report is a blatant attempt to save the loophole, rather than close it.

On April 6, the Senate voted 96 to 4 to close this unjustified tax loophole for billionaires who renounce their American citizenship in order to avoid taxes on the wealth they have accumulated as Americans.

As we all know, the Senate Finance Committee had tried to close the loophole as part of its action to restore the health care deduction for small businesses.

The Finance Committee bill closed the billionaires' loophole, despite the fact that the revenue gained was not needed to pay for the health care deduction in the bill. In fact, the Finance Committee recommended that the revenues be used for deficit reduction.

This is exactly the type of action necessary if we are serious about achieving a balanced budget.

According to the revenue estimates at the time, closing the loophole would raise $3.6 billion over the next 10 years. Clearly, substantial revenues are at stake.

Too often, we close tax loopholes only when we need to raise revenues to offset tax cuts. In this case, the Finance Committee closed this flagrant loophole as soon as it was brought to the Committee's attention and rightly so, because this loophole should be closed as soon as possible.

The Senate bill did so, and all of us thought the issue was settled.

Yet, when the legislation came back to us from the Senate-House conference, the loophole had reappeared, and this important tax reform had disappeared. This outrageous tax break for a few dozen or so of the wealthiest individuals in the country would remain open.

The provision was dropped in conference because it was felt that technical issues needed to be addressed before Congress took action on the issue.

But in the April 6 vote, the Senate went solidly on record to close the loophole as quickly as possible, and to make the effective date of such legislation February 6, 1995.

This all happened, of course, at the same time our Republican colleagues in Congress have been proposing deep cuts in Medicare and education in order to pay for their new tax breaks for the rich.

Now, the report of the Joint Tax Committee suggests that the real purpose of the delay was to try to find a way to save as much of the loophole as possible.

I have several major concerns about the report

First, the report now indicates that the revenue gain from closing the loophole may be only about half the amount estimated earlier—$1.9 billion, instead of $3.6 billion. The amount is still significant, but far less than was expected.

Second, the report suggests that it may be preferable simply to tinker with the existing law and improve IRS enforcement procedures, instead of enacting a new reform to close the loophole, as President Clinton has proposed.

But the IRS has attempted to enforce the current law, and it has been found to be fatally flawed. To tinker with the current law is a thin-veiled pretext to save the current loophole.

The IRS has been able to identify only a handful of cases in which any tax was collected under the defective current law. And the total tax collected is less than $500,000.

At the same time, we have tax lawyers quoted as saying: ''I talk to a new client interested in expatriating every week.''

Third, the report allows an unacceptable window of opportunity to avoid the tax. Under this proposal, wealthy tax-evaders can still qualify for the loophole by simply having begun, not completed, the process of renouncing their citizenship by the February 6 date.

When we debated this issue 2 months ago, there were suggestions that the effective date should be postponed to accommodate certain individuals in their tax avoidance schemes.

In my view, we should close the loophole tight, not gerrymander the effective date to let some well-connected billionaires squeeze through.

At a time when Republicans in Congress are cutting Medicare, education, and other essential programs in order to pay for tax cuts for the rich, they are also maneuvering to salvage this unjustified loophole for the super wealthy.

I say, this loophole should be closed now, and it should be closed tight—no ifs, and, or buts. I intend to do all I can to see that it is.

COMPREHENSIVE TERRORISM PREVENTION ACT

The PRESIDING OFFICER. Under the previous order, the hour of 9:45 having arrived and passed, the Senate will now resume consideration of S. 735, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 735) to prevent and punish acts of terrorism, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Hatch-Dole amendment No. 1199, in the nature of a substitute.

Mr. SPECTER. Mr. President, the time has arrived for consideration of the pending bill on terrorism. The issues which are going to be taken up this morning involve habeas corpus reform. In the absence of any other Senator on the floor who desires to speak or offer an amendment, I will address the subject in a general way.

Mr. President, the Specter-Hatch habeas corpus reform bill, S. 623, is a very important piece of legislation. The provisions of that bill will be taken up now as part of the pending antiterrorism bill. This bill is an appropriate place to take up habeas corpus reform, because the acts of terrorism in the atrocious bombing of the Federal building in Oklahoma City would carry with it the death penalty, and habeas corpus reform is very important in order to make the death penalty an effective deterrent.

In order to have an effective deterrent, the penalty has to be certain and the penalty has to be swift. We have seen in the course of the appeals taken on cases from death row that they last sometimes as long as 20 years. Habeas corpus proceedings arising from Federal convictions are handled slightly differently than those arising out of State convictions, because in State proceedings, after the highest State court affirms the death penalty on direct review, there may then be additional State-court review called collateral review on State habeas corpus before review on Federal habeas corpus. Despite this slight difference, this is the time to move ahead with legislation to reform habeas corpus in all cases.

This is a subject that I have been working on for many years, since my days as an assistant district attorney in Philadelphia and later as district attorney of Philadelphia. Since coming to the Senate in 1981, I have introduced many bills directed at improving the administration of criminal justice, like the armed career criminal bill, which was enacted in 1984, and other legislation which has dealt with expanding the prison system, improving the chances of realistic rehabilitation, and strengthening deterrent value of the criminal law. The subject of habeas corpus reform falls into the latter category.

I have addressed habeas corpus reform on many occasions over the years and succeeded in 1990 in having the Senate pass an amendment to the 1990 crime bill on habeas corpus reform to try to reduce the long appellate time. Notwithstanding its passage by the Senate in 1990, the provision was not passed by the House of Representatives and was dropped from the conference report. I continued to introduce legislation on habeas corpus reform in 1991, 1993, and again in 1995. This year, after very extended negotiations with the distinguished Senator from Utah, the chairman of the Judiciary Committee, we came to an agreement on legislation which captioned the Specter-Hatch habeas corpus reform bill, S. 623, the provisions of which are now pending as part of this antiterrorism bill.

Preliminarily, Mr. President, I think it important to note the controversy over whether the death penalty is, in fact, a deterrent against violent crime.

It is my view that it is a deterrent, and I base that judgment on my own experience in prosecuting criminal cases, prosecuting personally murder cases, and running the district attorney's office in Philadelphia which had some 500 homicides a year at the time.

Based on this experience, I am personally convinced that many professional robbers and burglars are deterred from taking weapons in the course of their robberies and burglaries because of the fear that a killing will result, and that would be murder in the first degree.

One of the cases which I handled many years ago as an assistant district attorney on appeal has convinced me that it is, in fact, a deterrent, and it is an illustrative case where there are many, many others which have been cited in treatises and the appellate reports.

The case I refer to involved three young hoodlums named Williams, age 19, Cater, 18, and Rivers, age 17. The three of them decided to rob a grocery store in north Philadelphia. They talked it over, and the oldest of the group, Williams, had a revolver which he brandished in front of his two younger coconspirators.

When Cater, age 18, and Rivers, age 17, saw the gun they said to Williams that they would not go along on the robbery if he took the gun because of their fear that a death might result and they might face capital punishment—the electric chair.

Williams put the gun in the drawer, slammed it shut, and they all left the room to go to the grocery store in north Philadelphia for the robbery, to get some money.

Unbeknown to Cater or Rivers, Williams had reached back into the drawer, pulled out the gun, took it with him, and in the course of the robbery in the north Philadelphia grocery store, the proprietor, Jacob Viner, resisted. Williams pulled out his gun and shot and killed Mr. Viner, and all three were caught and charged with murder in the first degree. All were tried. All were given the death penalty.

We know the facts of the case from the confessions and from the clearly established evidence as to what happened, as I have just recited it.

Ultimately, Williams was executed in 1962, the second to the last individual to be executed in Pennsylvania until within the past few months there was an execution after a 33-year lapse in carrying out the death penalty in the State of Pennsylvania.

When the matter came up on hearings before the pardon board, and I was district attorney, I agreed that the death penalty ought not to be carried out as to both Cater and Rivers because of the difference in their approach to the offense, that although technically they were guilty of the acts of their coconspirator, there was a significant qualitative difference, because they had refused to go along when the gun was to be taken and it was counter to the agreement and conspiratorial plan and scheme which the three carried out.

It was not an easy distinction to make because many would say that Cater and Rivers were equally responsible with Williams and that they had participated in the murder plot and should be held to the death penalty as well. But their sentences were commuted.

I think that case is a good illustration of the deterrent effect of capital punishment. Here you had two young men, 18 and 17, with very marginal IQ's, but they knew enough not to go along on a robbery if a gun was present because they might face the death penalty if a killing occurred.

Mr. President, in the current context in which habeas corpus appeals now run for as long as a couple of decades, the deterrent effect of capital punishment has been virtually eliminated.

There are many, many cases which illustrate this point. Many cases of brutal murders in which the case has dragged on and on for as long as 17 years or more.

One of them is the case of a man named Willie Turner. On the morning of July 12, 1978, he walked into the Smith Jewelers in Franklin, VA, carrying a sawed-off shotgun, wrapped in a towel. Without saying a word, Turner showed his shotgun to the proprietor, a man named Mr. Jack Smith.

Mr. Smith triggered the silent alarm, and a police officer, Alan Bain, arrived at the scene. During the course of the events, the defendant, Turner, pointed his shotgun at officer Bain's head and ordered him to remove his revolver from his holster and to put it on the floor. Turner then eventually shot the proprietor, Jack Smith, in the head. The shot was not fatal.

