situation where the people who are controlling the greatest part of the wealth, and getting wealthier at a faster rate all the time, are the people who seem to be of greatest concern to Congress, while those who have the greatest anxieties about their jobs and are worried about losing their jobs and not earning adequate income are being ignored totally.

Mr. SANDERS. If the gentleman will yield, let me just pick up on that perceptive point. We hear over and over again about welfare reform. We all agree that welfare reform is important. What we do not hear a whole lot is corporate welfare, the well over $100 billion in Federal subsidies that are going to large corporations and wealthy people.

We hear about street crime, which is a very serious problem, but we do not hear a whole lot about corporate crime, about price-fixing, about monopoly power in this country.

Right now, at a time when the wages, the real wages of American workers are in decline, interestingly enough, what is happening to the income of the CEO's? The reality is, of course, that the CEO's are earning significant increases in their income, at the same time as they are cutting back on jobs in America's major corporations.

One of the interesting facts, to my mind, that we do not talk about enough is the fact that CEO's in America today, the heads of the largest corporations, are earning 149 times more than the average worker in their company. What about justice? What about family values? What about morality?

□ 2250

In fact, there was an interesting study done recently which showed that some of the highest paid CEO's who received the most significant increases in their incomes were precisely those CEO's who laid off the most workers. They seemed to get more money, they get incentives to lay off workers.

Mr. OWENS. Will the gentleman slow down for a minute and explain what a CEO is, and let the American people understand what we are talking about in terms of the kinds of salaries or the kind of what they call a total remuneration package we are talking about? The average American CEO I understand makes no less than $1 million and some of them make above $20 million. People ought to understand we are talking about $20 million in total compensation packages, salary, pension, et cetera.

Mr. SANDERS. If the gentleman will yield, a recent study showed that the CEO's of 23 of the Nation's 27 top job destroyers, these are the large corporations who are downsizing, who are throwing workers out onto the street, those particular CEO's received raises last year averaging 30 percent. So in other words, it is good for business. We are going to really reward you, give you a major increase for throwing workers out on the street. The more you throw out, the bigger the increase would be.

Mr. OWENS. Thirty percent equals what? Give us some examples in terms of the kind of amounts.

Mr. SANDERS. We are talking about people like Mr. Eisner of Walt Disney earning well over I believe $100 million in income a year.

Let me mention something else, because the problem goes well beyond just the United States. There was a study also done recently, when we talk about the world economy, if you can believe this, that 358 billionaires worldwide have a combined net worth of $760 billion, which is equal to that of the bottom 45 percent of the world's population. That is 358 people who could sit, probably not so comfortably, but we could get them into this room right now, own more wealth than several billion people who constitute the bottom 45 percent of the world's population.

Again, in our country the richest 1 percent of the population owns more wealth than the bottom 90 percent.

Now I have not heard too much in the Contract With America about that. Maybe I missed it, but I do not think I heard that. Did the gentleman hear that?

Mr. OWENS. The Contract With America does not talk about a number of things that ought to be put on the table. It certainly does not talk about the tremendous wealth of this country and how the wealthy are increasing at an escalating rate, increasing their profits while we cannot contemplate an increase in the minimum wage to $5.15 an hour. The contrast is overwhelming. We are the richest country that ever existed in the history of the world, and we take the position, or the position is taken in the contract for America that there is no room in there to provide a job for everybody, there is no room in there to provide health care, there is no room in this Nation and no resources to provide health care. And we do have 12 million people who are unemployed workers. And we said before the official statistics at 5.7 percent would give us 7,498,000 unemployed workers. That is what we admit officially that we have. If you take those part-timers who are looking for full-time work, and you just count half of them because they are only working half time, you have another 2,346,000 people who are out of work. Discouraged workers who have not been looking for work for the past week are 1,783,000. Discouraged workers not looking in the past year, 440,000.

These are figures that come from the Economic Policy Institute and they all add up to about 12 million people who are unemployed in this Nation.

There is work to be done. It is not that there is no work to be done. We do need to build schools. We do need to take care of our infrastructure in terms of roads and highways. We do need to have workers in programs like Head Start and some other programs of the kind that were mentioned in the stimulus package that the administration introduced last year and it was passed on the floor of this House. Those kinds of programs are still needed to put people to work.

It may be that there is some great adjustment taking place in the global

economy and that private enterprise will be able to provide all of the jobs we need by the year 2000. But right now there is a lack of jobs, and there is a need to address the problem of people's anxiety about jobs and those, of course, who are unemployed by the fact that they do not have any jobs. So we need a program right now to deal with the needs of 12 million people.

Mr. SANDERS. I would just like to make a couple of points. Our Republican friends raise important issues and I think good issues and they talk about values, and values, in fact, are a very important part of what human life is. Life is not just dollars and cents; it goes deeper than that. But I have to raise the question about what kind of value system are we operating under when the very wealthiest people become wealthier, when we see a growth of billionaires at exactly the same time as we see more children in America who are hungry. What about those values? I yield to my friend.

Mr. BONIOR. And what about the values of a society that fails to adequately reward work for those who are working and trying to work their way up in our society today? What does that say about a family, for instance, where because both parents might be working, one might be working at a minimum wage job, the other working at a regular, full-time job, perhaps on a different schedule, a different shift, one is working 7 to 3, the other one is working maybe 4 to 11 in the evening and they do not see each other. The husband and wife do not see each other. They do not have a decent relationship because of it, and they do not spend time with their children. I saw a recent study that came out that said that people who are in that particular situation, the mother comes home and she spends 20 minutes with the children. The father comes home, he spends 5 minutes, and the rest of the time the kids are in front of the TV set, 3 or 4 hours a day. And they are not really getting very good quality stuff. I mean, they are tuned in to stuff where the kids are killing kids, and there is violence to an over extent even on the news. It is just not a good environment, and it does not facilitate the values of family, of love, of dignity, of working together as a unit. And it certainly does not speak well of our inability to try to help families like that in terms of their income and making their lives more decent.

Mr. OWENS. I yield to the gentleman from Vermont. We also have been joined by the gentleman from California [Mr. BECERRA], if he would like to take the other mike over here.

Mr. SANDERS. All of us are members of the Progressive caucus, and some of those issues have already been raised, some of the ideas we are bringing forth that we think this Congress must deal with. As both the gentleman from Michigan [Mr. BONIOR] and the gentleman from New York [Mr. OWENS] have said, it is very clear we need to raise the minimum wage; $4.25 does not make it. We need to raise the minimum wage.

The President has come out with a proposal raising it 90 cents over 2 years. I think that is the minimum we should do, but we have to move quickly and raise the minimum wage.

The gentleman from New York [Mr. OWENS] has been talking about a very, very important issue. He points out we have billions of people who are unemployed. We have an infrastructure in this country that is crumbling. It makes no sense at all not to invest in our infrastructure, put over a million people to work rebuilding our physical and human infrastructure through a federally funded jobs program. We need to move in that direction.

I think we four are in agreement that one of the reasons that the standard of living of working people is in decline has to do with our trade policy, which seems to be exporting jobs rather than product. We now have $150 billion in trade deficits this year which could equate to some 3 million jobs. Many of us in Congress are concerned about the impact of the NAFTA, GATT, most-favored-nation status with China. We want a fair trade policy, one that does not force American workers to compete against Chinese workers who make 20 cents an hour or the desperate people of Mexico who make $1 an hour.

□ 2300

Further, at a time when there are some people who are talking about cutbacks in Medicare and Medicaid, most of us believe that it is absolutely insane now that the cold war is over to be talking about a $50 billion increase in military spending. We are now spending $100 billion a year defending Europe and Asia, and many of the countries in Europe are now wealthier than we are. Against whom? Whom? One hundred billion dollars a year. We must cut military spending, reinvest in America.

And I think the last two points that I would make, and this chart deals with one of them, the Republicans have been very successful in making everybody antitax. The real question that we should be asking is, who is paying the taxes, who gets the tax breaks?

Many of us support a tax cut for middle-income people. But we do think that the wealthiest people in this country who have gotten wealthier, we think that in terms of the corporate income tax, what you can see from this chart is that the percentage, the contribution, the corporations are making to the Federal coffers have declined precipitously over the last 50 years, and that means middle-income people are making up the difference. We want to make a progressive tax.

Mr. BONIOR. The chart shows that in 1945 corporate, as a percent of Federal receipts from corporate income tax, was about 35 percent in 1945. In 1985, it looks like from the chart it went down to about 10 percent. Is that correct?

Mr. SANDERS. That is correct.

Mr. BONIOR. That is an amazing decrease. I mean, it is more than double the percent in decrease from 35 to about 10 or 12 percent now, back up to that in 1990. As a result of that, that has to be made up somewhere either in reduced services, which we certainly have had, but also in increased revenues that have been made up by the middle class. That is one of the reasons you have seen the stagnation in living standards of middle-income people.

Mr. OWENS. We need a total overhaul of the tax structure. The personal income tax pits one group of Americans against another. Corporate income tax makes a great deal of sense.

Taxes which are focused on businesses which are accumulating wealth and on individuals accumulating wealth are the taxes that ought to be raised to take care of our needs, and there are many needs that must be met with taxes, but the personal income tax should not bear the bulk of the burden as they are at present.

I think the gentleman from California [Mr. BECERRA] would like to show us a little bit more about taxes and the kind of swindle that is being proposed by the Contract on America.

Mr. BECERRA. I thank the gentleman for yielding to me. I am glad I have a chance to engage in the conversation with the three gentlemen who have spoken eloquently on this issue.

It seems to be absurd. We are talking so much these days about reforming welfare, and we always seem to forget that welfare comes in many shapes and in many sizes and in some cases big sizes.

When you take a look at the fact that welfare, as most people think of it, welfare to a woman and her children who cannot afford to live without some assistance from the Government, we are talking about something in the order of about $16.5 billion is what we give out to people who are poor and who need some assistance.

Contrast that to welfare that we do not think of very often, but welfare that we give to corporations, welfare to the tune of about $225 billion per year, money that we pay out as taxpayers by giving corporations tax breaks, letting them off from paying certain taxes. We have to make that up.

So in this whole discussion that I hear going on about the minimum wage, about welfare reform, about trying to do something for the working man and the working woman, I think it is interesting to note a program that helps 10 million children that are in poverty is being discussed for radical, in many cases, reform, but programs that help corporations to the tune of $225 billion are not touched. In fact, Secretary Reich, from the Department of Labor, was criticized because he recently talked about reforming corporate welfare and the discussion about all of welfare reform.

It seems to me even more difficult to comprehend this whole debate about reform when you look at the Republican Contract With America, and one of its proposals not only of reforming, so-called radical reforming, welfare, but also cutting the capital gains that will go mostly to wealthy Americans.

And there I would refer my colleagues to chart. We want to find out what the Contract with America really does. Well, first, it guts welfare for the 10 million children who are in poverty, and at the same time, of course, the Contract with America says let us cut or let us give a tax break to those who have capital gains. In other words, if you own stock or if you happen to have a stamp collection or priceless art, and you want to sell that, you do not want to pay certain taxes on that capital gain, you want to be able to write some of that off.

Mr. OWENS. I earn wages, and all of the wage earners of America pay taxes on their wages. Do they pay the same, pay taxes at the same rate that are currently on capital gains?

Mr. BECERRA. Not at all.

Mr. OWENS. Capital gains are a form of income also, by the way.

Mr. BECERRA. That is correct.

Mr. OWENS. It is mostly income you do not work for on an hourly basis. Is it presently taxed at the same rate as wages are taxed?

Mr. BECERRA. Drastically differently. Wages are fully taxed. Capital gains are not. The proposal that the Republicans have in their Contract with America says let us give them a further break in their capital gains, but the interesting thing about this is who benefits, and if you look at the charts, you see really who will benefit. As Laura D'Andrea Tyson said, and she is the President's Chief of the Council of Economic Advisers, fully 75 percent of those capital gains will go to the 10 percent richest Americans.

Mr. OWENS. Will the gentleman repeat that? Seventy-five percent?

Mr. BECERRA. Seventy-five percent; the 10 percent of richest Americans in this country will receive 75 percent of the tax cuts in the capital gains proposal in the Contract with America, and you can take a look. If you happen to earn somewhere between $30,000 and $40,000, every American family that has income of about $30,000 to $40,000 stands to get about 2½ percent of those capital gains cuts. That is sharing the wealth under the Contract on America.

Mr. BONIOR. In the Contract on America, also the tax cut package that the Republicans are advocating, I wonder if the American people understand what that will cost in terms of revenue to the Federal Government.

Mr. BECERRA. There are estimates it might be over $250 billion over 5 years. The capital gains program alone will cost about $55 billion the first 5 years. There are some estimates that after 10 years that goes up to about $210 billion.

Mr. BONIOR. On the capital gains portion.

Mr. BECERRA. On the capital gains portion of the proposed tax cuts only.