Then officer Bain began talking to Turner and he offered to take Turner out of the store if he would agree not to shoot anyone else. The defendant Turner then said, ''I'm going to kill this squealer,'' referring to the proprietor, Smith, who lay severely wounded. Turner reached over the counter with his revolver and fired two close-range shots into the left side of Mr. Smith's chest.

The shots caused Smith's body to jump. Medical testimony established that either of these two shots to the chest would have been fatal. Turner was tried for murder in the first degree, was convicted, and was sentenced to death. The appeals lasted 17 years, with the victim's family attending some 19 separate court proceedings.

It is not an easy matter, Mr. President, when we talk about capital punishment. It is my judgment, however, that society needs this ultimate weapon in order to try to deal with violent crime in America. That has been the judgment of some 38 States in the United States. That is a judgment of the Congress of the United States in enacting legislation on the death penalty on the crime bill which was passed last year—a very controversial bill with many aspects going in a number of directions, some with gun control, others with providing more police, others with building more prisons.

I supported that bill, in large part because of the death penalty and the strong stands taken in that bill against violent crime.

Mr. President, there are many, many cases which illustrate the enormous delays in the criminal justice system and one which I have cited on the floor before. The CONGRESSIONAL RECORD is replete with citations of cases which show the deterrent effect of the death penalty and show the enormous delays under habeas corpus, but the Robert Alton Harris case is one which shows it vividly.

Defendant Harris was arraigned for a double murder back in July of 1978. His case wound through the courts running for some 14 years until 1992. In the course of this case, Mr. Harris filed 10 State habeas corpus petitions under the laws of California, 6 Federal habeas corpus petitions, 4 Federal stays of executions, there were 5 petitions for certiorari to the Supreme Court of the United States, and the case went on virtually interminably. Finally, in a very unusual order, the Supreme Court of the United States directed the lower Federal courts not to issue any more stays of execution for Harris.

There is another aspect to these very long delays, Mr. President. It involves the question as to whether the protracted, lengthy period of time defendants wait to have their death sentences carried out is itself, in fact, cruel and unusual punishment.

In a case before the Supreme Court of the United States as reported in the Washington Post on March 28 of this year, Justice Stevens, joined by Justice Breyer, called upon the lower courts to begin to examine whether executing a prisoner who has spent many years on death row violates the Constitution's prohibition on cruel and unusual punishment.

There was a case in 1989 where the British Government declined to extradite a defendant, Jens Soering, to Virginia on murder charges until the prosecutor agreed not to seek the death penalty because the European Court of Human Rights had ruled that confinement in a Virginia prison for 6 to 8 years awaiting execution violated the European Convention on Human Rights.

So we have a situation where these long delays involve continuing travail and pain to the family of the victims awaiting closure and awaiting disposition of the case. We also have an adjudication under the European Convention on Human Rights that concluded that the practice in the State of Virginia where cases were delayed for 6 to 8 years constitutes cruel and unusual punishment—all of these factors come together. Delays now average over 9 years across the United States. It seems to me the Congress of the United States, which has the authority to establish timetables and procedures for the Federal courts, ought to act to make the death penalty an effective deterrent. This legislation will move precisely in that direction.

Under the Specter-Hatch bill there will be a time limit of 6 months for the defendant to file his petition for a writ

of habeas corpus in the Federal courts in a capital case. At the present time, without any statute of limitations, some of those on death row wait until the death penalty is imminent before filing the petition. This will put into effect a 6-month time limit in capital cases, where the State has provided adequate counsel in its post-conviction proceedings. So there is motivation under the pending legislation for adequate counsel to be appointed by the States. Not only will the appointment of counsel expedite the process, but it will ensure that the defendant will be accorded his or her rights.

After that period of time, a U.S. district court will have a period of 180 days to decide a habeas corpus petition in a capital case. That really is a sufficient period of time. That I can personally attest to from my own experience as an assistant district attorney and district attorney handling habeas corpus cases in both the State and Federal courts. If that time is insufficient, a judge can extend the time by writing an opinion stating his or her reasons. Right now, there are cases that have been pending before some Federal district judges for years. We must act to impose some limit on the length of time such cases are allowed to linger.

This deadline is not unduly burdensome to a Federal judge, to take up a case and decide it in 6 months. Even in the States which have the highest incidence of capital punishment, with the most defendants on death row—Florida, California, Texas—each Federal judge would not have a case sooner than once every 18 months or so. On appeal, the Federal court of appeals would have the obligation to decide the case within 120 days of briefing.

If a defendant sought to file any subsequent petition for habeas corpus, he would not be allowed to do so unless there was newly discovered evidence going to his guilt which could not have been available at an earlier time. This is a reasonably strict standard against filing repetitious petitions. And a second petition would be allowed only if the court of appeals agrees to permit the filing of the petition in the district court. Because the courts of appeals act in panels of three judges, two judges will have to agree that a subsequent petition satisfies the rigorous standards of this bill before it is filed in the district court.

So I think we have set forth here a timetable which is realistic and reasonable, and a structure which will make the death penalty a meaningful deterrent, cutting back the time from some 20 years, in extreme cases, to a reasonable timeframe which can be done with fairness to all parties in the course of some 2 years.

This legislation is not crafted in a way which is totally acceptable to me but it has been hammered out over the course of a great many negotiations and discussions with the distinguished Senator from Utah, the chairman. While he is on the floor I would like to praise him for his work in this field and for his work on the committee generally. This has been a very, very difficult matter to come to closure on. I think in the posture of the terrorism problem, that we are on the verge, now, of really moving forward and enacting this very important legislation.

I think it will pass the Senate. I believe it will pass the House. I think once presented to the President, it will be enacted into law and will very significantly improve the administration of criminal justice in the United States.

Mr. HATCH. Will my colleague yield?

Mr. SPECTER. I do.

Mr. HATCH. Mr. President, I thank my colleague for his kindness. I have to say we would not be as far along here on habeas corpus and having it in this bill if it was not for his leadership in this area. He is one of the few people in the whole Congress who really understands this issue very fully and thoroughly, and I have to give him an awful lot of credit on it.

We have worked together with the States attorneys general to have the language we have in this bill. I hope everybody on this floor will vote down these amendments that are being brought up here today because I think it is the only way we can make the change and get rid of these frivolous appeals, save taxpayers billions of dollars, and get the system so it works in a just and fair way, the way it should.

The amendment we have will protect civil liberties and constitutional rights while at the same time protecting the citizens and the victims and their families from the incessant appeals that really have been the norm in our society.

So I thank my colleague for his leadership on this and I just personally respect him and appreciate him and consider him a great friend.

We are prepared to go. We are supposed to have a vote at 10:15. I hope we can move ahead on the bill.

Mr. President, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. BIDEN. Mr. President, I apologize to my colleague for being late.

AMENDMENT NO. 1217

(Purpose: To amend the bill with respect to deleting habeas corpus for State prisoners)

Mr. BIDEN. Mr. President, I call up an amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 1217.

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

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

The amendment is as follows:

Delete title 6, subtitle A, and insert the following:

SUBTITLE A—COLLATERAL REVIEW IN FEDERAL CRIMINAL CASES

SEC. 601. FILING DEADLINES.

Section 2255 of title 28, United States Code, is amended—

(1) by striking the second and fifth paragraphs; and

(2) by adding at the end the following new paragraphs:

''A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

''(1) the date on which the judgment of conviction becomes final;

''(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movement was prevented from making a motion by such governmental action;

''(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and is made retroactively applicable; or

''(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

''In a proceeding under this section before a district court, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held only if a circuit justice or judges issues a certificate of appealability. A certificate of appealability may issue only if the movement has made a substantial showing of the denial of a constitutional right. A certificate of appealability shall indicate which specific issue or issues shows such a denial of a constitutional right.

''A claim presented in a second or successive motion under this section that was presented in a prior motion shall be dismissed.

''A claim presented in a second or successive motion under this section that was not presented in a prior motion shall be dismissed unless—

''(A) the movant shows the claim relies on a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable; or

''(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

''(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the movant guilty of the underlying offense.

''Before a second or successive motion under this section is filed in the district court, the movant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application. A motion in the court of appeals for an order authorizing the district court to consider a second or successive motion shall be determined by a three-judge panel of the court of appeals. The court of appeals may authorize the filing of a second or successive motion only if it determines that the motion makes a prima facie showing that the motion satisfies the requirements in this section. The court of appeals shall grant or deny the authorization to file a second or successive motion not later than 30 days after the filing of the motion.

''The grant or denial of an authorization by a court of appeals to file a second or successive motion shall not be appealable and shall not be the subject of a petition for rehearing or a writ of certiorari.

''A district court shall dismiss any claim presented in a second or successive motion that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.''.

Mr. BIDEN. Mr. President, this is the first of a series of several amendments relating to habeas corpus. Habeas corpus is probably the most time honored phrase in our English jurisprudential criminal justice system, referred to as the Great Writ. But it is not very well understood by a vast majority of people including many lawyers.

I say at the outset here that one of the things we are going to hear today—we are going to hear a great deal about how the system is abused. We are going to be told that time and again. We will see charts. We have been seeing these charts for years that show that a man or woman, in almost every case it has been a man, who has been sentenced to death, because of a series of frivolous appeals and successive habeas corpus petitions has remained in a prison cell and alive for—some of the examples of 10, 12, 14, 18 years after having committed the crime and having been convicted by a jury of their peers and having exhausted their appeals—after having committed a heinous crime. And we are left with the impression that the choice here is a stark choice between a continuation of a system where everybody convicted of a heinous crime and sentenced to death languishes in a prison for a decade or more, costing the system money and avoiding their ultimate fate that the choice is between that system and a system that essentially eliminates the right of a Federal court to review the actions taken by a State court to determine whether or not someone had been granted a fair trial. That is what habeas corpus is all about. Habeas corpus is all about saying when so and so is convicted, they were deprived of certain rights and opportunities and that they were not given a fair shake in the system.

Habeas corpus came about and really came in the forefront of the American political and legal system around 1917 when the State of Georgia put to death someone who by everyone's account should not have been put to death, and there was no ability of the Federal court to review the actions taken by the Georgia State court. The reason I give this background—and in light of the fact that I got here a few minutes late and there are Senators who have commitments early in the morning on this, I am going to shorten this particular amendment. But what we are told is that—and you will hear time and again this morning—the system is terrible, everyone abuses the system, and essentially State courts do a good job. Why have the Federal courts in this thing at all? I realize I am putting colloquial terms to this, but that is the essence of it.

The amendments that I am going to offer today and others will offer today are not designed to maintain the system as it is. We will show in future amendments that, if we amend the habeas corpus law the way we would like to as opposed to the way it is in the Republican bill, you still would have a situation where someone would have to have their fate executed and carried out after a trial by their peers and a finding of guilt within a very short amount of time. You would not have these 12-, 14-, 16-, or 18-year delays in implementing a court's decision.

As my former associate—I was his associate—a very fine trial lawyer in Wilmington, DE, always would say to the jury, ''I hope we keep our eye on the ball here.'' I want us to try to focus, if we can, this morning. My colleagues on the Republican side of the aisle have repeatedly said in this bill that we must do something to ensure swift punishment of those who committed the Oklahoma City bombing. That is supposedly why, you might wonder, in a terrorism bill there is habeas corpus.

Well, the constant argument put forward is, look, we have to do this because once we find the person who did this awful thing in Oklahoma and they are convicted and sentenced to death, the death penalty must be carried out swiftly. I might add, a bill that the Presiding Officer and I voted for, the Biden crime bill, is the only reason there is a death penalty. Had we not voted for that bill, had that not passed last year, this finding of a person who committed the bombing, that person under Federal law would not be eligible to be put to death. There is no question that because of the action you and I and others took last year there is a death penalty now.

So unlike the World Trade Tower, no death penalty would be there under Federal law had we not passed the Biden crime bill then. Now there is. But they say now, once we find this person, we are going to go put them to death, what we have to do—this will be a Federal prison because under Federal law they will be prosecuted, not under the Oklahoma law but Federal law. They are eligible for the death penalty, and they will be convicted—I assume, and it is our fervent hope they will be convicted—and now they get sentenced to death. And the President and the Attorney General say they want the death penalty for whomever is convicted. My friends say, well, what we have to do now is have habeas corpus changed so no one will languish in prison. I do not think there is anybody in the Federal system right now—and I am looking to my staff for confirmation—who sits on death row filing habeas corpus petitions. There is one habeas corpus petition that has been filed in the Federal system.

So what I want to say to my friends—and I will put the rest of this in the RECORD—is this has nothing to do with terrorism. Not one of the horror stories Senator HATCH has given or has given us on the Senate floor relates to a terrorist who was prosecuted in the Federal court. They all relate to someone who is prosecuted in State court and has spent too long sitting on death row. There are useful and practical steps we can take to prevent future terrorist activities. We can reform habeas corpus petitions for State court prisoners. But in reforming habeas corpus petitions for State court prisoners, not one of them will affect terrorism because—I want to make it real clear—if we have a terrorist convicted under Federal law in a Federal court, then Federal habeas applies.

So my amendment is very simple. It says if you want to deal with terrorism, that is the purpose of putting habeas corpus in this bill and then limit it to Federal cases; limit it to Federal prisoners. That is the stated purpose. Do not go back and change the whole State court system. Do not go back and change the whole State habeas system on this bill. Debate it on a bill which should be the crime bill that is coming up in the next couple of weeks we are told.

There was a lot of discussion yesterday about nongermane amendments. This amendment strikes the 95 percent of the habeas bill that is not germane and keeps the 5 percent that is germane. Ninety-five percent of what my friends have in this bill relates to State prisoners, State courts, and has nothing to do with terrorism, nothing to do with Oklahoma City, but 5 percent arguably does.

My amendment says let us pass the 5 percent that has to do with Federal prisoners held in Federal prisons convicted in Federal courts and change the habeas the way they want for those prisoners. That will deal with Oklahoma City the way they say they want it and it will not mess up the 95 percent of the cases that deal with the State prisoners in State prisons in State courts and deny essentially Federal review of those State decisions.

So I will reserve the remainder of my time by saying that it is simple. My amendment simply says, all right, if this is about Oklahoma City, let us have it about Oklahoma City. The provisions in the bill relate to Federal prisoners and Federal habeas corpus.

Parliamentary inquiry: How much time remains?

The PRESIDING OFFICER. The Senator from Delaware has 5 minutes 2 seconds.

Mr. BIDEN. I will reserve the remainder of my time.

I yield the floor.

Mr. HATCH. Mr. President, I rise in opposition to the amendment offered to limit habeas reform exclusively to Federal cases.

Some have argued that habeas reform as applied to the States is not germane to this debate. Those individuals, including my distinguished colleague from Delaware, contend that a

reform of the Federal overview of State convictions is meaningless in the context of the debate we are having. They are perhaps willing to admit that some revision of the collateral review of cases tried in Federal court may be in order, but they contend that reform of Federal collateral review of cases tried in State court is unnecessary.

This position is simply incorrect. I would like to read from a letter written by Robert H. Macy, district attorney of Oklahoma City, and a Democrat:

> [I]mmediately following the trial or trials in federal court, I shall, working in cooperation with the United States Department of Justice and the Federal law enforcement agencies investigating the bombing of the Alfred P. Murrah Building, prosecute in Oklahoma State court the cowards responsible for murdering innocent people in the area surrounding the federal building. And I shall seek the death penalty. We must never forget that this bombing took several lives and injured dozens of persons in the neighborhood and businesses near the building. The State of Oklahoma has an overwhelming, compelling interest to seek, and obtain the maximum penalty allowable by law for the senseless and cowardly killings.

In our reaction to the destruction of the Federal building in Oklahoma City, we may overlook the fact that the bombing also caused the death of people who were not inside the building itself, or even on Federal property. The State of Oklahoma, not the Federal Government, will thus prosecute those responsible for the bombing that killed people outside of the Federal building. In those instances, Federal jurisdiction may not obtain and it will thus be necessary to prosecute the killers in State, as well as Federal, court.

A failure to enact a complete, meaningful, reform of habeas corpus proceedings may enable the individuals in this case, provided they are apprehended and duly convicted, to frustrate the demands of justice. The blood of the innocent men and women are on the hands of the evil cowards who committed this terrible tragedy. Justice must be, as President Clinton declared, ''swift, certain, and severe.''

Moreover, failure to enact meaningful, comprehensive, habeas reform will permit other killers who have terrorized their communities to continue to frustrate the judicial system. If we adopt the proposed amendment, we will create a schism between State and Federal capital law. In other words, murders tried in Federal court will face imposition of their final penalty more swiftly than persons tried for capital crimes in State cases. Why should we adopt such a piecemeal approach to reform, one that will leave such a gap between State and Federal cases? It simply makes no sense to reform habeas proceedings for cases tried in Federal court but leave the current disastrous system in place for cases tried in State court.

As of January 1, 1995, there were some 2,976 inmates on death row. Yet, only 38 prisoners were executed last year, and the States have executed only 263 criminals since 1973. Abuse of the habeas process features strongly in the extraordinary delay between sentence and the carrying out of that sentence.

In my home State of Utah, for example, convicted murderer William Andrews delayed the imposition of a constitutionally imposed death sentence for over 18 years. The State had to put up millions of dollars in precious criminal justice resources to litigate his meritless claims. His guilt was never in question. He was not an innocent person seeking freedom from an illegal punishment. Rather, he simply wanted to frustrate the imposition of punishment his heinous crimes warranted.

This abuse of habeas corpus litigation, particularly in those cases involving lawfully imposed death sentences, has taken a dreadful toll on victims' families, seriously eroded the public's confidence in our criminal justice system, and drained State criminal justice resources. This is simply not a just system.

Justice demands that lawfully imposed sentences be carried out. Justice demands that we now adopt meaningful habeas corpus reform. Justice demands that we not permit those who would perpetuate the current system to steer us from our course. We must do as the victims, families, and friends of those who have asked us to do: enact meaningful, comprehensive habeas reform now.

Mr. President, I know a number of our colleagues are ready to vote on this. Let me just make three or four points that I think are important with regard to the amendment of my friend and colleague.

I contend that the Biden amendment—and I think anybody who reads it would gut the habeas corpus title of this bill by applying habeas corpus reform solely to Federal capital convictions thus making reform inapplicable to the majority of capital cases including the Oklahoma State prosecution for murders of some of the people killed in Oklahoma. I am referring to those victims who were not Federal employees but were killed by the blast while outside of the building. If this amendment passes, there would be no habeas reform that would apply to them.

So I would like to make three additional points about why we should not vote for the Biden amendment before I move to table the amendment.

First, I have made this point that where people who were not Federal employees were outside the building, the terrorist will be prosecuted in State court for those people.

I ask unanimous consent that a letter from Robert H. Macy, a Democrat district attorney of Oklahoma City, be printed in the RECORD.

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

STATE OF OKLAHOMA,
DISTRICT ATTORNEY,
Oklahoma City, OK, May 24, 1995.