Mr. SANDERS. Are these the same group of people who are talking about cutting back on nutrition programs for hungry people and senior citizens because we have a terrible deficit? I just wanted to be clear. I was a little bit confused. Are these the same folks?

Mr. BECERRA. That is correct. These are the same folks, too, who are saying we cannot afford to increase the minimum wage from $4.25 an hour.

Mr. BONIOR. Are these the same folks that want to cut back veterans' benefits as well?

Mr. BECERRA. The same ones that would probably cut veterans' benefits. Somehow we are going to have to balance the budget and give these tax cuts and still raise spending for defense, for military, and somehow with what is left in the budget to look at, not cut Social Security, not cut Medicare.

Mr. BONIOR. There is a rumor going around here they also want to cut Medicare as well significantly for the elderly.

Mr. BECERRA. That is right; that is right. You know, we should look at something here. Right now, the capital gains that we have in law right now costs this country between now and the next 5 years about $94 billion. We are already paying $94 billion for that. That, if you think about it, amounts to about $362 for every man, woman, and child in this Nation, $362 that each American has to somehow make up for either through other taxes, personal income taxes or cuts in programs like Social Security, Medicare, Head Start, job training. Somehow we have to make up that $94 billion over 5 years. It does not just come freely.

Either that or you increase the size of the deficit.

So we have to take all of those things into consideration. Then you look at the minimum wage, and it is interesting, over the weekend on some of the TV talk shows, we heard a number of Republicans say that they opposed raising the minimum wage. They thought it was a job killer. They did not want to see it happen.

But then all of a sudden you ask them, well, what happens if you get the capital gains tax cuts in exchange? All of a sudden they change their tune. All of a sudden, well, maybe they are willing to trade. Sure, would you not be willing to trade if you could get a $94 billion tax break and increase that to about $55 billion for the next 5 years, and up to $208 billion for the next 10 years, in exchange for 90 cents an hour more for people who are low income and barely surviving at the poverty level?

Mr. OWENS. I thank the gentleman. I hope at this point each one of you could sort of sum up and show how all of this ties together, when you give the multibillion dollar tax cuts, and you have to go and cut something out of the budget, and what we have here is a display by what I call some high-technology barbarians who are approaching the situation without any heart at all. They want to throw a large part of American humanity overboard and just say we do not care; we do not care whether they have homes, we do not care whether they have food, we do not care whether they have medical care, we are going to help the rich get richer.

It all ties together. They cannot help the rich get richer without committing these atrocities against the poor and atrocities are committed these days in ways where you do not have blood. When you refuse to raise the minimum wage, that is a kind of an atrocity. When you are going to force welfare mothers to get off welfare after 2 years and not bother to try to create an economy which is going to produce jobs for them to step into, those are atrocities without blood.

□ 2310

We have to see how it all holds together and make the American people understand that the Contract With America, which many of us call the Contract on America, is a very deadly approach indeed. We are dealing with a deadly approach to government which runs counter to the whole principle of government and the fact that society exists to take care of everybody, not just a few. The social order is threatened when you refuse to recognize the need to take care of all of the people.

I yield to the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. It think maybe we all want to summarize our views, and the fear that I have is that this country increasingly is moving away from our democratic traditions into an oligarchy, and all that those tax breaks for the wealthy do is they make the people on the top that much wealthier, and with that money what they do is buy television networks.

I understand that the Speaker last night was at a fund raiser, a nice little dinner, I guess, and it only cost $50,000 a plate to go to that dinner in order to contribute to a TV network which will further propagate the rich person's point of view.

Mr. BONIOR. And the gentleman should note that those $50,000 contributions to that dinner were tax deductible because they went to a foundation that promoted this program that we have been criticizing.

Mr. SANDERS. And the rich get richer, and meanwhile with that money they can contribute huge amounts of money to both political parties.

This institution itself, 20 percent of the Members at least are millionaires. We expect that with the high cost of elections more and more millionaires will write out their own campaign checks and run for office.

The answer, I think, is that working people, middle income people, low income people all over America, have got

to stand up and say, ''Excuse me. This country belongs to all the people and not just the very wealthy. You can't not vote. You can't not participate in the political process.''

The big money people are here every single day. I say, ''We need your help. Stand up. Fight back.''

Mr. OWENS. I yield to the gentleman from Michigan [Mr. BONIOR].

Mr. BONIOR. I just want to thank my friend, the gentleman from Vermont [Mr. SANDERS], and the distinguished gentleman from New York [Mr. OWENS], and the gentleman from California [Mr. BECERRA] for participating in this hour and for allowing me to share some thoughts with them.

I guess in summation I would say that we live in a society with relatively limited resources with respect to how we operate here at the Federal Government level, and it seems to me, and I think it was demonstrated well by the discussion we have had and the charts that we have seen, that the very wealthy in our society have done extremely well, the most comfortable people in America have done incredibly well, particularly since 1979 when the rest of America had basically held on or their standard of living has decreased.

The question is how do we bring some equity into this equation? How do we deal with bringing people into the middle class who are not there, bringing people off welfare and into a work situation where they can have some pride, dignity and raise their kids with a decent future ahead of them? How do we provide for the middle income people to put money into their pocket with respect to providing tax cuts for them and not for the wealthiest in our society?

I think that is the challenge that we have. The goal in this country often for many people is to have some, to acquire some sort of wealth, and there is nothing wrong with that, but when you are dealing with limited resources, you have to make sure that those who need it the most have the opportunity to share in those resources.

So, I thank my colleagues for yielding, and I look forward to working with them on these issues.

Mr. OWENS. Mr. Speaker, I thank the gentleman from Michigan [Mr. BONIOR].

I yield to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. Mr. Speaker, I will be brief because I think my two colleagues preceding me did a very fine job of summarizing what we are trying to say. All I would like to say is that we should take a little bit of time and think about what we mean by reform regarding welfare. You know, what is it and who really gets it? Then, once we do that, once we think about it, let us reform welfare, let us reform it so that we get people and corporations off of welfare, and let us make sure that our policies reward working people and not continue to lavish very costly tax breaks on the rich, and we should remember that the rich are the only group of people who made off like bandits during the Reagan years when we had exorbitant spending, and now we should come back and look at 1995 and say, ''It's time to reform, but what is reformed, let's do it right.''

Mr. OWENS. I thank the gentleman from California [Mr. BECERRA] for the closing remarks.

Mr. Speaker, I submit two articles, one which appeared in the New York Times on February 6 entitled ''Farmers Brace for Stormy Debate over Subsidies'' which contains many of the facts concerning agribusinesses on the dole, and a second article that appeared on Tuesday, February 7, entitled ''Now, After $36 Billion Run, Coming Soon: 'Star Wars II'—The New G.O.P. Plan Is Smaller but Still Costly.'' It also gives facts about increasing defense expenditures at a time when we are cutting programs for the poor.

The articles referred to are as follows:

NOW, AFTER $36 BILLION RUN, COMING SOON: ''STAR WARS II''—NEW G.O.P. PLAN IS SMALLER, BUT STILL COSTLY

(By Eric Schmitt)

WASHINGTON, February 6.—Twelve years after President Ronald Reagan first proposed his ''Star Wars'' antimissile system that ultimately cost $36 billion, provoked much debate and built nothing, Republicans are pressing to revive it, although in a vastly different form.

Mr. Reagan's dream of erecting an impregnable astrodome to shield the United States against an onslaught of Soviet nuclear-tipped missiles dissolved with the end of the cold war. But in its place has risen a smaller, but still very costly, plan to defend the continental United States against a nuclear, chemical or biological attack from more than a dozen rogue nations like Iraq or an accidental strike from Russia.

''One day, mathematically, something bad can happen and you ought to have a minimum screen on a continentwide basis, and that's do-able,'' Speaker Newt Gingrich of Georgia told reporters last month. ''And I think compared to the loss of one city, it is clearly a very small investment, although it's a lot of money over time.''

Republicans want to more than double what the Clinton Administration is spending to develop a national missile defense, to at least $1 billion a year from $400 million a year now. At a time of exceedingly tight budgets, experts say such a network would cost $5 billion to $35 billion, depending on its coverage and complexity, and could never guarantee complete protection.

The new ''Star Wars'' debate puts Republicans on a collision course with the Administration over how quickly and at what cost the United States should deploy a national system. The Pentagon is developing national defenses, but at a slower pace than Congress wants. Given that senior American intelligence officials say a serious long-range missile threat from countries other than Russia or China is still 10 years away, President Clinton's priority has been to build better defenses for troops overseas to shoot down shorter-range missiles similar to the Scud rockets that Iraq launched against Israel and Saudi Arabia in the Persian Gulf war.

Hanging over the growing debate is a sore reminder of past mistakes: So far, the United States has spent $36 billion on ballistic missile defenses since 1984 without one working system to show for it. Billions were poured into exotic space weapons and laser beams that gave the program its fanciful ''Star Wars'' nickname. Even the most hawkish generals at the Pentagon fear that ratcheting up financing for national defenses will only bleed away dwindling money for training, new barracks and advanced fighter jets and warships.

Representative Curt Weldon, a Pennsylvania Republican on the House National Security Committee, is one of many missile-defense supporters who say the painful debate of the 1980's taught some hard lessons. ''The problem with 'Star Wars' was we gave the program a large blank check without holding the appropriate officials accountable,'' Mr. Weldon said. ''That's not going to happen again. This will not be a black hole.''

While Republicans express general support for a national missile defense, there is no consensus among them on important issues like cost, when to put such a system in place or what technical design it should have.

''There are still a lot of outstanding questions,'' acknowledged Senator Daniel R. Coats, an Indiana Republican on the Armed Services Committee.

Legislation that carried out the Contract With America, the House Republicans' political manifesto, directs the Administration to field ''a highly effective defense'' of the United States ''at the earliest practical date,'' but offers no other details.

''This proposal is broad and vague,'' Representative John M. Spratt, Jr., a South Carolina Democrat who is a leading Congressional authority on missile defenses, said at a hearing of the National Security Committee last week. ''Is it ground-based? Space-based? You haven't defined deployment. I don't think you've laid down a policy here.''

Indeed, the legislation, which the House will most likely approve later this month and send to the Senate, leaves it up to Defense Secretary William J. Perry to draft a deployment plan within 60 days after the bill becomes law.

After the pitched battles between the Reagan and Bush administrations and Congress, the debate over missile defenses died down when Mr. Clinton took office two years ago. Republicans and Democrats alike agreed to improve the country's battlefield, or theater, missile defenses after Iraq fired dozens of Scud rockets in the Persian Gulf war.

Indeed, when Mr. Perry's predecessor, Les Aspin, declared the ''Star Wars'' program dead in 1993, it was already moribund. The Administration merely made it official, and earmarked two-thirds of the $3 billion annual missile-defense budget to battlefield defenses like improved Patriot missiles and the new Theater High-Altitude Area Defense, or Thaad, which intercepts incoming missiles at even higher altitudes and greater distances than the Patriot.

But the Administration did not entirely give up on a national missile defense. The Pentagon scaled it back to a research program that would be developed by the year 2000 and deployed depending on the threat.

''If the decision is made at that time to deploy, the deployment will be made very rapidly, within another few years,'' Mr. Perry said last month. Pentagon officials say the projected threat over the next 10 years does not warrant speedier deployment.

But Republicans have seized on the Central Intelligence Agency's estimate that 15 nations now have ballistic missiles, and perhaps 20 will have them by the end of the decade, to push for a faster timetable to put national antimissile defenses either on the ground or in space.

As Senator Strom Thurmond, the South Carolina Republican who heads the Armed Services Committee, put it, ''Defense of our homeland against direct attack is a priority enshrined in the Constitution, yet it is an aspect of our national defense that has been woefully neglected.''

Mr. Perry has said that one quick option would be to spend $5 billion over next five years to field a ground-based system using existing sensors, radars and missiles to defend against a ''thin attack,'' a relatively small number of missiles fired at once.

Some Republicans, like Senator Jon Kyl of Arizona, favor waiting, as long as the threat is low, to develop the most technologically advanced system possible, one that could include space-based sensors and interceptors.

But most Republicans say their first step will be to revive efforts to deploy 100 missiles at one site—near Grand Forks, N.D.—which is allowed under the 1972 Antiballistic Missile Treaty. The site could protect the United States' midsection, but not the coasts. The Administration had largely abandoned this option.

In 1993 the Ballistic Missile Defense Organization, the successor to the Strategic Defense Initiative Organization, which embodied the ''Star Wars'' program, said it would cost $21.8 billion to develop and build a single site at Grand Forks by the year 2004. To cover the entire 50 states would require building five additional sites for an additional $12.5 billion, the agency estimated.

Ultimately, budget pressures may dictate the size and deployment date of a national system.

''The budget hawks are prevailing,'' said Lawrence F. Di Rita, a senior official at the Heritage Foundation, a conservative research organization in Washington. ''So whatever is proposed has to be technically feasible soon enough so that the cost is bearable. This can't be a science project.''

FARMERS BRACE FOR STORMY DEBATE OVER SUBSIDIES

(By Keith Schneider)

ARLINGTON, KAN., Feb. 1—This wind-bullied land, the center of America's wheat empire since the late 19th century, is bracing for a political fight over farm subsidies like none before.

Of the 73 new Republicans in the House, 33 are from rural agricultural districts and have been at the vanguard of the movement to cut the Federal budget, curb regulations, and limit the Government's authority to interfere in business.

This more conservative Congress is writing a new farm policy law this year, the first since 1990. In every previous law since the first one was written during the Great Depression, the paramount provision has been a contract in which the Government helps to decide how much a farmer can grow in exchange for guaranteeing to pay farmers a set price for their crops.

Now, the central question is: What arguments will farmers and their conservative champions in the House and Senate use to win support for one of the most costly and intrusive Government programs of all?

Here in Reno County and in more than 2,000 other rural counties across the country, perhaps the only thing as enduring as the great vaulted sky is the money that blows out of Washington to support farm incomes. In the last 10 years, $149 billion has been spent on crop subsidies nationwide, nearly $8 billion of that in Kansas alone. Farm economists say Kansas farmers typically gain $20,000 to $40,000 annually, far more than is received by families on welfare.

Those indisputable facts of economic life in Kansas and other farm states are now fueling a battle in Congress that is being sharpened by deepening concern about costs.

Senator Bob Dole, the Kansan who is majority leader, and Representative Pat Roberts, the Kansan who is chairman of the House Agriculture Committee, have both been advocates for cutting the Government, returning more power to the states and balancing the Federal budget. But both lawmakers have protected farm subsidies for years, particularly for growers of wheat, the state's most important crop.

In a speech last month in St. Louis to the American Farm Bureau Federation, Mr. Dole, who has helped shape farm policy since he entered Congress in 1961, was guarded as he discussed the coming debate, saying only that ''some cuts will be made'' in farm programs.

Mr. Roberts has been more voluble. In an interview, Mr. Roberts defended the subsidies, saying that nationwide they had decreased to $10.2 billion last year from $25.8 billion in 1986. Still, Mr. Roberts's 66-county Congressional district, which includes Reno County, received $5.45 billion in farm subsidies over the last decade, more than any other, according to the Environmental Working Group, a policy analysis organization in Washington.

Mr. Roberts vowed to defend those payments and his constituents from being a target for budget cutters. ''Farmers have already given at the office,'' he said. ''I will make sure that if there are additional cuts, they are not disproportionate on farmers.''

Opposing the Kansas lawmakers is Senator Richard G. Lugar, Republican of Indiana and chairman of the Senate Agriculture Committee. He said in an interview that farm subsidies were justifiably seen as a test of Republican resolve.

''We are being taunted with it almost daily,'' said Mr. Lugar, who owns a farm. ''Will we act? I would guess that subsidies will be cut at least in half over the next five years. But I also see phasing out subsidies in five years, if not completely then in such a way that there is only some minimal safety net.''

Here in Reno County, where most of the 1,540 farms receive crop subsidies, growers are nervous even as they acknowledge being somewhat embarrassed about accepting Government handouts.

''It's like insurance,'' said Ronald Jacques, who votes Republican and raises wheat and other crops on a 2,000-acre farm 10 miles west of here. ''It's not all of your income by any stretch, but it's a help. It's something you can count on.''

Budd Fountain, a retired employee of the United States Department of Agriculture who raises 1,100 acres of wheat here and received $14,000 last year in subsidy payments, said: ''If they totally did away with the program, there would be some problems. As long as Government is involved in setting the supply, then the farmer has no choice because he can't make his money from the market. The price is too low.''

Whatever decisions are made by Congress this year, the outcome will have a significant effect in counties like this one, which received $148 million in farm program payments over the last decade, according to the Environmental Working Group.

No policy ever devised by Congress has such power to shape so much land and so many lives. It is a policy that farmers eagerly accept even as they complain about the rules, the bureaucracy and the Government's control of grain markets.

When the Government called for maximum production of grain in the 1970's, farmers here cut down trees that served as wind breaks in order to plant every available acre.

In the 1980's, when storehouses bulged with surpluses, the Government paid farmers to plant grass to conserve topsoil, making a quarter of the flat land here look like it did over a century ago, before the prairie grasses were plowed under.

But taking so much land out of production also reduced the amount of seed, fertilizer and farm equipment being used, and limited the demand for storage space in the big white grain elevator hugging the railroad tracks here. Farm supply stores went out of business, and the grain elevator was sold.

In interviews here this week, farmers said they would gladly give up subsidies if the Government also agreed to withdraw from setting supplies. By controlling the supply, the program controls demand and thereby prices.

Without being able to control supply, they said, farmers have little choice but to take the handouts because the prices they have received at the market for wheat—from $3.02 to $3.72 over the last decade—are below the cost of producing it.

The program for wheat, which is similar to those for corn, feed grains, rice and cotton, pays farmers the difference between the market price for their crop, and a higher ''target'' price that is set by Congress. Last year, the difference was at times as much as 80 cents a bushel. The wheat program cost taxpayers $2 billion, about a fifth of which went to Kansas growers.

As political pressure mounts to dismantle the programs, farmers say, consumers do not recognize the advantages of having stable grain supplies—and therefore stable prices—for such items as meat, bread and milk in the supermarket. If the programs were ended, they add, grain supplies and prices would be much more erratic.

''One thing overlooked by Democrats and Republicans in this debate is that farm programs are really designed to give consumers cheap food,'' said Jim French, who with his wife, Lisa, raises cattle and wheat on a 1,200-acre farm in Partridge, just north of here. ''But we've seen the handwriting on the wall. In the early 1980's, we earned $25,000 one year from the program, the most we've ever had. That was our profit. Last year, our check was a little over $6,000.''

Farmers in this region offer many ideas about how to alter the farm programs to reduce their costs and make them more useful.

Nathan Stillwell, a cattle rancher and wheat farmer who lives just outside town urges the Government to relax the strict rules, and give farmers more flexibility to decide what to plant and how much. That will save money, he says, and produce benefits for the environment because it will allow farmers to rotate crops more easily, a soil-saving practice that the programs have discouraged.

Others, like Mr. Jacques, said that dismantling the programs altogether would be possible as long as other countries also ended the practice of subsidizing their farmers. Grain markets are influenced by international factors and as long as other countries continue to subsidize their farmers, Americans will be at a disadvantage, he said.

Mr. STOKES. Mr. Speaker, I believe in the same basic tenets that the Founders of the Republic believed in. America needs to live up to its pledge of being one nation that will provide every American an opportunity to earn a decent living. In today's society there can be no advancement without a decent job and a decent wage. We live in a nation which has veered away from its creed—from its pledge to all Americans—and is now called to conscience.

President Clinton has submitted to Congress his budget proposal for fiscal year 1996. Unlike the budgets submitted by Presidents Reagan and Bush, which were dead on arrival in Congress, I applaud President Clinton for presenting a budget that demonstrates his continued commitment to improving the lives of working Americans. His proposal would raise the current $4.25 hourly minimum wage to $5.15 over a 2 year period.

I support the President's position that the minimum wage should be increased. At a time when we are considering the reform of our Nation's welfare system, and putting more individuals to work, we need to be able to guaranteed our workers a wage they can live on.

Mr. Speaker, in the United States, we continue to make strides toward full economic recovery, with 1994 noted as the best year for economic growth in 10 years. Yet, we continue to have a permanent class of working poor—individuals who go to work every day but find it impossible to make ends meet. These are the individuals who must choose between health care and day care; food for their children or electricity; warm clothing for their children or mortgage payments. It is these individuals for whom this modest increase in the minimum wage will make a significant difference.

In my home district of Cuyahoga County, the percentage of households living below the poverty level is 20 percent. I therefore realize from firsthand experience why it is so imperative that we support the President's call for a minimum wage increase. I will certainly do all that I can to advance this important effort to improve the conditions of working Americans.

Mr. Speaker, in Dr. Martin Luther King's lifetime, America needed a war on poverty. It is my hope that with this small step we will fulfill Dr. King's mission to end poverty for all Americans.

GENERAL LEAVE

Mr. OWENS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the subject of my special order tonight.

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

There was no objection.

THE CONTRACT WITH AMERICA IS GOOD FOR AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. BURTON] is recognized for 30 minutes.

Mr. BURTON of Indiana. Mr. Speaker, let me just start off by saying that I have spent the last hour listening to my distinguished colleagues from the Democrat Party talking about the Contract With America and what is wrong with it. Let me start off by saying, before I get into my special order, that the capital gains tax cut that they maligned so viciously over the past hour would end up probably bringing $2 to $3 trillion of investment into the economy which would create jobs, $2 to $3 trillion.

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

Mr. BURTON of Indiana. I am very sorry. I only have a half hour, but I would be happy to have a colloquy with the gentleman at a different time.

But when people sell a farm, when people sell stocks, when people sell a business, that money just does not disappear. That money is reinvested in our society, and we are talking about two to three thousand, thousand, million dollars that would be reinvested in new plants, and equipment, and job expansion in this country. That is one of the things that they discounted.

Now their party had control of this place for the last 40 years, and during those 40 years we saw the great War on Poverty that Lyndon Johnson talked about that was supposed to eradicate poverty in one decade end up being an abject failure, and the people of this country have said, ''Enough welfarism, enough socialism. We want to get back to the free enterprise concepts that made this country great,'' and that is why the Republican Party won the majority in both the House and Senate in the last election.

Now they talked about corporate taxes. ''Let's soak the corporations.''

Corporations do not pay taxes. Those taxes are added to the price of the product. If you raise corporation taxes on the automobile industry, for instance, then they add that to the price of a car. It is the cost of doing business, and when you go to buy a car, you pay more money for that care because the corporation has a fixed profit margin in their books.

So, when you raise corporate taxes, that means the consumer is going to pay more for that car, so they in effect are paying the tax when you raise corporate taxes. The consumer always pays, and the tax and spend policies of the Democrats are the reason for their demise in the last election, and I think that everybody in the country now realizes that, at least a majority.

They talked about the Contract With America being bad for America. The fact of the matter is every one of the 10 items in the Contract With America was approved by more than 70 percent of the American people. In polling data that we got before we came up with the Contract With America, Mr. Speaker, we found the top 10 items that Americans were concerned about, and many of those items were approved or requested by more than 70 percent of the people of this country. The problems is they do not have any ideas. They are attacking our Contract With America, and they are going to lose that battle because the American people simply want the things that we put in that Contract With America to be passed by this Congress.

They want a balanced budget amendment. They want a line-item veto. They want tax fairness for seniors. They want to stop violent criminals. They want welfare reform. They want to protect our kids. They want a strong national defense. They want to roll back government regulations. All these things we are going to bring to the floor for a vote, which they would not do over the past 40 years.

□ 2320

I think the American people will see the difference very clearly in the weeks and months to come. They are seeing it already, because polling data shows American people support what the Congress of the United States is doing under the new Republican leadership.

Tonight I want to talk briefly about some unethical contacts that have taken place in the Whitewater debacle that has taken place over the last several years we have been talking about in this body and the other body, unethical contracts between the White House and the Treasury Department.

Mr. Speaker, last November 7 members of the Senate Banking Committee asked Independent Counsel Kenneth Starr to investigate possible perjury charges by two high-ranking White House officials, White House senior advisor George Stephanopoulos and deputy chief of staff Harold Ickes.

Members of the committee believe these two men lied under oath to the Banking Committee during hearings last August about Whitewater and unethical contacts between the White House and the Treasury Department. The charges against Mr. Stephanopoulos and Mr. Ickes are a very serious matter. However, this only touches the tip of the iceberg of how improper conduct within the Clinton administration was to slow down and coverup the White House investigation. Tonight I would like to review this whole matter, and the best place to start is at the beginning.

Criminal referrals from the RTC, the Resolution Trust Corporation: When Madison Guarantee Savings & Loan in Little Rock failed, its debts and its assets were inherited by the Government-run Resolution Trust Corporation.

Madison Guarantee was owned by then Gov. Bill Clinton's business partner, James McDougal, and the Governor. In March 1992, the RTC began an investigation of possible criminal activity at Madison after the New York Times broke a major story about the Whitewater Development Corp. In September 1992, the RTC sent a criminal referral, criminal investigation request, to the Justice Department. The RTC urged a thorough investigation of a ''check kiting scheme'' in which over $100,000 in Madison funds were alleged to be illegally funneled into the Whitewater Development Corp. to pay its bills. President and Mrs. Clinton were named as potential beneficiaries of this scheme.

A year later the Resolution Trust Corporation sent a second criminal referral to the Justice Department regarding Madison Guarantee. This referral contained nine specific allegations

of criminal wrongdoing. The second referral named President and Mrs. Clinton as possible witnesses.