Senator ORRIN G. HATCH,
Chairman, Judiciary, Dirksen Senate Office, Washington, DC.

DEAR SENATOR HATCH: The purpose of this letter is to express my support for the inclusion of the provisions for reform of Federal Habeas Corpus authored by Senator Spector and you in the Anti-terrorism Bill, S735. Apparently some persons have raised questions about the appropriateness of this measure. Specifically, I have been told that there are some who do not see the importance of these reform measures in cases, such as the Oklahoma City bombing, which will initially be prosecuted by Federal Court.

There are two points I would like to make in response to those questions. First, immediately following the trial or trials in Federal Court, I shall, working in cooperation with the United States Department of Justice and the Federal law enforcement agencies investigating the bombing of the Alfred P. Murrah Building, prosecute in Oklahoma State Court the cowards responsible for murdering innocent people in the area surrounding the federal building. And I shall seek the death penalty. We must never forget that this bombing took several lives and injured dozens of persons in the neighborhood and businesses near the building. The State of Oklahoma has an overwhelming, compelling interest to seek and obtain the maximum penalty allowable by law for the senseless and cowardly killings. Not only is it in the interest of the State, it is my sworn duty to seek those sanctions, and I intend to fully carry out my responsibilities.

The reform measures contained in the Spector, Hatch, Dole Habeas Corpus Reform measures contained in S735 will in my judgment significantly curb the abuse and delays inherent in current habeas practice. Every day of delay represents a victory for these cowardly cold blooded killers and another day of defeat and suffering for the victims and all other Americans who cry out for justice.

Secondly, your reform provisions will also create significant time savings during appeals from federal convictions as well. Examples of this include:

Time limitations on when habeas petitions may be filed; time deadlines on when federal courts must rule on habeas petitions; a requirement that federal courts prioritize consideration of capital appeals; reform of the abuses inherent in the probable cause process; limitations on second and successive petitions.

As Chairman of the Board of Directors of the National District Attorney's Association I am proud to inform you that America's prosecutors speak with one voice and that we are calling upon you and your colleagues to set your priorities and enact reforms which will provide to every convicted murderer the rights guaranteed by the constitution, but absolutely no further consideration or delay than is constitutionally required.

Respectfully,

ROBERT H. MACY,
District Attorney.

Mr. HATCH. Mr. President, in this letter, Mr. Macy makes it very clear that he intends to prosecute these terrorists under State law who caused the Oklahoma City bombing. If he does, the Biden amendment will not apply to them. So they can be on death row, even though we want swift, secure, and fast judgment, they would be on death row for anywhere up to 50 years, which is the case of one person in our society

today still sitting on death row almost 50 years later.

So, first, it does not take care of those Federal employees who were killed outside the building should the State of Oklahoma choose to prosecute those responsible—as Robert Macy has stated will occur.

Second, we do not want piecemeal reform. If a robber kills one of the Federal employees the night before the bombing in Oklahoma City or anywhere else, why should we treat that killer any differently from the Oklahoma terrorists simply because he would be tried in a State court rather than a Federal court? We need to have it apply across the board, and the vast majority of murders are committed in the States and prosecuted by the State courts, and they would not be affected by the Biden amendment.

Third, let us say that the Federal Government prosecutors, for some reason or other, blow the prosecution. Assume we are unable to get a conviction against these terrorists in the Federal courts. The double jeopardy clause still allows the State to prosecute those terrorists or those murderers in State court under State law. But if they do prosecute them and we do not reform Federal habeas corpus review of State cases, then we will have the same incessant, frivolous appeals ad hominem, day and night, from that point on because this amendment would not take care of that problem. If we are going to pass habeas reform, let us pass real habeas reform. Let us do it straight up. Let us protect the constitutional rights, which our amendment does do in the bill. Let us protect civil liberties, but let us get some finality into the law so that the frivolous appeal game will be over.

Basically, those are the three things: People killed who are not Federal employees outside the building, those prosecutions will be brought in State court. And the Biden amendment would not apply to the benefit of habeas reform to that case. We do not want piecemeal reform. If a robber kills a Federal employee the night before the bombing in Oklahoma City, just to give a hypothetical, and the State has to bring the murder action against that individual, then why should that person not be subject to the same rules as the murderers in the Oklahoma City bombing? And if the Federal prosecutor blows the prosecution, why should not the State prosecutor be able to bring action under the State laws and under those circumstances prosecute the killers and have the same rule apply under those circumstances as well?

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I will be very brief in reply.

With regard to the point that if someone is not a Federal employee outside the building is killed, fortunately, we passed the Biden crime bill last year, and under title 18, section 2332(A) ''Use of Weapons of Mass Destruction''—I would refer my colleague to that—anyone killed at all, whether sitting across the street drinking a cup of coffee, whether they are riding by in their automobile, whether they are a Federal employee or whether they are an alien, it does not matter; they are subject to the Federal death penalty. So the Senator is missing the point.

Second, we do want universal reform of habeas corpus. Let us do it on a bill that we are supposed to do it on. Let us do it on the crime bill.

And, No. 3, as to the idea that we are somehow going to have two different standards apply, the real issue is under what circumstances does a Federal court have a right to review a State court's judgment. It has nothing to do with terrorism under this provision. It has nothing to do with Oklahoma City. We should deal with it. We should discuss it. We should debate it, not on this bill.

I am prepared, whenever the Senator wants, to move to the tabling of my amendment.

Mr. HATCH. I am prepared to yield. Let me just make a point that a State prosecutor—a Democrat—is going to prosecute these terrorists, and this habeas reform, if the Biden amendment passes, will not apply to them. And that, in a nutshell, is the problem with this amendment. We ought to make our habeas reform apply to both Federal and State convictions.

Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. HATCH. I yield back the time.

Mr. BIDEN. Mr. President, I would take issue with the last statement of my friend. I will not debate it now. We will have plenty of time to do that.

I yield back my time.

Mr. HATCH. I yield back my time.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. The yeas and nays have been ordered. The clerk will call the roll.

Mr. LOTT. I announce that the Senator from Texas [Mr. GRAMM], the Senator from New Hampshire [Mr. GREGG], the Senator from Pennsylvania [Mr. SANTORUM], and the Senator from Wyoming [Mr. SIMPSON], are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON], would vote ''yea.''

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD], is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 67, nays 28, as follows:

[Rollcall Vote No. 237 Leg.]

YEAS—67

Abraham	Faircloth	Mack
Ashcroft	Feinstein	McCain
Baucus	Ford	McConnell
Bennett	Frist	Murkowski
Bingaman	Gorton	Nickles
Bond	Graham	Nunn
Breaux	Grams	Pressler
Brown	Grassley	Pryor
Bryan	Hatch	Reid
Burns	Heflin	Robb
Byrd	Helms	Rockefeller
Campbell	Hollings	Roth
Chafee	Hutchison	Shelby
Coats	Inhofe	Smith
Cochran	Jeffords	Snowe
Cohen	Johnston	Specter
Coverdell	Kassebaum	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kerrey	Thompson
DeWine	Kyl	Thurmond
Dole	Lieberman	Warner
Domenici	Lott	
Exon	Lugar	

NAYS—28

Akaka	Harkin	Moseley-Braun
Biden	Hatfield	Moynihan
Boxer	Inouye	Murray
Bradley	Kennedy	Packwood
Bumpers	Kerry	Pell
Daschle	Kohl	Sarbanes
Dodd	Lautenberg	Simon
Dorgan	Leahy	Wellstone
Feingold	Levin	
Glenn	Mikulski	

NOT VOTING—5

Conrad	Gregg	Simpson
Gramm	Santorum	

So the motion to table the amendment (No. 1217) was agreed to.

Mr. BIDEN. Mr. President, I understand one of our colleagues thought this was an up-or-down vote as opposed to a tabling motion and would like to ask unanimous consent to change the vote which will not affect the outcome.

CHANGE OF VOTE

Mrs. BOXER. On this last rollcall vote No. 237, I voted ''yea.'' It was my intention to vote ''nay.'' Therefore, I ask unanimous consent that I be permitted to change my vote. This will in no way change the outcome of the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

Mr. KENNEDY. Mr. President, I rise to speak generally on the subject of habeas corpus and in support of the amendments by Senators BIDEN and LEVIN that will be offered to the bill.

At the outset, I want to emphasize my support for passage of a strong antiterrorism bill that gives law enforcement agencies the tools they need to combat crimes of terror at home and abroad. I commend President Clinton and the Senators who brought in legislation expeditiously before the Senate. There is much in this legislation that deserves to be enacted into law as soon as possible.

It is unfortunate, therefore, that the proponents of the bill have injected into it an unrelated and highly controversial subject; namely, drastic changes to longstanding law relating to habeas corpus.

The manager of the bill says that habeas corpus is relevant because the suspects charged in the Oklahoma City

bombings are charged with a capital offense. But that fact presents absolutely no justification for changing the rules with regard to State prisoners.

The inclusion of sweeping habeas corpus reform in this bill is the worst kind of opportunism, and I regret that it has occurred in the wake of this national tragedy.

When, and if, capital punishment is imposed, it must be imposed in a constitutional manner. That is accomplished through the writ of habeas corpus—a process so central to our constitutional system of Government that it is often called the ''Great Writ.''

Clearly, some form of habeas corpus is needed to avoid excessive litigation, repetitive reviews, and the delays that sometimes characterize the present system. In a series of decisions over the past 10 years, the Supreme Court itself has imposed certain restrictions on the ability of death row inmates to obtain review through habeas corpus, and the issue has brought heated controversy to our congressional debates on crime bills in recent years.