The U.S. attorney in Little Rock, Paula Casey, had been appointed by President Clinton. She let the first referral sit on her desk for over a year without taking any action on it. She should have recused herself, excused herself from acting in that capacity in this case because she was a friend and political ally of the President of the United States. In October 1993 she formally declined to investigate any of the allegations in the first referral.

Later in October the second referral was reported in the press, and only then did Paula Casey excuse herself from the entire matter.

Here are some questions that need to be answered. Why did the Resolution Trust Corporation's first referral sit on Paula Casey's desk for over a year? Was that because of her connections with people at the White House? Why did she refuse to open an investigation into the serious charges raised by the Resolution Trust Corporation? Why did Paula Casey wait until the criminal referrals became public knowledge before she recused herself? As a friend of President Bill Clinton and one of his campaign workers, she should have recused herself immediately because of that connection. Are Paula Casey's actions being investigated by the Justice Department's Ethics Office?

Let's talk about Roger Altman and his Senate testimony. In March 1993, Roger Altman, Deputy Secretary of the Treasury, became the acting chief of the Resolution Trust Corporation. This became necessary when Treasury Secretary Lloyd Bentsen forced out the RTC chief Albert Casey. At the time, the first RTC referral involving Whitewater and Madison Guarantee was sitting on Paula Casey's desk gathering dust for over a year.

In a routine hearing in February 1994, Roger Altman testified before the Senate Banking Committee that he had participated in one substantive meeting with White House officials about the RTC referrals. Under questioning from the Senators, he testified that he could not recall, remember, any other substantive contacts. In fact, from September 1993 to February 1994, there had been a flurry of improper meetings, phone calls, and faxes between the White House and the Treasury Department about this case. Treasury Department general counsel Jean Hanson has testified that she prepared talking points for Mr. Altman—this is unethical—outlining all of the contacts that he took, outlining all those contacts, and he took those talking points with him to the hearing. Mr. Altman denied he ever saw those talking points.

The full scope of these contacts became clear when the Senate Banking Committee held full hearings on the issue last August. After the hearings, even Democrat Senators criticized Mr. Altman and his counterparts at the White House because of this involvement, one with the other,

Senator CHRIS DODD said, ''In my view, there were far too many meetings, there were far too many people involved, and the testimony gets just too cute for my tastes, quite frankly.''

Senator SHELBY. ''I think he, Roger Altman, has been less than candid. He has been very selective in his answers.'' Senators Reigle and SARBANES told Lloyd Bentsen they no longer had confidence in Mr. Altman.

On August 17, Roger Altman resigned his position after his testimony. The next day general counsel Jean Hanson also resigned her post.

Here are some questions that need to be answered. Did Roger Altman lie to the Banking Committee during the February hearings, or did he actually forget all but one of the contacts between the Treasury Department and the White House?

It seems farfetched to me he would forget all of those meetings. Did Roger Altman read the talking points Jean Hanson prepared for him before the February hearing? These talking points listed the contact.

Three, were there any other meetings or contacts that we still do not know about?

Four, how much information about the investigation of Madison Guarantee did the Treasury Department give to the White House? And this would be unethical, very unethical.

No. five, was the RTC or the independent counsel's investigation jeopardized by these contacts?

Now, why were the contacts improper? When the Resolution Trust Corporation investigates a failed savings and loan that the taxpayers are going to have to bail out, it has two avenues it can pursue. First, it can recommend investigation of criminal wrongdoing to the Justice Department. That is called criminal referrals. Or, second, it can file civil suits against people who are responsible for the S&L's failure and try to recover some of those losses. When the RTC is in the middle of an investigation, it is very important that the details remain confidential. So if Mr. Altman was talking to Treasury and the White House about these things, he sure was not keeping these things confidential.

If information about an investigation is leaked to a potential target of the investigation, that person could potentially destroy evidence, like shred files, hide assets, or take other actions to impede the investigation. If a police department investigates a bank robbery, it does not share any of the information it has with any of the suspects. And that is exactly the kind of thing that was taking place between Mr. Altman, Treasury and the White House.

Neither of the criminal referrals from the RTC accuses the Clintons of wrongdoing. However, the Clintons are named as potential witnesses in one and potential beneficiaries in the other. Many of the top officials at the White House were from Arkansas and friends of the President. Some were probably friends and political allies of targets of the investigation. Any details of the investigation could have been leaked from the White House to people being investigated in connection with the failure of Madison Guaranty which cost the taxpayers, get this, $47 million.

Now, here is the chronology of events and contacts between Treasury and the White House. In March of 1993, after becoming Acting Chief of the Resolution Trust Corporation, Roger Altman was briefed on the first criminal referral by RTC vice president William Roelle. Altman faxed a copy of the New York Times article which broke the Whitewater story to White House counsel Bernie Nussbaum, Mr. Nussbaum was the chief counsel to the President of the United States.

He later testified that he does not remember either being briefed or sending the article to Nussbaum. However, the fax cover sheet, which is a document that tells when it was sent, the fax cover sheet confirms that it did come from Mr. Altman's office.

□ 2330

So once again, he conveniently forgot something that came from his office to the White House, to Bernie Nussbaum, the chief legal counsel to the President.

September 1993, the Resolution Trust Corporation is preparing its second criminal investigation or referral. Treasury Department General Counsel Jean Hanson briefs Altman on the confidential referral. According to Hanson, Roger Altman then directed her to brief the White House on the situation, which was against RTC procedure. That, once again, is letting people who may be under criminal investigation knowing what the investigation is about. You just do not do that. Mr. Altman denies this.

September 29, 1993, Jean Hanson initiates the first formal contact with the White House. At a White House meeting, she briefs Chief Counsel to the President, Bernie Nussbaum, in detail on the referral. Also at the meeting was Clifford Sloan, a lawyer on Nussbaum's staff. Nussbaum appoints Clifford Sloan to be Hanson's designated White House liaison on the issue. She should have not been talking to the White House and here they are setting up an official liaison.

During the next several days, Hanson and Sloan have several follow up conversations on the phone.

October 4, 1993. Senior White House aide Bruce Lindsey, who is traveling with the President, informs President Clinton about the RTC referrals.

October 7, 1993, Jean Hanson calls Clifford Sloan at the White House to tell him about press inquiries into the Whitewater investigation.

October 14, 1993, a full-fledged meeting is called at the White House to discuss the RTC investigation. Attending

from the Treasury Department, Communications Director Jack DeVore, General Counsel Jean Hanson, Chief of Staff Joshua Steiner, and attending from the White House was White House Counsel to the President, Bernie Nussbaum and Senior Advisor, Bruce Lindsey. They should not have even been talking about this. Here they are having a full-scale meeting.

February 2, 1994, the second full-fledged meeting on the Whitewater investigation is held at the White House. This meeting was reportedly called to discuss potential civil claims against Madison and people associated with Madison by the Resolution Trust Corporation. Attending this meeting from the Treasury Department, Deputy Treasury Secretary Roger Altman, General Counsel Jean Hanson. Attending from the White House again, White House Chief Counsel Bernie Nussbaum, Chief Counsel to the President, Deputy Chief of Staff Harold Ickes, Hillary Clinton's Chief of Staff, Margaret Williams comes. According to those in attendance, the substance of the case was not discussed, only procedures. But once again, a formal meeting involving this investigation which should not have been discussed between those doing the investigating and those who are being investigated.

February 24, 1994, as I mentioned earlier, on this day, Roger Altman appeared before the Senate Banking Committee at an RTC oversight hearing. He testified that he attended one meeting concerning the White House investigation and denied any recollection of any other contacts. He had a lot of failures of memory.

March 4, 1994, then independent counsel Robert Fiske subpoenaed 10 Treasury and White House officials who participated in the contacts and questioned them before a grand jury. Here are some questions that need to be answered.

Did Roger Altman order Jean Hanson to brief the White House about the first criminal investigation or referral in September of 1993 as Hanson alleges? Would Hanson go and brief the White House officials without approval from higher up? I do not think so. Why would she go over there and start briefing them unless somebody asked her to do it?

Number two, why was it necessary for Jean Hanson to have a liaison at the White House with whom to discuss the Resolution Trust Corporation's investigation of Whitewater and Madison? She was not even supposed to be discussing the investigation with the White House.

Number three, did officials from the Treasury Department who had attended the three White House meetings discuss only procedures and policies of the RTC as they have claimed or did they reveal substantive information about the Madison Guarantee case as well? And how can we ever know for sure.

Number four, did White House officials share any of the information they received through these meetings and phone conversations with any potential targets of the investigation, and how can we know about that for sure?

All of the details about these meetings that I have been just discussing became public knowledge during the Senate and House banking committee hearings last August. And additional detail that was revealed at that time concerned White House efforts to stop Roger Altman from excusing, recusing himself from the Whitewater investigation?

In January 1994, Altman was considering recusing himself, stepping aside, from the entire Madison-Whitewater case because of his close friendship with President Clinton. They had attended college together at Georgetown University and had been friends ever since. Treasury Department General Counsel Jean Hanson advised Altman that he should recuse himself, step aside, according to her testimony. Prior to the February 2 meeting at the White House, Altman reportedly had decided to step aside and recuse himself. However, during the meeting, the Chief Counsel to the President, Bernie Nussbaum, talked Altman out of it.

Nussbaum testified that he simply asked Altman to reconsider his decision. However, Treasury Department Chief of Staff Josh Steiner tells a different story in his personal diary. Steiner's diary says that Nussbaum told Altman this his decision to excuse himself or step aside was ''unacceptable''. They didn't want him stepping out of the picture because there might be some incriminating evidence that he could stop. At least that is what it appears to be.

After the meeting Jean Hanson spoke to White House Deputy Chief of Staff Harold Ickes. According to Hanson's testimony, Ickes asked her who else knew that she had advised Altman to step aside or recuse himself. Hanson told him that only three people knew. According to her testimony, Ickes told her that that was good that nobody else should know about it. According to Jean Hanson's testimony at the hearings last August, Mr. Ickes asked me, this is her quote, ''Mr. Ickes asked me who else knew that I had recommended to Mr. Altman that he recuse himself, and I gave him three names. He said, 'that's good, because if it gets out, it will look bad.' ''.

When Harold Ickes testified before the Senate banking committee in August, he denied ever making such a statement. Ickes maintains that all he said to Hanson at the meeting was, hello, nice to see you and goodbye.

At the beginning of my statement, I said that the 7 Members of the Senate banking committee have asked the independent counsel to investigate possible perjury by Mr. Ickes. The Senators were particularly concerned about his statements about his conversation or lack of conversation with Jean Hanson. The whole episode raises a number of questions.

First, why would Jean Hanson lie about her conversation with Harold Ickes?

Two, why would Bernie Nussbaum, legal counsel to the President, try to talk Roger Altman out of stepping aside, recusing himself, when Altman was clearly such a close personal friend of President Clinton?

Three, how forcefully did Chief Counsel to the President, Bernie Nussbaum, discourage Mr. Altman from recusing himself? Is Nussbaum lying or is Josh Steiner lying?

Four, did Bernie Nussbaum, Chief Counsel to the President, take this action on his own or did someone higher up in the White House urge him to do so?

Now, let us talk about Jay Stephens. As I mentioned earlier, the Senators also asked the independent counsel to investigate the testimony of George Stephanopoulos from the White House. Stephanopoulos' alleged perjury involved the hiring of Jay Stephens from by the Resolution Trust Corporation as an outside counsel in the Madison Guarantee case. Jay Stephens was hired by an independent board at the Resolution Trust Corporation for the Whitewater investigation. Stephanopoulos and other officials at the White House were really upset. They were furious because Stephens was a Republican and had been a U.S. Attorney under President Reagan.

In his testimony before the Senate banking committee in August, Stephanopoulos testified about a conversation he had with Treasury Department Chief of Staff Josh Steiner. He said that he complained about Stephens to Josh Steiner, but he denied trying to get rid of him. Mr. Stephanopoulos testified, and I quote, ''I did blow off steam in the conversation, based on my belief that Mr. Stephens could not be an impartial investigator. Mr. Steiner informed me that the decision had been made by an independent board. That ended the conversation. I took no further action.'' That is what Stephanopoulos testified. However, Josh Steiner's personal diary tells a different story.

The February 27 entry reads: ''Stephanopoulos and Ickes also asked about how Jay Stephens had been hired to be outside counsel on this case. Simply outrageous, they said, that RTC had hired him, Stephens, but even more amazing when George Stephanopoulos then suggested to me that we needed to find a way to get rid of him.'' Obviously because he did not want him to go on and conduct an investigation. ''Persuaded George,'' he persuaded George Stephanopoulos, ''that firing him would be incredibly stupid and improper.''

Stephanopoulos's testimony was also contradicted by Roger Altman.

□ 2340

Altman testified that in a phone call on February 25, Stephanopoulos and Ickes complained about Stephens being hired by the RTC. Altman testified that he told Josh Steiner that he thought it was unwise for them to be complaining so vocally about Jay Stephens, because he was a Republican and he might get too deeply involved in the investigation.

Stephanopoulos was also contradicted by Jean Hanson.

Here are some questions:

No. 1, did George Stephanopoulos and Harold Ickes lie to the Senate Banking Committee, and if they did, should they be prosecuted for it?

Two, what motive could Josh Steiner, Roger Altman, and Jean Hanson all have to falsely contradict their testimony? Why would they do that?

Three, how many other people did George Stephanopoulos call to attempt to get Jay Stephens fired?

All of these questions need to be thoroughly investigated and answered by the independent counsel. There is so much that smells about what has gone on between the RTC, Mr. Altman, Treasury, and the White House that a full and thorough investigation needs to be conducted, not only by the independent counsel but by the committees of Jurisdiction in this House and in the other body, and possibly hiring other people to conduct this investigation.

The House, the Senate, and the independent counsel need to thoroughly investigate this. If there is lying, if people have committed perjury before the House and Senate Banking Committees, they need to be brought to justice. We need to follow this all the way to its final conclusion. There are all kinds of questions about shredded documents involving Whitewater and Madison that go all the way to the top.

We need to get to the bottom of it for the benefit of the American people. We are talking about $47 million of taxpayers' money that has been squandered or stolen. We need to get to the bottom of it, no matter where it leads us.

The SPEAKER pro tempore (Mr. QUINN). Under a previous order of the House, the gentleman from Pennsylvania [Mr. WELDON] is recognized for 60 minutes.

[Mr. WELDON of Pennsylvania addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Miss COLLINS of Michigan (at the request of Mr. GEPHARDT) for today, on account of illness.

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. WATT of North Carolina) to revise and extend their remarks and include extraneous material:)

Mr. GUTIERREZ, today, for 5 minutes.
Ms. KAPTUR, today, for 5 minutes.
Mr. SKAGGS, today, for 5 minutes.
Mr. HILLIARD, today, for 5 minutes.
Mr. LAFALCE, today, for 5 minutes.
Mr. HOYER, today, for 5 minutes.
Mr. GENE GREEN of Texas, today, for 5 minutes.
Mrs. CLAYTON, today, for 5 minutes.
Mr. CLYBURN, today, for 5 minutes.

(The following Member (at the request of Mr. FOX of Pennsylvania) to revise and extend his remarks and include extraneous material:)

Mr. SOLOMON, today, for 5 minutes.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. WATT of North Carolina) and to include extraneous matter:)

Mr. MANTON.
Mr. HAMILTON in three instances.
Mr. DINGELL in two instances.
Mr. SKELTON.
Mr. WARD.
Mr. MENENDEZ in two instances.
Mr. TRAFICANT.
Mr. STOKES in two instances.
Ms. KAPTUR.
Mr. ENGEL.
Mr. RAHALL.
Mr. ORTON.
Mr. FAZIO.

(The following Members (at the request of Mr. FOX of Pennsylvania) and to include extraneous matter:)

Mr. PACKARD.
Mr. SMITH of New Jersey.
Mr. HOUGHTON.
Mr. GINGRICH.
Mr. KOLBE.
Mr. DUNCAN.
Mr. CAMP.

(The following Members (at the request of Mr. BURTON of Indiana) and to include extraneous matter:)

Mr. DE LA GARZA.
Mr. HOYER.
Mr. RICHARDSON.

ADJOURNMENT

Mr. BURTON of Indiana. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 41 minutes p.m.), the House adjourned until tomorrow, Thursday, February 9, 1995, 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:

339. A letter from the Chief of Legislative Affairs, Department of the Navy, transmitting notice that the Navy intends to renew the lease of the *Albert David* (FF 1050), pursuant to 10 U.S.C. 7307(b)(2); to the Committee on National Security.

340. A letter from the Secretary of Health and Human Services, transmitting a copy of the fiscal year 1993 report on the Native Hawaiian Revolving Loan Fund [NHRLF], pursuant to 42 U.S.C. 2991–1; to the Committee on Economic and Educational Opportunities.

341. A letter from the Secretary of Labor, transmitting a report on the enforcement activities of the Directorate of Civil Rights concerning the nondiscrimination and equal opportunity provisions of the JTP act, pursuant to Public Law 97–300, section 167(e); to the Committee on Economic and Educational Opportunities.

342. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–382, ''Maurice T. Turner, Jr., Education and Training Center Designation Act of 1994,'' pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

343. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–383, ''Privatization of Government Services Task Force Establishment Act of 1994,'' pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

344. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–385, ''Anti-Sexual Abuse Act of 1994,'' pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

345. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–386, ''Probate Reform Act of 1994,'' pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

346. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–387, ''Clean Air Compliance Fee Act of 1994,'' pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

347. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–388, ''District of Columbia Housing Authority Act of 1994,'' pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

348. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–390, ''Washington Metropolitan Area Transit Authority Compact Amendment Act of 1994,'' pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

349. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–391, ''Closing of a Public Alley in Square 750, S.O. 94–123, Act of 1994,'' pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

350. A letter from the Acting Inspector General, Federal Communications Commission, transmitting the annual report regarding an evaluation of the compliance by the FCC with, and the effectiveness of, the requirements imposed by 31 U.S.C. 1352 on the FCC and on persons requesting and receiving

Federal contracts from the FCC using appropriated funds, pursuant to Public Law 101–121, section 319(a)(1) (103 Stat. 753); to the Committee on Government Reform and Oversight.

351. A letter from the Secretary of Veterans Affairs, transmitting a report on contract care and services furnished to eligible veterans, pursuant to Public Law 100–322, section 112(a); to the Committee on Veterans' Affairs.

352. A letter from the Chairman, Advisory Council on Unemployment Compensation, transmitting their second annual report, pursuant to Public Law 102–164, section 303 (105 Stat. 1060); to the Committee on Ways and Means.

353. A letter from the Director, Office of Civilian Radioactive Waste Management, transmitting the 10th annual report on the activities and expenditures of the Office of Civilian Radioactive Waste Management, pursuant to 42 U.S.C. 10224(c); jointly, to the Committees on Commerce and Resources.

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. MCCOLLUM: Committee on the Judiciary. H.R. 729. A bill to control crime by a more effective death penalty; with an amendment (Rept. 104–23). Referred to the Committee of the Whole House on the State of the Union.

Mr. MCCOLLUM: Committee on the Judiciary. H.R. 728. A bill to control crime by providing law enforcement block grants; with an amendment (Rept. 104–24). Referred to the Committee of the Whole House on the State of the Union.

Mr. QUILLEN: Committee on Rules. House Resolution 63. A resolution providing for the consideration of H.R. 667, The Violent Criminal Incarceration Act (Rept. 104–25). Referred to the House Calendar.

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. DINGELL (for himself, Mr. CONDIT, Mr. MOORHEAD, and Mr. OXLEY):

H.R. 857. A bill to require the disclosure of service and other charges on tickets, and for other purposes; to the Committee on Commerce.

By Mr. HOYER (for himself, Mrs. MORELLA, Mr. BOEHLERT, Mr. FILNER, Mr. MORAN, Mr. WYNN, Mr. FAZIO of California, Mr. GILMAN, Mr. CUNNINGHAM, Mr. HUNTER, Mr. LANTOS, and Mr. LEWIS of California):

H.R. 858. A bill to amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, and for other purposes; to the Committee on Government Reform and Oversight.

By Mr. GUNDERSON:

H.R. 859. A bill to amend title XVIII of the Social Security Act to provide for coverage under part B of the Medicare Program of emergency care and related services furnished by rural emergency access care hospitals; to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DORNAN:

H.R. 860. A bill to terminate the Office of the Surgeon General of the Public Health Service; to the Committee on Commerce.

By Mr. CUNNINGHAM (for himself and Mr. HUNTER):

H.R. 861. A bill to amend title 10, United States Code, and title XVIII of the Social Security Act to permit the reimbursement of expenses incurred by a medical facility of the uniformed services or the Department of Veterans Affairs in providing health care to persons eligible for care under medicare; to the Committee on National Security, and in addition to the Committees on Commerce, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DORNAN (for himself, Mr. DOOLITTLE, Mr. BARTLETT of Maryland, Mr. BURTON of Indiana, and Mr. MANZULLO):

H.R. 862. A bill to prohibit the use of Federal funds to promote homosexuality; to the Committee on Government Reform and Oversight.

By Mr. HAMILTON:

H.R. 863. A bill to amend the Federal Property and Administrative Services Act of 1949 to authorize the transfer to States of surplus personal property for donation to nonprofit providers of necessaries to impoverished families and individuals; to the Committee on Reform and Oversight.

By Mr. HOUGHTON (for himself, Mr. PAYNE of Virginia, Mrs. JOHNSON of Connecticut, Mr. MCCRERY, Mr. COYNE, Mr. BREWSTER, Mr. WELDON of Pennsylvania, and Mr. ENGLISH of Pennsylvania):

H.R. 864. A bill to amend the Internal Revenue Code of 1986 to provide an election to exclude from the gross estate of a decedent the value of certain land subject to a qualified conservation easement, and to make technical changes to alternative valuation rules; to the Committee on Ways and Means.

By Mr. ORTON:

H.R. 865. A bill to amend part A of title IV of the Social Security Act to offer States the option of replacing the Job Opportunities and Basic Skills Training [JOBS] Program with a program that would assist all recipients of aid to families with dependent children in achieving self-sufficiency, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Agriculture, Commerce, and Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RAHALL:

H.R. 866. A bill to make a technical correction to section 601 of the Federal Aviation Administration Act; to the Committee on Transportation and Infrastructure.

By Mr. SANDERS (for himself, Ms. KAPTUR, Mr. DEFAZIO, Ms. DANNER, Mr. TAYLOR of Mississippi, Mr. KLINK, Mr. TRAFICANT, Mr. ROHRABACHER, and Mr. EVANS):

H.R. 867. A bill to amend title 31, United States Code, to provide that certain budget authority and credit authority provided to the exchange stabilization fund shall be effective only to the extent provided in appropriation acts; to the Committee on Banking and Financial Services.

By Mrs. THURMAN:

H.R. 868. A bill to amend the Fair Labor Standards Act of 1938 to provide an exemption from that act for inmates of penal or other correctional institutions who participate in certain programs; to the Committee on Economic and Educational Opportunities.

By Mr. TRAFICANT:

H.R. 869. A bill to designate the Federal building and U.S. courthouse located at 125 Market Street in Youngstown, OH, as the ''Thomas D. Lambros Federal Building and U.S. Courthouse''; to the Committee on Transportation and Infrastructure.

By Mr. WILLIAMS (for himself and Mr. BONIOR):

H.R. 870. A bill to resolve the current dispute involving major league baseball, and for other purposes; to the Committee on Economic and Educational Opportunities.

By Mr. FRANK of Massachusetts:

H.J. Res. 68. Joint resolution proposed an amendment to the Constitution of the United States to repeal the 22d amendment relating to Presidential term limitations; to the Committee on the Judiciary.

By Mr. COMBEST (for himself and Mr. DICKS):

H. Res. 64. Resolution providing amounts for the expenses of the Permanent Select Committee on Intelligence in the 104th Congress; to the Committee on House Oversight.

By Mr. GINGRICH:

H. Res. 65. Resolution naming certain rooms in the House of Representatives wing of the Capitol in honor of former Representative Robert H. Michel; to the Committee on House Oversight.

By Mrs. SMITH of Washington (for herself, Mr. BROWNBACK, Mr. FOX, Mr. CHRYSLER, Mr. WELDON of Florida, Mr. HOSTETTLER, and Mr. METCALF):

H. Res. 66. Resolution to amend the Rules of the House of Representatives to ban gifts, and for other purposes; to the Committee on Standards of Official Conduct, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. ROTH introduced a bill (H.R. 871) for the relief of Eugene Hasenfus; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 11: Mr. SOUDER.

H.R. 26: Mr. WELDON of Pennsylvania, Mr. BARTON of Texas, Mr. HOSTETTLER, Mr. HANSEN, Mr. CHRYSLER, Mr. HEFNER, Mr. CLEMENT, and Mr. PAXON.

H.R. 28: Mr. CALVERT.

H.R. 47: Mr. CALVERT and Mr. KIM.

H.R. 70: Mr. BOEHNER, Mrs. SEASTRAND, Mr. KLUG, and Mr. ROYCE.

H.R. 76: Ms. SLAUGHTER.

H.R. 95: Ms. LOFGREN, Mr. MARTINEZ, Mr. MARKEY, Mr. ACKERMAN, Mr. HOYER, Ms. JACKSON-LEE, and Mr. FOGLIETTA.

H.R. 104: Mr. BALLENGER and Mr. NETHERCUTT.

H.R. 112: Mr. COOLEY, Mr. ACKERMAN, Mr. NEY, and Ms. SLAUGHTER.

H.R. 159: Mr. RAHALL, Mr. ROHRABACHER, Mr. STUMP, Mr. KING, Mr. BLUTE, Mr. SENSENBRENNER, and Mr. ACKERMAN.