In the past, Senator BIDEN, among others, has proposed legislation to limit the number and length of death row appeals, but at the same time to make sure that post-conviction review in the Federal courts is meaningful. But he adhered to the sensible conclusion of former Justice Lewis Powell, who in a landmark report commissioned by Chief Justice Rehnquist said the following:

> Capital cases should be subject to one fair and complete course of collateral review through the State and Federal system. Where the death penalty is involved, fairness means a searching and impartial review of the propriety of the sentence.

But the bill before us today does not strike a fair balance. It actually precludes the meaningful review that Justice Powell said was necessary, and it increases the likelihood that innocent people will be executed in this country.

A principal problem is that this bill does nothing to ensure that death penalty defendants receive adequate legal representation at their original trial.

As many as 20 percent of all death sentences are overturned after Federal habeas corpus review, very often because a defendant has been inadequately represented at trial.

This bill also eliminates the current requirement that poor defendants receive appointed counsel in Federal habeas corpus proceedings. I reject that view. The appointment of attorneys for death row inmates is not a question of sympathy, it is a question of fundamental fairness.

In addition, the bill limits the circumstances under which a death row inmate may raise a claim of innocence based on newly discovered evidence. The proposal to limit inmates to one bite at the apple is sound in principle, but surely our interest in swift executions must give way in the face of new evidence that an innocent person is about to be put to death.

At any time prior to the execution there must be a forum in which nonfrivolous claims of innocence can be heard. As Supreme Court Justice Potter Stewart once wrote, ''swift justice demands more than just swiftness.''

Finally, the bill might be read to require Federal courts to defer to State courts on issues of Federal constitutional law. In part the bill states that a Federal court cannot grant a writ of habeas corpus based on Federal constitutional claims unless the State court judgment was an ''unreasonable application of Federal law.''

No one thinks that under current law the Federal courts just ignore State court decisions, even on questions of Federal constitutional law. The federal courts respect the State courts and give their decisions a great deal of attention. The specialists I have talked to tell me that the Federal courts, even now, grant relief on constitutional claims only when it is pretty clear that a prisoner's constitutional rights were violated.

This being true, a bill that tells the Federal courts that they should not grant relief unless they are satisfied that a prisoner's clearly established rights were violated may not change things very much.

I do not see the need for this kind of language in the bill, but to the extent it allows the Federal courts to do what they are doing now, it may do no great harm. I just hope that, if the bill is adopted, it will be interpreted correctly.

A contrary interpretation would stand our Federal system on its head. Why should a Federal court defer to the judgment of a State court on a matter of Federal constitutional law? The notion that a Federal court would be rendered incapable of correcting a constitutional error because it was not an unreasonable constitutional error is unacceptable, especially in capital cases.

Ever since the days of the great Chief Justice John Marshall, the Federal courts have historically served as the great defenders of constitutional protections. They must remain so.

Whatever the merits of this sweeping habeas corpus reform, such drastic changes should not be adopted on this bill. Nothing in this legislation would be more detrimental to the values of the Nation and our Constitution than for Congress, in its rush to combat terrorism, to strip away venerable constitutional questions.

The perpetrators of the Oklahoma City tragedy will have triumphed if their actions promote us to short-circuit the Constitution.

This bill goes far beyond terrorism and far beyond Federal prisoners. It severely limits the ability of any State prisoner—not just terrorists, but any State prisoner—to seek Federal court review of constitutional rights. This is an extremely controversial, very complicated proposal. It is wrong to try to sneak it into an antiterrorism bill that we all want to pass as quickly as we reasonably can.

The debate on comprehensive habeas corpus reform should take place when we take up the omnibus crime bill. The attempt to jam it into the pending bill is a cynical attempt to manipulate public concern about terrorism, and the Congress should reject it.

I urge the Senate to act responsibly on this critical issue. We should adopt the Biden and Levin amendments on the subject, and if necessary resume the rest of the debate on habeas corpus when the crime bill comes before the Senate.

(Mr. KYL assumed the chair.)

Mr. DOLE. Mr. President, I wanted to indicate we now have to dispose of the Biden amendment No. 1217. My understanding is that the Senator from Delaware is prepared to offer a second.

Mr. BIDEN. Mr. President, my intention would be to offer the second amendment on counsel standards required in Federal habeas corpus cases. I think the number is 1226.

Then I will have one more. The most important, from my perspective, of the amendments I have is the one relating to the deference standard that is in the Republican bill.

Senator GRAHAM of Florida has indicated to me that he will not offer his amendment. Senator LEVIN, I believe, will be ready to offer his amendment shortly.

I would respectfully request that the Presiding Officer, Mr. KYL, offer his amendment sometime between that. It is my intention to offer my amendment last. I will offer the first three, but the last amendment on habeas I would like very much to be my amendment on deference.

We will by that time have eliminated all Democratic amendments. I understand there is one—unless Mr. KYL is withdrawing his—there is one amendment on the other side.

Mr. DOLE. We have one, and we have 30 minutes equally divided on this amendment.

Mr. BIDEN. I am happy to do that. We have apparently not reached a time agreement. I am prepared to enter now into a time agreement on this amendment of 30 minutes equally divided.

Mr. DOLE. Mr. President, I make that request.

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

AMENDMENT NO. 1226 TO AMENDMENT NO. 1199

(Purpose: To amend the bill with respect to requiring counsel for federal habeas proceedings)

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

> The Senator from Delaware [Mr. BIDEN], proposes an amendment numbered 1226 to amendment No. 1199.

Mr. BIDEN. Mr. President, I ask unanimous consent further reading be dispensed with.

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

The amendment is as follows:

Delete from page 106, line 20 through all of page 125 and insert the following:

''(h) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.''.

SEC. 605. SECTION 2255 AMENDMENTS.

Section 2255 of title 28, United States Code, is amended—

(1) by striking the second and fifth undesignated paragraphs; and

(2) by adding at the end the following new undesignated paragraphs:

''A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

''(1) the date on which the judgment of conviction becomes final;

''(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

''(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

''(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

''In all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for a movant who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

''A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

''(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

''(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.''.

SEC. 606. LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.

(a) CONFORMING AMENDMENT TO SECTION 2244(a).—Section 2244(a) of title 28, United States Code, is amended by striking ''and the petition'' and all that follows through ''by such inquiry.'' and inserting '', except as provided in section 2255.''.

(b) LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.—Section 2244(b) of title 28, United States Code, is amended to read as follows:

''(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

''(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

''(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

''(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

''(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

''(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

''(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

''(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

''(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

''(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

''(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.''.

SEC. 607. DEATH PENALTY LITIGATION PROCEDURES.

(a) ADDITION OF CHAPTER TO TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended by inserting after chapter 153 the following new chapter:

''CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

''Sec.
''2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.
''2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.
''2263. Filing of habeas corpus application; time requirements; tolling rules.
''2264. Scope of Federal review; district court adjudications.
''2265. Application to State unitary review procedure.
''2266. Limitation periods for determining applications and motions.

''§ 2261. 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 statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction 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 counsels 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 post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. 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 post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

''§ 2262. 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 2261(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 shall recite that the State has invoked the post-conviction 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 application under section 2254 within the time required in section 2263;

''(2) before a court of competent jurisdiction, in the presence of counsel, unless the prisoner has competently and knowingly waived such counsel, and after having been advised of the consequences, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254; or

''(3) a State prisoner files a habeas corpus petition under section 2254 within the time required by section 2263 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.

''(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 in the case, unless the court of appeals approves the filing of a second or successive application under section 2244(b).

''§ 2263. Filing of habeas corpus application; time requirements; tolling rules

''(a) Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmance of the conviction and sentence on

direct review or the expiration of the time for seeking such review.

''(b) The time requirements established by subsection (a) 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) from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

''(3) during an additional period not to exceed 30 days, if—

''(A) a motion for an extension of time is filed in the Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

''(B) a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.

''§ 2264. 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 made retroactively applicable to cases on collateral review by the Supreme Court; or

''(3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

''(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.

''§ 2265. 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. 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) To qualify under this section, a unitary review procedure 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 2261(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 2262, 2263, 2264, and 2266 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 such sections shall be understood as referring to unitary review under the State procedure. The reference in section 2262(a) to 'an order under section 2261(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 180-day limitation period under section 2263 shall be deferred until a transcript is made available to the prisoner or counsel of the prisoner.

''§ 2266. Limitation periods for determining applications and motions

''(a) The adjudication of any application under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 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.

''(b)(1)(A) A district court shall render a final determination and enter a final judgment on any application for a writ of habeas corpus brought under this chapter in a capital case not later than 180 days after the date on which the application is filed.

''(B) A district court shall afford the parties at least 120 days in which to complete all actions, including the preparation of all pleadings and briefs, and if necessary, a hearing, prior to the submission of the case for decision.

''(C)(i) A district court may delay for not more than one additional 30-day period beyond the period specified in subparagraph (A), the rendering of a determination of an application for a writ of habeas corpus if the court issues a written order making a finding, and stating the reasons for the finding, that the ends of justice that would be served by allowing the delay outweigh the best interests of the public and the applicant in a speedy disposition of the application.

''(ii) The factors, among others, that a court shall consider in determining whether a delay in the disposition of an application is warranted are as follows:

''(I) Whether the failure to allow the delay would be likely to result in a miscarriage of justice.

''(II) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate briefing within the time limitations established by subparagraph (A).

''(III) Whether the failure to allow a delay in a case, that, taken as a whole, is not so unusual or so complex as described in subclause (II), but would otherwise deny the applicant reasonable time to obtain counsel, would unreasonably deny the applicant or the government continuity of counsel, or would deny counsel for the applicant or the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

''(iii) No delay in disposition shall be permissible because of general congestion of the court's calendar.

''(iv) The court shall transmit a copy of any order issued under clause (i) to the Director of the Administrative Office of the United States Courts for inclusion in the report under paragraph (5).

''(2) The time limitations under paragraph (1) shall apply to—

''(A) an initial application for a writ of habeas corpus;

''(B) any second or successive application for a writ of habeas corpus; and

''(C) any redetermination of an application for a writ of habeas corpus following a remand by the court of appeals or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

''(3)(A) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

''(B) No amendment to an application for a writ of habeas corpus under this chapter shall be permitted after the filing of the answer to the application, except on the grounds specified in section 2244(b).

''(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

''(B) The State may enforce a time limitation under this section by petitioning for a writ of mandamus to the court of appeals. The court of appeals shall act on the petition for a writ or mandamus not later than 30 days after the filing of the petition.

''(5)(A) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the district courts with the time limitations under this section.

''(B) The report described in subparagraph (A) shall include copies of the orders submitted by the district courts under paragraph (1)(B)(iv).

''(c)(1)(A) A court of appeals shall hear and render a final determination of any appeal of an order granting or denying, in whole or in part, an application brought under this chapter in a capital case not later than 120 days after the date on which the reply brief is filed, or if no reply brief is filed, not later than 120 days after the date on which the answering brief is filed.

''(B)(i) A court of appeals shall decide whether to grant a petition for rehearing or other request for rehearing en banc not later than 30 days after the date on which the petition for rehearing is filed unless a responsive pleading is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the responsive pleading is filed.

''(ii) If a petition for rehearing or rehearing en banc is granted, the court of appeals shall hear and render a final determination of the appeal not later than 120 days after the date on which the order granting rehearing or rehearing en banc is entered.

''(2) The time limitations under paragraph (1) shall apply to—

''(A) an initial application for a writ of habeas corpus;

''(B) any second or successive application for a writ of habeas corpus; and

''(C) any redetermination of an application for a writ of habeas corpus or related appeal following a remand by the court of appeals en banc or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

''(3) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

''(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

''(B) The State may enforce a time limitation under this section by applying for a writ of mandamus to the Supreme Court.

''(5) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the courts of appeals with the time limitations under this section.''.

(b) TECHNICAL AMENDMENT.—The part analysis for part IV of title 28, United States Code, is amended by adding after the item relating to chapter 153 the following new item:

''154. Special habeas corpus procedures in capital cases ..... 2261.''.

(c) EFFECTIVE DATE.—Chapter 154 of title 28, United States Code (as added by subsection (a)) shall apply to cases pending on or after the date of enactment of this Act.

Mr. BIDEN. Mr. President, in 1988, we passed a bill which I had authored with several others called the Death Penalty for Drug Kingpins Act.

It was the first constitutional Federal death penalty to go on the books after 1972 when the Supreme Court invalidated the death penalty.

I helped write that bill, much to the dismay of many of my liberal friends who could not understand why I was writing such a bill. It was a bill strongly promoted by President Bush, and it passed by a lopsided vote of 65 to 29, with only six Republicans voting against the bill.

When we passed that bill, we recognized that if the Federal Government was going to put a person to death, we better get it right. We better have the right guy and we better have had a fair trial, and the defendant better have had his or her day in court.

As part of the law, we said that the capital defendant—the defendant accused of a crime which carried with it the death penalty—in that case the person should have a lawyer. Kind of axiomatic. They should have a lawyer if they are going to go to trial, a trial in which, if that person is found guilty, they will be put to death.

That, of course, is also what the sixth amendment of the Constitution of the United States says. It explicitly says that ''In all criminal proceedings the accused shall have the assistance of counsel for his defense.''

Remember Clarence Earl Gideon? The case was Gideon versus Wainwright. The Supreme Court held that Mr. Gideon, accused of a crime, could not receive a fair trial absent the right to a lawyer.

In that case, the court said, ''The sixth amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not be done. The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.''

Also, in the 1988 drug bill we said that prisoners, State or Federal, who are looking the death penalty in the eye should have a lawyer for their Federal habeas corpus appeals. Again, we recognize that if the Federal Government is going to put its stamp of approval on a man's execution, he should at least have a lawyer. But this Republican bill does something I am not sure they intended to do, but they did. This Republican bill changes all of that. Astonishingly, it changes all of that. In a section entitled ''technical amendments''—we should all keep our eyes open when someone says ''this is just a technical amendment''—in a section entitled ''technical amendments,'' this bill repeals the right to counsel in Federal capital cases. It says that the right to counsel is no right at all but a matter of discretion for the judge.

Let me refer you back to Gideon versus Wainwright, that famous last sentence which says, ''The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.''

It does not say it is discretionary in ours. It does not say maybe it is all right in ours. It does not say it is OK sometimes in ours. It says, ''it is in ours.''

Astonishingly, this little technical amendment says the right to counsel is a matter of discretion for the judge to decide.

I do not know what my colleagues were thinking of when they wrote this. But what this seems to be saying is this: We do not care what the Constitution says. We do not care what the Supreme Court says. We think it is OK to deny a person who faces the Federal death penalty—and there are now over 60 on the books—we think it is OK to deny that person the assistance of counsel at his trial. I submit this proposition is as unthinkable as it is unconstitutional. And we should have nothing to do with it.

The Republican bill also repeals the right we created in 1968 to a lawyer for Federal habeas corpus appeal. This bill says that there should be no right to a lawyer, that it should instead be a matter of discretion for every individual case. What is more, the Republican proposal is taking away this right at the very same time it is changing the rules of the game on habeas corpus, and placing new and sweeping restrictions on the right of habeas corpus itself.

We want to change habeas corpus but they are making sweeping changes in the rules of the game. And in addition saying, and by the way, while we are at it we are going to go back and deny you your right to counsel when you are filing such a petition. And one more thing, we are going to deny you the automatic right to a lawyer at your trial, before you are convicted.

It reminds me of that line that is often used, and I will paraphrase, ''hanging first, trial later.'' What are we into here?

I agree we should cut down the delay and abuse of the Federal habeas corpus and I have made a number of similar proposals over the years to impose strict time limits on when such petitions could be filed and also to limit the number that could be filed, essentially giving one bite out of the apple to drastically reduce the ability to have successive petitions unless there is some egregious action that is learned about after the petition is filed, the first petition.

But I have always believed if we are going to speed up the process, which I wish to do, if we are going to narrow the avenues of habeas corpus, which I wish to do, we should at least make sure that the petitioner has a lawyer. That is what we said in 1988 and there has been no serious question raised about our wisdom in passing that law since then.

Two years ago I entered into painstaking extensive negotiations with the Nation's district attorneys and the attorneys general of the United States over habeas corpus reform. We negotiated for months. We logged hundreds of hours, argued over scores of serious issues before we came up with a lengthy and comprehensive compromise—which, I might say and I probably should not, my staff will not like this, which the liberal press killed. The liberal press told us this was somehow a terrible thing to do.

I kept saying we better do this or they are going to take it all away. But I hope everybody is listening who helped kill that compromise.

But not once in all our discussions with the Nation's prosecutors, I was not talking with the public defenders. I was not talking with the defense bar. I was talking with the Nation's prosecutors, the DA's back home, the State's attorneys general back home. Not one time in our talks did the prosecutors propose the repeal of the 1988 right to a lawyer in a habeas corpus petition. Not once did they argue that the right to counsel in habeas corpus should be discretionary. Not once did they suggest that the right to counsel at a trial should be denied.

As a matter of fact, what they constantly said was that the best way to shorten the appeals, the best way to cut down on the abuse, was to do it right the first time. They argued—not me—they, the prosecutors, Republican and Democrat—they said if you want to get this thing on track make sure there is a competent lawyer representing these people during this stage of the proceeding. Because they pointed out that most of the habeas corpus petitions that are granted, and the Federal courts grant many, most of the ones that are granted are granted because the court concludes that the defendant did not have adequate counsel, they were denied their right to know what a fair trial should be.

So here you had the prosecutor—not the defense bar—saying, ''Make sure that the defendant has legal counsel and then give him one bite out of the apple.''

These are experienced people. These are the people who try these cases. These are the people who respond to these habeas corpus petitions.

I might say to those who are listening, I have to keep reminding people—

habeas corpus. If a habeas corpus petition is granted it does not mean anyone goes free. The man or woman still stays behind bars. All it says is they get a new trial. This is not a petition for innocence that can be decided in terms of releasing someone. This merely says that a prisoner behind bars slips a paper between the bars and says: Send this to the judge, ask him to take a look at it because I do not think I got a fair trial.

That is what it is. And here we had for months of negotiations—months—worked out a compromise, and these hard-nosed prosecutors in our home States said make sure they have counsel. That is the best insurance for the public at large that we will not be wasting their money and their time.

Just last year the U.S. Supreme Court, which for the most part is no friend of the Federal habeas petitioner, recognized the importance of having a lawyer. In the case of McFarland versus Scott, the Court said:

> Quality legal representation is necessary in capital habeas corpus proceedings in light of the seriousness of the possible penalty and the unique and complex nature of the litigation.