H.R. 201: Mr. FOX, Mr. SMITH of New Jersey, Mr. GENE GREEN of Texas, Mr. PETRI, Mr. HUNTER, Mr. BEREUTER, and Ms. PRYCE.

H.R. 281: Mr. WALSH.

H.R. 259: Mr. HASTINGS of Washington.

H.R. 325: Mr. LIPINSKI, Mr. SCHAEFER, Mr. EVERETT, Mr. ACKERMAN, and Mr. GOODLATTE.

H.R. 328: Ms. MOLINARI.

H.R. 357: Mr. HILLIARD, Mr. YATES, Mr. MEEHAN, Mr. FATTAH, Mr. GUTIERREZ, Mr. KENNEDY of Rhode Island, Mr. BEILENSON, Mr. WAXMAN, Mr. FRANK of Massachusetts, Ms. SLAUGHTER, Mr. MARKEY, Mr. HORN, and Mr. SCHUMER.

H.R. 367: Mr. FRAZER, Mr. LAFALCE, Mr. MARTINEZ, Mr. MINETA, Mr. NADLER, Mr. SANDERS, Mrs. SCHROEDER, Ms. VELAZQUEZ, Mr. VENTO, and Ms. WOOLSEY.

H.R. 394: Mr. MCDERMOTT and Mr. EMERSON.

H.R. 404: Mr. CALVERT.

H.R. 436: Mr. HASTERT, Mr. HOSTETTLER, Mr. POSHARD, Mr. LATHAM, Mr. FLANAGAN, and Mr. ZELIFF.

H.R. 450: Mr. PARKER and Mr. MONTGOMERY.

H.R. 452: Mr. SANDERS.

H.R. 463: Mr. TANNER.

H.R. 488: Mr. ENGEL.

H.R. 520: Mr. BARRETT of Nebraska.

H.R. 556: Mr. FROST, Mr. BRYANT of Texas, Mr. TORRES, Mrs. SCHROEDER, Mr. GENE GREEN of Texas, Mr. GONZALEZ, Ms. EDDIE BERNICE JOHNSON of Texas, and Mr. CHAPMAN.

H.R. 557: Mr. FROST, Mr. BRYANT of Texas, Mr. TORRES, Mrs. SCHROEDER, Mr. GENE GREEN of Texas, Mr. GONZALEZ, Ms. EDDIE BERNICE JOHNSON of Texas, and Mr. CHAPMAN.

H.R. 558: Mr. STENHOLM.

H.R. 571: Mr. THOMAS, Mr. HAYES, Mr. UNDERWOOD, Mr. CONDIT, Mr. ORTON, Mrs. SEASTRAND, Mr. CHRYSLER, Mr. TORRICELLI, Mr. EMERSON, Mr. DOOLEY, Mr. COBURN, Mr. BACHUS, Mr. RADANOVICH, Mr. LUCAS, Mr. RIGGS, Mrs. VUCANOVICH, and Mr. CHRISTENSEN.

H.R. 579: Mr. ROHRABACHER.

H.R. 612: Mr. BARRETT of Wisconsin, Mr. FOGLIETTA, Ms. EDDIE BERNICE JOHNSON of Texas, and Mr. GENE GREEN of Texas.

H.R. 645: Mr. FLAKE, Mr. GENE GREEN of Texas, Mr. PETE GEREN of Texas, Mr. TORRES, and Mr. WARD.

H.R. 662: Mr. COLLINS of Georgia.

H.R. 663: Mr. BARR and Mr. HASTINGS of Washington.

H.R. 697: Mr. HASTINGS of Washington, Mr. SOLOMON, Mr. ROYCE, Mr. BUYER, Mr. THORNBERRY, Mr. WALSH, Mr. SMITH of Texas, Mr. NETHERCUTT, Mr. LIVINGSTON, and Mr. SHADEGG.

H.R. 707: Mr. CALVERT and Mr. FIELDS of Texas.

H.R. 739: Mr. SAM JOHNSON.

H.R. 810: Mrs. MEYERS of Kansas.

H.J. Res. 3: Mrs. MYRICK.

H.J. Res. 24: Mr. GOODLATTE.

H. Con. Res. 12: Mr. SMITH of New Jersey.

H. Res. 40: Mr. VENTO, Mr. NADLER, Ms. HARMAN, and Mr. POSHARD.

H. Res. 54: Ms. DANNER and Mrs. THURMAN.

H. Res. 57: Mr. ROHRABACHER and Mr. BURTON of Indiana.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 667

OFFERED BY: MR. BERMAN

AMENDMENT NO. 10: Page 9, after line 6, add the following:

(c) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of this Act, of the funds made available under subsection (a) the following amounts shall be available only to carry out section 242(j) of the Immigration and Nationality Act:

(1) $330,000,000 for fiscal year 1996.
(2) $310,000,000 for fiscal year 1997.
(3) $305,000,000 for fiscal year 1998.
(4) $320,000,000 for fiscal year 1999.
(5) $340,000,000 for fiscal year 2000.

H.R. 667

OFFERED BY: MR. BERMAN

AMENDMENT NO. 11: Page 8, strike lines 7 through 11 and insert the following:

''(1) $667,500,000 for fiscal year 1996;
''(2) $1,020,000,000 for fiscal year 1997;
''(3) $2,222,000,000 for fiscal year 1998;
''(4) $2,340,000,000 for fiscal year 1999; and
''(5) $2,413,100,000 for fiscal year 2000.''.

At the end insert the following new title:

TITLE V—COMPENSATION FOR INCARCERATION OF UNDOCUMENTED CRIMINAL ALIENS.

SEC. 501. COMPENSATION FOR INCARCERATION OF UNDOCUMENTED CRIMINAL ALIENS.

(a) FUNDING.—Section 242(j) of the Immigration and Nationality Act (8 U.S.C. 1252(J)) is amended by striking paragraph (5) and inserting the following:

''(5) The Attorney General shall pay to each State and political subdivision of a State which is eligible for payments under this subsection the amounts to which they are entitled under paragraph (1)(A) in such amounts as in the aggregate do not exceed—

''(A) $630,000,000 for fiscal year 1996;
''(B) $640,000,000 for fiscal year 1997;
''(C) $655,000,000 for fiscal year 1998;
''(D) $670,000,000 for fiscal year 1999; and
''(E) $680,000,000 for fiscal year 2000.

''(6) RATABLE REDUCTION RULE.—If the sums available under paragraph (5) for any fiscal year for making payments under this subsection are not sufficient to pay in full the total amounts which all States and subdivisions of States are entitled to receive under this subsection for such fiscal year, the amount which each State and political subdivision of a State is entitled to receive under this subsection for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.''.

(b) TERMINATION OF LIMITATION.—Section 20301(c) of the Violent Crime Control and Law Enforcement Act of 1994 is amended by striking ''2004'' and inserting ''2000''.

H.R. 667

OFFERED BY: MR. BERMAN

AMENDMENT NO. 12. Page 8, strike lines 7 through 11 and insert the following:

''(1) $667,500,000 for fiscal year 1996;
''(2) $1,020,000,000 for fiscal year 1997;
''(3) $2,222,000,000 for fiscal year 1998;
''(4) $2,340,000,000 for fiscal year 1999; and
''(5) $2,413,100,000 for fiscal year 2000.''.

Page 10, after line 10, insert the following new subsection:

(c) COMPENSATION FOR INCARCERATION OF UNDOCUMENTED CRIMINAL ALIENS.—Section 242(j)(5) of the Immigration and Nationality Act (8 U.S.C. 1252(j)) is amended by striking all after subparagraph (A) and inserting the following:

''(B) $630,000,000 for fiscal year 1996;
''(C) $640,000,000 for fiscal year 1997;
''(D) $655,000,000 for fiscal year 1998;
''(E) $670,000,000 for fiscal year 1999; and
''(F) $680,000,000 for fiscal year 2000.''.

H.R. 667

OFFERED BY: MR. BERMAN

AMENDMENT NO. 13. Page 2, strike lines 8 and 9 and insert the following:

''TITLE V—TRUTH IN SENTENCING AND CRIMINAL ALIEN GRANTS

Page 8, strike line 5 and all that follows through line 6 on page 9 and insert the following:

''(a) IN GENERAL.—There are authorized to be appropriated to carry out this title and section 242(j) of the Immigration and Nationality Act—

''(1) $997,500,000 for fiscal year 1996;
''(2) $1,660,000,000 for fiscal year 1997;
''(3) $2,877,000,000 for fiscal year 1998;
''(4) $3,010,000,000 for fiscal year 1999; and
''(5) $3,093,000,000 for fiscal year 2000.

''(b) LIMITATION OF FUNDS.—

''(1) USES OF FUNDS.—Subject to subsection (c), funds here after made available under this title may be used to carry out the purposes described in section 501(a).

''(2) NONSUPPLANTING REQUIREMENT.—Funds made available under this section to carry out sections 502 and 503 of this title shall not be used to supplant State funds, but shall be used to increase the amounts of funds that would, in the absence of Federal funds, be made available from State sources.

''(3) ADMINISTRATIVE COSTS.—Not more than 3 percent of the funds available under this section to carry out sections 502 and 503 of this title may be used for administrative costs.

''(4) MATCHING FUNDS.—The Federal share of a grant received under this title to carry out sections 502 and 503 may not exceed 75 percent of the costs of a proposal as described in an application approved under this title.

''(c) ALIEN INCARCERATION.—Of the funds appropriated under subsection (a) for each fiscal year, the Attorney General shall first reserve $650,000,000 which shall be available only to carry out section 242(j) of the Immigration and Nationality Act.

H.R. 667 OFFERED BY: MR. BERMAN

AMENDMENT NO. 14: Title V should be amended to read—

''TITLE V—TRUTH IN SENTENCING AND CRIMINAL ALIEN GRANTS''

Amend Section 507 to read as folllows:

''(a) IN GENERAL.—There are authorized to be appropriated to carry out this title and Section 242(j) of the Immigration and Nationality Act—

''(1) $232,000,000 for fiscal year 1995;
''(2) $997,500,000 for fiscal year 1996;
''(3) $1,660,000,000 for fiscal year 1997;
''(4) $2,877,000,000 for fiscal year 1998;
''(5) $3,010,000,000 for fiscal year 1999;
''(6) $3,093,000,000 for fiscal year 2000;

''(b) LIMITATION ON FUNDS.—

''(1) USES OF FUNDS.—Funds made available under this title may be used to carry out the purposes described in Section 501(a).

''(2) NONSUPPLANTING REQUIREMENT.—Funds made available under this section to carry out sections 502 and 503 of this title shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources.

''(3) ADMINISTRATIVE COSTS.—Not more than three percent of the funds available under this section to carry out sections 502 and 503 of this title may be used for administrative costs.

''(4) MATCHING FUNDS.—The Federal share of a grant received under this title to carry out sections 502 and 503 may not exceed 75 percent of the costs of a proposal as described in an application approved under this title.

''(c) ALIEN INCARCERATION.—

''(1) USES OF FUNDS.—Of the funds made available under this title, no less than $650 million shall be made available each year to carry out Section 242(j) of the Immigration and Nationality Act (8 U.S.C. 1252).

''(2) ALLOCATION.—No funds made available under this title shall be used to carry out sections 502 and 503 until each state that has applied for funds under Section 242(j) has received such funds.''

H.R. 667

OFFERED BY: MR. BURTON OF INDIANA

AMENDMENT NO. 15: Page 6, line 14, after ''general'' insert ''including a requirement that any funds used to carry out the programs under section 501(a) shall represent the best value for the state governments at the lowest possible cost and employ the best available technology.

H.R. 667

OFFERED BY: MR. CANADY OF FLORIDA

AMENDMENT NO. 16: Page 18, line 11, after ''agreements'' insert ''(except a settlement agreement the breach of which is not subject to any court enforcement other than reinstatement of the civil proceeding which such agreement settled)''.

H.R. 667

OFFERED BY: MR. CANADY OF FLORIDA

AMENDMENT NO. 17: Page 1, after line 22, insert the following:

''Such grants may also be used to build, expand, and operate secure youth correctional facilities.''

Page 6, after line 2, insert the following (and redesignate any subsequent subsections accordingly):

''(b) JUVENILE JUSTICE INCENTIVE.—Beginning in fiscal year 1998, 15 percent of the funds that would otherwise be available to a State under section 502 or 503 shall be withheld from any State which does not have an eligible system of consequential sanctions for juvenile offenders.

Page 10, line 7, delete ''and'' at the end of the line.