To say that habeas litigation is unique and complex is an understatement. Habeas petitions must meet tightened pleading requirements. They must comply with the Supreme Court's intricate doctrines on procedural default and waiver. Federal courts can summarily dismiss any petition that appears legally insufficient on its face. And they can deny stay of execution where petitioner fails to raise a substantial Federal claim. But this provision tells these indigent defendants who have just been sentenced to death that they have no right to the help of a lawyer, that they might have to navigate the arcane, complicated and hazardous sea of the Supreme Court jurisprudence and statutory rules by themselves.

Quite apart from what I believe is the fundamental unfairness of this proposition, I also think at a practical level it will waste a lot of time and a lot of money to deny a lawyer at this point. First, ask any experienced lawyer or prosecutor. Almost all would rather have a competent adversary who can adequately frame and present issues over an incompetent one who does not have the first clue about how to present his arguments. Most experienced lawyers would tell you that having someone who has no training on the other side only slows things down because the trained lawyer and the judge end up doing a lot of extra work just to figure out what the untrained lawyer is trying to say and to make sure reversible error is not created.

What is more, under the Republican proposal, valuable resources will be squandered in litigation at the outset over whether counsel should or should not be appointed. If the judge ends up appointing counsel, all that time and money will have been wasted, and if the judge does not appoint counsel, the indigent death row inmate will be left to find his own way through some of the most complicated legal doctrines imaginable. This just does not make sense, in my view, as a practical matter or as a matter of principle.

We should not in our haste to hurry up executions lose sight of our commitment to constitutional values. We should not endorse proposals that increase the chance that, where execution is imminent, an innocent person be executed. We should not, I believe, sacrifice certainty in the name of speed, or fairness in the name of vengeance.

Most importantly, Mr. President, I really believe that everyone should understand we are not talking about changing any of the ways in which we deal with habeas corpus in this amendment. We are not talking about whether the Biden approach of only one petition or their approach of only one petition is the best one. We are not talking about whether we are going to cut the delay by a year or a month or a day. What we are talking about is a fundamental principle, one that, as it relates to the trial, has been established since Gideon versus Wainwright, and in many instances before that, and one as it relates to Federal habeas corpus that was established in 1988.

I ask my friend from Utah, because it may have been an oversight, whether he really intended to eliminate the right to counsel at trial as well as the right to counsel in a habeas corpus petition.

So I sincerely hope my colleagues will take a close look at this. This does not have to do with speeding up the process; this has to do with the fundamental fairness. Are we going to stick with constitutional principle established several decades ago in this country saying you are entitled to a lawyer at a trial and, if you cannot afford one, the court will appoint one as a matter of right and you are entitled to a lawyer at the Federal level when you file a habeas corpus petition? The practical implication of all that is that most prosecutors will tell you that will speed the process up, not slow the process down.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Of course, we will not deny counsel, nor will anybody; nor is it done, nor will it be done. The reason we oppose this amendment offered by the distinguished Senator from Delaware is this amendment would strike the much-needed reform in 28 U.S.C. 848(q) contained in the antiterrorism bill. Section 848(q), as many of our Senators and others are no doubt aware, provides funding for capital litigants; that is, people who have been convicted of capital crimes, to hire among other things investigators and expert witnesses to assist them with their habeas petitions. That just presumes that there will be a lawyer there as well, and there will be. I do not know of a case where a lawyer has not been appointed.

What you may not be aware of, however, is that section 848(q) permits the defense counsel to contact the judge ex parte; that is, without the prosecutor being present, and requests additional funding for experts, investigators, researchers, and the like. In other words, defense counsel can approach the judge outside the prosecutors presence and request the appointment of additional investigators or a new psychiatrist. The prosecutor is given neither the opportunity to present nor even a chance to oppose such an appointment.

To add insult to injury, the court can order payment and the appointment to run nunc pro tunc; that is, from the time the defense counsel initially hired the additional help. They can go way back. The defense counsel can go hire these people, have no way of paying them, and then all of a sudden have an ex parte proceeding, and the judge can order that they be paid back to the date that the defense counsel hired them. Talk about an abusive system. This means an investigator hired 6 months before can, when approved by the judge, receive payment for all of that investigator's past work, and in an ex parte proceeding, without the right of the prosecutor to be present. The defense counsel can use whatever information the investigator provides as demonstrating the need to hire that investigator and pay him from the time that he actually started working on the case.

There is absolutely no reason for ex parte proceedings on Federal collateral review after the judgment is final. While such an arrangement may arguably be appropriate at the trial level, it is not defensible for postconviction collateral proceedings. It is likely that the secrecy of these proceedings serves no other purpose than to permit the defense counsel to, outside of the presence of the prosecutor or the prosecution, argue their cases, obtain extensions of time, or receive additional unwarranted investigative expenses. This is simply indefensible.

There should be no need for a confidential hearing at this point in the proceeding. They will have had the hearing already. They will be on appeal. They will have had all kinds of constitutional protections under our bill, and then to allow an ex parte proceeding to go ahead, they will have raised their issues at the State level or they would be unexhausted. By the time the claim is presented in Federal court, all of these issues should have seen the light of day. Thus, no reason exists for defense counsel to hide whatever they may be investigating, nor should defense counsel be permitted to argue their petitions outside of the presence of other counsel.

It just makes sense that they would not. Section 848(q) has been greatly abused, and has resulted in enormous

cost to the States. The reform contained in the antiterrorism bill is thus greatly needed. The Supreme Court has never required counsel in collateral proceedings. We do not make it discretionary to appoint counsel at trial; counsel must be appointed at trial. I have to say that any argument that we do not is ridiculous. But this is a very, very important point.

I hope our colleagues will vote against the Biden amendment.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield time to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I certainly agree with the distinguished Senator from Delaware that we have to be meticulous on right to counsel. We cite Gideon versus Wainwright, and I was assistant district attorney when that case was decided in 1963. I am glad to say that in our Pennsylvania courts, in Philadelphia, counsel had been provided for indigent defendants long before the Supreme Court of the United States made that a constitutional mandate in the landmark Gideon case, written by Justice Black, which said counsel was required for anyone who is hauled into court to face felony charges.

On a very personal note, I got my introduction into criminal law when I was assisting defendants back in March 1958, when I took my first turn defending indigents going down to the prison in the city of Philadelphia and had, as a matter of fact, my first taste of what the role of the trial lawyer was, of criminal prosecutions, and of being in public service.

As I understand these provisions of the bill, it will greatly improve the extraordinarily technical and complicated procedure that when a State opts into the expedited procedures, there is additional responsibility on the State under the provisions of section 2261(b) to establish a mechanism for the appointment of compensation and payment of reasonable litigation expenses of competent counsel at the State postconviction proceedings brought by indigent prisoners.

On the point about ex parte contacts by defense counsel, I doubt that there is any real quarrel about the requirement that defense lawyers ought to make an application in the presence of opposing counsel and ought to make that application in advance of wanting to hire experts.

So it seems to me that whatever the state of the law is this is an advancement in requiring that States under this provision that I just read have competent counsel.

Mr. BIDEN. Will the Senator yield for a very brief question?

Mr. SPECTER. I do.

Mr. BIDEN. On page 125 of the Senator's bill, section 608, ''Technical Amendments,'' it says ''Section 408(c) of the Controlled Substance Act is amended in paragraph 34(a) by striking 'shall' and inserting 'may'.''

When you go and look at that paragraph in the law, it says, paragraph 4(a) says ''notwithstanding any other provision of the law to the contrary, in every criminal action in which the defendant is charged with a crime,'' and then it goes on to say that the defendant, the present law says, ''The defendant shall be entitled to the appointment of one or more attorneys and'' et cetera.

But the way it is changed in your law, it says that ''Notwithstanding any other provision of the law to the contrary, every criminal action in which a defendant is charged with a crime the defendant may be entitled.'' You strike the word ''shall'' and insert ''may.''

Mr. SPECTER. I do not have the referenced section. Let me get it.

Mr. BIDEN. All right.

Mr. SPECTER. Even if you had a statutory provision, it would not alter the constitutional mandate of Gideon versus Wainwright. Not that we should trifle with language which would in any way suggest undercutting the constitutional right to counsel, but if a statute in error were to say that, Gideon versus Wainwright would control. You simply cannot have a criminal proceeding where there is not counsel appointed for the defendant.

Mr. BIDEN. If the Senator will yield for 10 seconds, I think he is right, Mr. President, but I do not know why we should pass an unconstitutional statute, because this is clearly unconstitutional the way it is written.

Mr. SPECTER. If I may respond further to my colleague, if that is so, that is something that I would certainly concur ought to be corrected. And I would take a look at that section right now.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

Mr. HATCH. If the Senator will withhold.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I yield time to myself.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. This certainly is not unconstitutional. This has been worked very carefully by top legal experts, State attorneys general and others. The court has never mandated counsel in collateral proceedings, and I think that point has to be made. But there is going to be counsel appointed and always has been.

To be honest with you, what we are concerned about is that the way the amendment of the distinguished Senator from Delaware reads, we are going to wind up having nun pro tunc orders which will allow petitioners to have expert witness fees and investigators paid for from the time that the defense counsel wants to hire all these people. The law currently allows these payments to be made at excessive cost to the States on an ex parte, meaning one attorney only, proceeding. And that just should not be. So I hope that folks will vote this amendment down. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BIDEN. Mr. President, with the consent of my colleague—and I failed to do this earlier—I would send a modification of my amendment, a draft error correction in my amendment to the desk.