Page 10, at the end of line 10, strike the period and insert '';'', and add the following:

''(4) the term 'an eligible system of consequential sanctions for juvenile offenders' means that the State or States organized as a regional compact, as the case may be—

''(A)(i) have established or are in the process of establishing a system of sanctions for the State's juvenile justice system in which the State bases dispositions for juveniles on a scale of increasingly severe sanctions for the commission of a repeat delinquent act, particularly if the subsequent delinquent act committed by such juvenile is of similar or greater seriousness or if a court dispositional order for a delinquent act is violated; and

''(ii) such dispositions should, to the extent practicable, require the juvenile delinquent to compensate victims for losses and compensate the juvenile justice authorities for supervision costs;

''(B) impose a sanction on each juvenile adjudicated delinquent;

''(C) require that a State court concur in allowing a juvenile to be sent to a diversionary program in lieu of juvenile court proceedings;

''(D) have established and maintained an effective system that requires the prosecution of at least those juveniles who are 14 years of age and older as adults, rather than in juvenile proceedings, for conduct constituting—

''(i) murder or attempted murder;

''(ii) robbery while armed with a deadly weapon;

''(iii) battery while armed with a deadly weapon;

''(iv) forcible rape;

''(v) any other crime the State determines appropriate; and

''(vi) the fourth or subsequent occasion on which such juveniles engage in an activity for which adults could be imprisoned for a term exceeding 1 year;

unless, on a case-by-case basis, the transfer of such juveniles for disposition in the juvenile justice system is determined under State law to be in the interest of justice;

''(E) require that whenever a juvenile is adjudicated in a juvenile proceeding to have engaged in the conduct constituting an offense described in subparagraph (D) that—

''(i) a record is kept relating to that adjudication which is—

''(I) equivalent to the record that would be kept of an adult conviction for that offense;

''(II) retained for a period of time that is equal to the period of time records are kept for adult convictions; and

''(III) made available to law enforcement officials to the same extent that a record of an adult conviction would be made available;

''(ii) the juvenile is fingerprinted and photographed, and the fingerprints and photograph are sent to the Federal Bureau of Investigation; and

''(iii) the court in which the adjudication takes place transmits to the Federal Bureau of Investigation the information concerning the adjudication, including the name and birth date of the juvenile, date of adjudication, and disposition.

''(F) where practicable and appropriate, require parents to participate in meeting the dispositional requirements imposed on the juvenile by the court;

''(G) have consulted with any units of local government responsible for secure youth correctional facilities in setting priorities for construction, development, expansion and modification, operation or improvement of juvenile facilities, and to the extent practicable, ensure that the needs of entities currently administering juvenile facilities are addressed; and

''(H) have in place or are putting in place systems to provide objective evaluations of State and local juvenile justice systems to determine such systems' effectiveness in protecting the community, reducing recidivism, and ensuring compliance with dispositions.''.

H.R. 667

OFFERED BY: MR. CHAPMAN

AMENDMENT NO. 18: Page 2, after line 3, insert the following:

SEC. 2. CONDITION FOR GRANTS.

(a) STATE COMPLIANCE.—The provisions of title V of the Violent Crime Control and Law Enforcement Act of 1994, as amended by this Act, shall not take effect until 50 percent or more of the States have met the requirements of 503(b) of such Act.

(b) REPORT.—Beginning in fiscal year 1996, the Attorney General shall submit a report to the Congress not later than February 1 of each fiscal year regarding the number of States that have met the requirements of section 503(b) of the Violent Crime Control and Law Enforcement Act of 1994, as amended by this Act.

(c) EFFECTIVE DATE.—Begininng on the first day of the first fiscal year after the Attorney General has filed a report that certifies that 50 percent or more of the States have met the requirements of section 503(b) of the Violent Crime Control and Law Enforcement Act of 1994, as amended by this Act, title V of such Act shall become effective.

(d) PRISONS.—Until the requirements of this section are met, title II of the Violent Crime Control and Law Enforcement Act of 1994 shall remain in effect as such title was in effect on the day preceding the date of the enactment of this Act.

H.R. 667

OFFERED BY: MR. CHAPMAN

AMENDMENT NO. 19: Page 2, lines 24 and 25, strike ''either a general grant'' and insert ''general grants''.

Page 2, line 25, strike ''or'' and insert ''and''.

H.R. 667

OFFERED BY: MR. CHAPMAN

AMENDMENT NO. 20: Page 2, lines 24 and 25, strike ''either a general grant'' and insert ''general grants''.

Page 2, line 25, strike ''or'' and insert ''and''.

Page 6, line 6, strike ''title, if the State'' and insert ''title if,''

Page 6, line 7, strike ''title—'' and all that follows down through ''the'' on line 9, and insert ''title, the''.

H.R. 667

OFFERED BY: MR. CHAPMAN

AMENDMENT NO. 21. Page 7, line 8, strike ''or compact,'' and all that follows down through ''States'' on line 12, and insert the following: ''in the ratio that the number of part I violent crimes reported by such State to the Federal Bureau of Investigation for 1993 bears to the number of part I violent crimes reported by all States to the Federal Bureau of Investigation for 1993''.

H.R. 667

OFFERED BY: MR. DOGGETT

AMENDMENT NO. 22. Page 5, after line 2, add the following (and redesignate any subsequent sections accordingly):

''SEC. 504. GRANTS FOR THE CONFINEMENT OF VIOLENT YOUTH OFFENDERS.

''(a) IN GENERAL.—Notwithstanding the provisions of section 501(a) and 502(a), the Attorney General is authorized to provide grants to a State or States organized as a regional compact, and to a unit of local government or to a consortium of units of local government to build, expand, and operate temporary or permanent correctional facilities for youth offenders and violent youth offenders, including secure correctional facilities, boot camps, and detention centers. Funds received under this section may also be used to convert military bases to correctional facilities for youth offenders.

''(b) ELIGIBILITY.—To be eligible to receive a grant under this section, an applicant shall submit an application to the Attorney General which—

''(1) provides assurances that the applicant has increased, since 1993, mandatory lengths of stay for youth offenders;

''(2) provides assurances that the applicant has implemented policies that recognize the rights of crime victims;

''(3) provides evidence of a comprehensive correctional plan for youth offenders;

''(4) provides assurances that funds received under this section will be used to supplement not supplant other Federal, State or local funds, as the case may be, that would otherwise be available in the absence of such Federal funds;

''(5) provides documentation, if applicable, of a multi-State compact or local consortium agreement; and

''(6) provides a statement regarding eligibility criteria for participation in alternative correctional facilities such as boot camps.

''(c) DEFINITIONS.—For purposes of this section—

''(1) 'youthful offender' means an adjudicated juvenile delinquent and juveniles prosecuted as adults; and

''(2) 'unit of local government' has the same meaning given such term in section 901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968.

''(d) ALLOCATION OF FUNDS.—25 percent of the funds made available to carry out section 502(a) for each of fiscal years 1996 through 2000 shall be made available to carry out the purposes of this section.''.

Page 2, line 26, insert ''or discretionary grants for youth offenders under section 504'' before the period.

Page 7, line 15, insert '', a unit of local government or a consortium of units of local government'' after ''compact''.

Page 7, line 19, insert ''or unit of local government or a consortium of units of local government'' after ''State''.

Page 8, line 15, insert ''and 504(a)'' before the period.

H.R. 667

OFFERED BY: MR. SCHUMER

AMENDMENT NO. 23. Page 4, after line 22, insert the following:

''(c) TRANSFER OF UNUSED FUNDS.—On September 30 of each of fiscal years 1996, 1997, 1998, 1999, and 2000, the Attorney General shall transfer and make available any unexpended funds under this section to carry out section 502.

Page 8, strike lines 1 through 4.

H.R. 667

OFFERED BY: MR. SCHUMER

AMENDMENT NO. 24. Page 2, strike line 4 and all that follows through the matter preceding line 1, page 12, and insert the following:

TITLE I—PRISON BLOCK GRANT PROGRAM

SEC. 101. LOCAL CONTROL PRISON GRANT PROGRAM.

Subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 is amended to read as follows:

''Subtitle A—Prison Block Grants

''SEC. 201. PAYMENTS TO STATE GOVERNMENTS.

''(a) PAYMENT AND USE.—

''(1) PAYMENT.—The Attorney General shall pay to each State which qualifies for a payment under this title an amount equal to the sum of the amount allocated to such State under this title for each payment period from amounts appropriated to carry out this title.

''(2) USE.—Amounts paid to a State under this section shall be used by the State for confinement of persons convicted of serious violent felonies, including but not limited to, one or more of the following purposes:

''(A)(i) Building, expanding, operating, and maintaining space in correctional facilities in order to increase the prison bed capacity in such facilities for the confinement of persons convicted of a serious violent felony.

''(ii) Building, expanding, operating, and maintaining temporary or permanent correctional facilities, including boot camps, and other alternative correctional facilities, including facilities on military bases, for the confinement of convicted nonviolent offenders and criminal aliens for the purpose of freeing suitable existing space for the confinement of persons convicted of a serious violent felony.

''(iii) Contributing to funds administered by a regional compact organized by two or more States to carry out any of the foregoing purposes.

''(b) TIMING OF PAYMENTS.—The Attorney General shall pay to each State that has submitted an application under this title not later than—

''(1) 90 days after the date that the amount is available, or

''(2) the first day of the payment period if the State has provided the Attorney General with the assurances required by section 203(d),

whichever is later.

''(c) ADJUSTMENTS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Attorney General shall adjust a payment under this title to a State to the extent that a prior payment to the State was more or less than the amount required to be paid.

''(2) CONSIDERATIONS.—The Attorney General may increase or decrease under this subsection a payment to a State only if the Attorney General determines the need for the increase or decrease, or if the State requests the increase or decrease, not later than one year after the end of the payment period for which a payment was made.

''(d) RESERVATION FOR ADJUSTMENT.—The Attorney General may reserve a partnership of not more than 2 percent of the amount under this section for a payment period for all States, if the Attorney General considers the reserve is necessary to ensure the availability of sufficient amounts to pay adjustments after the final allocation of amounts among the States.

''(e) REPAYMENT OF UNEXPENDED AMOUNTS.—

''(1) REPAYMENT REQUIRED.—A State shall repay to the Attorney General, by not later than 27 months after receipt of funds from the Attorney General, any amount that is—

''(A) paid to the State from amounts appropriated under the authority of this section; and

''(B) not expended by the unit within 2 years after receipt of such funds from the Attorney General.

''(2) PENALTY FOR FAILURE TO REPAY.—If the amount required to be repaid is not repaid, the Attorney General shall reduce payment in future payment periods accordingly.

''(3) DEPOSIT OF AMOUNTS REPAID.—Amounts received by the Attorney General as repayments under this subsection shall be deposited in a designated fund for future payments to States.

''(f) NONSUPPLANTING REQUIREMENT.—Funds made available under this title to States shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of funds under this title, be made available from State sources.

''SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this title—

''(1) $232,000,000 for fiscal year 1995;

''(2) $997,500,000 for fiscal year 1996;

''(3) $1,330,000,000 for fiscal year 1997;

''(4) $2,527,000,000 for fiscal year 1998;

''(5) $2,660,000,000 for fiscal year 1999; and

''(6) $2,753,100,000 for fiscal year 2000.

''(b) ADMINISTRATIVE COSTS.—Not more than 2.5 percent of the amount authorized to be appropriated under subsection (a) for each of the fiscal years 1996 through 2000 shall be available to the Attorney General for administrative costs to carry out the purposes of this title. Such sums are to remain available until expended.

''(c) AVAILABILITY.—The amounts authorized to be appropriated under subsection (a) shall remain available until expended.

''SEC. 203. QUALIFICATION FOR PAYMENT.

''(a) IN GENERAL.—The Attorney General shall issue regulations establishing procedures under which a State is required to give notice to the Attorney General regarding the proposed use of assistance under this title.

''(b) GENERAL REQUIREMENTS FOR QUALIFICATION.—A State qualifies for a payment under this title for a payment period only if the State submits an application to the Attorney General and establishes, to the satisfaction of the Attorney General, that—

''(1) the State will establish a trust fund in which the State will deposit all payments received under this title;

''(2) the State will use amounts in the trust fund (including interest) during a period not to exceed 2 years from the date the first grant payment is made to the State;

''(3) the State will expend the payments received in accordance with the laws and procedures that are applicable to the expenditure of revenues of the State;

''(4) the State will use accounting, audit, and fiscal procedures that conform to guidelines which shall be prescribed by the Attorney General after consultation with the Comptroller General and as applicable, amounts received under this title shall be audited in compliance with the Single Audit Act of 1984;

''(5) after reasonable notice form the Attorney General or the Comptroller General to the State, the State will make available to the Attorney General and the Comptroller General, with the right to inspect, records that the Attorney General reasonably requires to review compliance with this title or that the Comptroller General reasonably requires to review compliance and operation;

''(6) a designated official of the State shall make reports the Attorney General reasonably requires, in addition to the annual reports required under this title; and

''(7) the State will spend the funds only for the purposes authorized in section 201(a)(2).

''(c) SANCTIONS FOR NONCOMPLIANCE.—

''(1) IN GENERAL.—If the Attorney General determines that a State has not complied substantially with the requirements or regulations prescribed under subsection (b), the Attorney General shall notify the State that if the State does not take corrective action within 60 days of such notice, the Attorney General will withhold additional payments to the State for the current and future payment period until the Attorney General is satisfied that the State—

''(A) has taken the appropriate corrective action; and

''(B) will comply with the requirements and regulations prescribed under subsection (b).

''SEC. 204. ALLOCATION AND DISTRIBUTION OF FUNDS.

''(a) STATE DISTRIBUTION.—Except as provided in section 203(c), of the total amounts appropriated for this title for each payment period, the Attorney General shall allocate for States—

''(1) 0.25 percent to each State; and

''(2) of the total amounts of funds remaining after allocation under paragraph (1), an amount that is equal to the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for 1993 bears to the number of part 1 violent crimes reported by all States to the Federal Bureau of Investigation for 1993.

''(b) UNAVAILABILITY OF INFORMATION.—For purposes of this section, if the data regarding part 1 violent crimes in any State for 1993 is unavailable or substantially inaccurate, the Attorney General shall utilize the best available comparable data regarding the number of violent crimes for 1993 for such State for the purposes of allocation of any funds under this title.

''SEC. 205. UTILIZATION OF PRIVATE SECTOR.

''Funds or a portion of funds allocated under this title may be utilized to contract with private, nonprofit entities or community-based organizations to carry out the purposes specified under section 201(a)(2).

''SEC. 206. PUBLIC PARTICIPATION.

''(a) IN GENERAL.—A State expending payments under this title shall hold at least one public hearing on the proposed use of the payment from the Attorney General.

''(b) VIEWS.—At the hearing, persons, including elected officials of units of local government within such State, shall be given an opportunity to provide written and oral views to the State and to ask questions about the entire budget and the relation of the payment from the Attorney General to the entire budget.

''(c) TIME AND PLACE.—The State shall hold the hearing at a time and place that allows and encourages public attendance and participation.

''SEC. 207. ADMINISTRATIVE PROVISIONS.

''For the purposes of this title:

''(1) The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, except that American Samoa, Guam, and the Northern Mariana Islands shall be considered as one State and that, for purposes of section 104(a), 33 percent of the amounts allocated shall be allocated to American Samoa, 50 percent to Guam, and 17 percent to the Northern Mariana Islands.

''(2) The term 'payment period' means each 1-year period beginning on October 1 of any year in which a grant under this title is awarded.

''(3) The term 'part 1 violent crimes' means murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports.''.

H.R. 667

OFFERED BY: MR. TRAFICANT

AMENDMENT NO. 25: In the matter proposed to be added by section 101 of the bill by section 503(b)(2) of the Violent Crime Control and Law Enforcement Act of 1994, insert ''victims of the defendant or the family of such victims, the local media, and the convicting court'' after ''notify''.

H.R. 667

OFFERED BY: MR. VOLKMER

AMENDMENT NO. 26: Page 2, line 10, Strike, and all that follows through Page 7, line 12.

Page 9, line 7, Strike and all that follows through Page 10, line 10.

Page 2, line 10, insert the following:

''SEC. 501. GRANTS AUTHORIZED.

(a) GRANT AUTHORIZATION.—The Attorney General shall make grants to individual States to construct, expand, and improve prisons and jails.

(b) AMOUNTS AUTHORIZED.—Grants totalling $3,000,000,000 shall be made to each State not later than October 30, 1995, and grants to each State totalling $3,000,000,000 shall be made annually thereafter in each of the years from fiscal year 1996 through fiscal year 1998.

(c) GRANT ALLOCATION.—All such grants shall be made without conditions imposed by the Federal Government, not withstanding any other provision of Federal law, except to comply with the provisions of this title and that the use of such funds shall be exclusively for the construction of prisons and jails. States shall be encouraged to allocate appropriate portions of their grants to local governments within their jurisdictions for the construction of jails.

(d) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated to carry out this title $3,000,000,000 for each of fiscal years 1995, 1996, 1997, and 1998. All such moneys shall be appropriated from the Violent Crime Reduction Trust Fund.

(e) DISTRIBUTION OF FUNDS IN FISCAL YEAR 1995.—Of the total amount of funds appropriated under this title in fiscal years 1995, 1996, 1997 and 1998 there shall be allocated to each State an amount which bears the same ratio to the amount of funds appropriated pursuant to this title as the number of part I violent crimes reported by the States to the Federal Bureau of Investigation for the preceding year which appropriated bears to the number of part I violent crimes reported by all States to the Federal Bureau of Investigation for such preceding year.

SEC. 502. LIMITATIONS OF FUNDS.

(a) NONSUPPLANTING REQUIREMENT.—Funds made available under the title shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from States sources.

(b) ADMINISTRATIVE COSTS.—Not more than 3 percent of the funds available under the title may be used for administrative costs.

(c) MATCHING FUNDS.—The portion of the costs of a program provided by a grant under this title shall be 75 percent of the total costs of the program as described in application.

(d) CARRY OVER OF APPROPRIATIONS.—Any funds appropriated but not expended as provided by this section during any fiscal year shall be carried over and will be made available until expended.

SEC. 503. DEFINITIONS.

For purposes of this title—

(1) the term 'violent crime' means—

(A) a felony offense that has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(B) any other offense that is a felony and that, by its nature, involves substantial risk that physical force against the person of another may be used in the course of committing the offense;

(2) the term 'serious drug offender' has the same meaning as that is used in section 924(e)(2)(A) of title 19, United States Code;

(3) the term 'State' means any of the United States and the District of Columbia;

(4) the term 'convicted' means convicted and sentenced to a term in a State corrections institution or a period of formal probation; and

(5) the term 'part I violent crimes' means murder, rape, robbery, and aggravated assault as those offenses are reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports.

And renumber ''SEC. 506'' as ''SEC. 504'' and ''SEC. 507'' as ''SEC. 505''.

H.R. 667

OFFERED BY: MR. WELLER

AMENDMENT NO. 27: On page 6, after line 20, insert the following new subsection (c):

''(c) FUNDS FOR JUVENILE OFFENDERS.—If a State which otherwise meets the requirements of the section certifies to the Attorney General that exigent circumstances exist which require that the State expend funds to confine juvenile offenders, the State may use funds received under this title to build, expand, and operate juvenile correctional facilities or pretrial detention facilities for such offenders.

H.R. 667

OFFERED BY: MR. WYDEN

AMENDMENT NO. 28: Page 1, after line 22, insert the following:

''Such grants may also be used to build, expand, and operate secure youth correctional facilities.''

Page 6, after line 2, insert the following (and redesignate any subsequent subsections accordingly):

''(b) JUVENILE JUSTICE INCENTIVE.—Beginning in fiscal year 1998, 15 percent of the funds that would otherwise be available to a State under section 502 or 503 shall be withheld from any State which does not have an eligible system of consequential sanctions for juvenile offenders.

Page 10, line 7, delete ''and'' at the end of the line.

Page 10, at the end of line 10, strike the period and insert '';'', and add the following:

''(4) the term 'an eligible system of consequential sanctions for juvenile offenders' means that the State or States organized as a regional compact, as the case may be—

''(A)(i) have established or are in the process of establishing a system of sanctions for the State's juvenile justice system in which the State bases dispositions for juveniles on a scale of increasingly severe sanctions for the commission of a repeat delinquent act, particularly if the subsequent delinquent act committed by such juvenile is of similar or greater seriousness or if a court dispositional order for a delinquent act is violated; and

''(ii) such dispositions should, to the extent practicable, require the juvenile delinquent to compensate victims for losses and compensate the juvenile justice authorities for supervision costs;

''(B) impose a sanction on each juvenile adjudicated delinquent;

''(C) require that a State court concur in allowing a juvenile to be sent to a diversionary program in lieu of juvenile court proceedings;

''(D) have established and maintained an effective system that requires the prosecution of at least those juveniles who are 14 years of age and older as adults, rather than in juvenile proceedings, for conduct constituting—

''(i) murder or attempted murder;

''(ii) robbery while armed with a deadly weapon;

''(iii) battery while armed with a deadly weapon;

''(iv) forcible rape;

''(v) any other crime the State determines appropriate; and

''(iv) the fourth or subsequent occasion on which such juveniles engage in an activity for which adults could imprisoned for a term exceeding 1 year;

unless, on a case-by-case basis, the transfer of such juveniles for disposition in the juvenile justice system is determined under State law to be in the interest of justice;

''(E) require that whenever a juvenile is adjudicated in a juvenile proceeding to have engaged in the conduct constituting an offense described in subparagraph (D) that—

''(i) a record is kept relating to that adjudication which is—

''(I) equivalent to the record that would be kept of an adult convictin for that offense;

''(II) retained for a period of time that is equal to the period of time records are kept for adult convictins; and

''(III) made available to law enforcement officials to the same extent that a record of an adult conviction would be made available;

''(ii) the juvenile is fingerprinted and photographed, and the fingerprints and photograph are sent to the Federal Bureau of Investigation; and

''(iii) the court in which the adjudication takes place transmits to the Federal Bureau of Investigation the information concerning the adjudication, including the name and birth date of the juvenile, date of adjudication, and disposition.

''(F) where practicable and appropriate, require parents to participate in meeting the dispositional requirements imposed on the juvenile by the court;

''(G) have consulted with any units of local government responsible for secure youth correctional facilities in setting priorities for construction, development, expansion and modification, operation or improvement of juvenile facilities, and to the extent practicable, ensure that the needs of entities currently administering juvenile facilities are addressed; and

''(H) have in place or are putting in place systems to provide objective evaluations of State and local juvenile justice systems to determine such systems' effectiveness in protecting the community, reducing recidivism, and ensuring compliance with dispositions.''.

H.R. 667

OFFERED BY: MR. WYNN

AMENDMENT NO. 29: Page 9, after line 6 insert the following:

''(6) DEFICIT REDUCTION.—Notwithstanding any other provision of this title, any funds that are not distributed pursuant to this title to carry out section 503 shall, in the fiscal year following the fiscal year that such funds were made available, revert to the Department of Treasury to reduce the deficit.''.

H.R. 667

OFFERED BY: MR. ZIMMER

AMENDMENT NO. 30: Add at the end the following new title:

TITLE —PRISON CONDITIONS

SEC. . PRISON CONDITIONS.

(a) IN GENERAL.—The Attorney General shall by rule establish standards regarding conditions in the Federal prison system that provide prisoners the least amount of amenities and personal comforts consentent with Constitutional requirements and good order and discipline in the Federal Prison system.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to establish or recognize any minimum rights or standards for prisoners.

SEC. . ANNUAL REPORT.

The director of the Bureau of Prisons shall submit to Congress on or before December 31 of each year, beginning on December 31, 1995 a report setting forth the amount spent at each Federal correctional facility under the jurisdiction of the Bureau of Prisons for each of the following items:

(1) The minimal Requirements necessary to maintain Custody and security of prisoners.

(2) Basic nutritional needs.

(3) Essential medical services.

(4) Amenities and programs beyond the scope of the items referred to in paragraphs (1) through (3), including but not limited to—

(A) recreational programs and facilities;

(B) vocational and education programs; and

(C) counseling services, together with the rationale for spending on each category and empirical data, if any, supporting such rationale.

H.R. 728

OFFERED BY: MS. JACKSON LEE

AMENDMENT NO. 2: Page 6, after line 10, insert the following:

(g) APPORTIONMENT REQUIREMENT.—''Funds made available under this title to units of local government shall be equitably apportioned between the categories of programs set forth in sections (2) (A–C), above. Under no circumstance should 100% of any allocation be expended on only one category of programs listed above.''

H.R. 728

OFFERRED BY: MS. JACKSON LEE

AMENDMENT NO. 3: Page 4, after line 5, insert the following:

''(D) Establishing the programs described in the following subtitles of title III of the Violent Crime Control and Law Enforcement Act of 1994 (as such title and the amendments made by such title were in effect on the day preceding the date of the enactment of this Act):

''(i) Assistance for Delinquent and At-Risk Youth under subtitle G.

''(ii) Urban Recreation and At-Risk Youth under subtitle O which made amendments to the Urban Park and Recreation Recovery Act of 1978.

''(iii) Gang Resistance and Education Training under subtitle X.''

Page 6, after line 24, insert the following (and redesignate any subsequent subsections accordingly):

''(c) PREVENTION SET-ASIDE FOR YOUTH.—Of the amounts to be appropriated under subsection (a), the Attorney General shall allocate $100,000,000 of such funds for each of fiscal years 1996 through 2000 to carry out the purposes of subparagraph (D) of section 101(a)(2).

H.R. 729

OFFERED BY: MR. FIELDS OF LOUISIANA

AMENDMENT NO. 2: In the matter proposed to be inserted in section 3593(e) of title 18, United States Code, by section 201, insert ''or a sentence of life imprisonment without the possibility of release'' after ''shall recommend a sentence of death''.

Strike subsection (b) of section 201 and eliminate the subsection designation and heading of subsection (a).