Mr. President, I will withhold.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I ask unanimous consent that the pending amendment be laid aside so that we can proceed to other business and also to work on some of the questions we have.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATCH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BIDEN. Mr. President, let me very briefly state where we are right now. You can see the staffs scurrying around here. We have reached a meeting of the minds on two-thirds of the amendments that I have offered here. The staff is trying to get precise language that would accommodate the mutual agreement we have made here thus far. But there is going to be one part of my amendment that is still going to be pertinent, and I will speak to that later. But the distinguished Senator from Pennsylvania and I would like to enter into a brief colloquy on what I think will be the only remaining part of disagreement in the Biden amendment that was sent up.

Very briefly, Mr. President, there were two sections of the Biden amendment, one relating to counsel for an indigent in the filing of a habeas corpus petition. The second provision is what the Senator from Utah spoke to, and that is the ability under present law for the counsel of an indigent person to go to a judge, without notifying the prosecutor he is going to the judge, and in private—we call it in camera—say, judge, I need you to authorize my ability to go hire a psychiatrist for the following reasons, or hire an investigator

for the following reasons. The distinguished Senator from Utah is worried about that provision and suggests that that portion of the law is presently being abused. I do not believe it is abused.

I want to make a very brief statement now as to why I think that and why I am going to pursue in my follow-on amendment here the elimination of the provision in the Republican bill that would delete the possibility of an indigent defense counsel going to a judge on his own. The reason for that is as follows:

Right now, if I am a prosecutor and I get a lead as to how I can make my case better to prove the defendant did the deed, I can hire—I can use—an investigator to go investigate that. If I believe there is a need to make a case that the defendant is, in fact, perfectly sane and not insane, I can hire a psychiatrist.

I can use investigative tools without ever having to go to the defendant's counsel and say, ''By the way, here is what I am going to do. I am going to hire this psychiatrist to prove that your defendant, your client, is sane.'' Or, ''I am going to hire two investigators to go down to Second and Vine and prove that the stoplight does not exist there,'' or whatever.

So no one quarrels with that. If I am a lawyer who is hired by private funds to defend an accused person, I am not required to telegraph to the prosecutor that I have hired a private detective to investigate a lead in a particular city. I do not have to tell the prosecutor that.

My worry is that if we change the law as proposed in the core legislation, that what will be required for an indigent defense counsel is to walk into court, walk into the chambers of a judge and say, by the way, judge, we better call in the prosecutor, and sit the prosecutor down and say, now I want to say, judge, I need your authority to allow me to go hire an investigator. Here are the reasons that I want to hire the investigator. The prosecutor is sitting there taking notes about my case.

Now, that is why I think we should not delete this portion of the law.

Mr. SPECTER. Would the distinguished Senator from Delaware yield?

Mr. BIDEN. I am delighted to yield.

Mr. SPECTER. I understand the concerns that the Senator has expressed. I believe that the bill as drafted is preferable, notwithstanding the arguments the distinguished Senator has raised. I will come to the specific question in just a moment here.

I think that ex parte communications are very problemsome in any kind of a case, but they ought to be eliminated to the maximum extent possible, which is why I think that it just is not a good idea to have one lawyer talking to the judge by himself.

But the language which I would focus on here is that which says no ex parte communication request may be considered pursuant to the section unless a proper showing is made concerning the need for confidentiality.

I concur with the Senator from Delaware when he says that there ought not to have to be disclosure by defense counsel in the presence of the prosecutor to matters which would prejudice the defendant in investigating the case on the facts, or as to getting expert opinion as to mental state and competency.

But the question I would have, and it is not really accommodated by the language, is that if there is a showing of the need for confidentiality, that would preclude the prosecutor gaining an upper hand in an unfair way. As a sponsor of this language, let me state that it is our intent here in this legislation that there not be a circumstance in which the defense is compelled to reveal, in front of the prosecutor, matters which would be prejudicial to his opportunity to present a defense.

Mr. BIDEN. Mr. President, in response to my colleague, he is coming awfully close to what I intend. If it is read the way in which the distinguished Senator from Pennsylvania reads it, which is that if there is a showing for the need for confidentiality, then the judge can meet only with the defense counsel and make his or her judgment. That, quite frankly, gets a lot closer to what I intend.

As the Senator feels, as a matter of principle, that we should err on the side of not having ex parte proceedings, I must acknowledge in these days, I err on the side of allowing indigent defense counsel to have the maximum flexibility with the judge.

While the staff is correcting the other portions of this, I would like to seek the counsel of my counsel, and determine whether or not it is still necessary to proceed with the last portion of this amendment.

I see the distinguished leader is on the floor. He always comes when he worries things are slowing down. I can assure the Senator they are not slowing down, they are moving along fast. We will get this done before the time would have been used had a rollcall vote been called. We are very close. I think that can happen.

So I do not want the Senator to get upset. We have Senator LEVIN waiting in the wings to go with his amendment.

Mr. DOLE. If the Senator will yield, I had just sort of passed through the Chamber and I did not see anything happening, but there is a lot of precedent for that.

As I understand, the next amendment would be the Senator from Michigan, Senator LEVIN, and there would be 50 minutes, 25 minutes on a side. Is that satisfactory?

Mr. LEVIN. That would be fine.

Mr. DOLE. Mr. President, I make that request.

The PRESIDING OFFICER (Mr. ASHCROFT). Without objection, it is so ordered.

Mr. DOLE. While that debate is going on, it is my understanding that the Biden amendment is now pending, is that correct?

Mr. BIDEN. Mr. President, the answer is yes.

The reason I have counseled my friend from Michigan not to go yet is that the key staff people who know this issue very well, who will also want to be available to Senator HATCH as well as to me, are the very people negotiating this other item which is very close.

Apparently, we are now ready to go. We will be able to move right away to Senator LEVIN. We may be able to dispose of this right now. Apparently, we have reached our agreement.

Mr. DOLE. Does the Senator from Wisconsin have an amendment?

Mr. BIDEN. Mr. President, I think the Senator from Wisconsin wishes to speak on the issue.

Mr. FEINGOLD. That is right.

Mr. BIDEN. Maybe we can let him do that while we nail this down.

Mr. DOLE. If I understand, after the disposition of the pending amendment—if we work it out—fine; then the amendment of the Senator from Michigan; there would be two amendments remaining, one by the Presiding Officer and one by the Senator from Delaware.

Mr. BIDEN. That is correct.

Mr. DOLE. And as I understand, one would have a 60 minute time agreement, the other 90 minutes.

Mr. BIDEN. I would say we may not use all 90 minutes, but since it is the last amendment, I would prefer to have that cushion.

Mr. DOLE. The point is, we would like to complete action. We said no votes before 1 o'clock. I think it will be probably be before 2 o'clock, would be my guess. there will probably not be any vote before 2 o'clock, but we had hoped to complete action on this bill by 3 o'clock so we could start on telecommunications. We are probably going into the evening tonight on that bill.

I am told by the managers on that bill that it is a bipartisan effort, and may be able to complete that more quickly than we may have thought at the outset.

The bottom line is we need to finish this bill, and I know the managers are making progress. I appreciate it very much.

Mr. FEINGOLD. Mr. President, I wish to speak on the bill on the habeas corpus issue. I rise today to speak against provisions in S. 735 that are characterized as reforms in the habeas corpus appeals process. These items that are being referred to as reforms, in my view, would hasten the implementation of the death penalty and might well have the result of rushing innocent people to executions.

This is not, strictly speaking, a debate about the death penalty itself, but about the fundamental American right of due process.

Mr. President, there are several ways in which this fundamental right may be undermined by the pending bill, including the requirement that Federal

judiciary defer to State courts. This is a major departure from more than 200 years of legal precedent, and to my mind, the most egregious change proposed by habeas reform supporters.

There is also a general 1-year statute of limitations—6 months in some cases—for filing a petition. These time limits fail to recognize the time needed to develop a proper habeas petition.

There is also a concern which the ranking member has been discussing about the elimination of the current absolute right of petitioners in capital cases to counsel for Federal habeas corpus petitions and replacing it with a provision that leaves assignment of counsel to the discretion of the court. I understand there has been some movement on that, some progress. I am pleased to hear it and look forward to reviewing it.

Mr. President, we have heard the arguments for streamlining habeas corpus procedures to limit death row appeals and implement the death penalty more quickly.

On a gut level, these arguments carry power; they paint a picture of convicted criminals contemptuously manipulating our justice system to avoid punishment for heinous crimes, all the while supposedly languishing comfortably in their prison cells. The arguments remind us of the lingering pain and frustration of victims' families, who are forced to wait, sometimes for years, before they reach the end of their ordeals that began with the violent death of a loved one. The arguments also speak to the problems of clogged courts and precious resources tied up in lengthy and, perhaps, duplicative habeas proceedings.

But the supporters of so-called habeas reform usually do not tell us other stories—the rest of the story.

They do not tell us about innocent defendants sent to death row because they could not afford competent counsel, and because some States do not have procedures in place to provide effective counsel to indigents. They do not tell us of murder defendants watching as their attorneys fail to properly prepare and present a defense, either because they lack resources or because they themselves are indifferent, incompetent, or inexperienced.

They do not tell us about innocent defendants convicted because of sloppy investigations or prosecutorial misconduct.

They do not seem to take into account the amount of time it takes to properly prepare and present a habeas petition.

They seem ready and willing to hasten to fatal judgment in the name of efficiency and to accept tragic mistakes as the necessary price for timely justice.

I am not willing to support this haste.

While I completely understand the pain of victims' families, I do not want to create more pain, and more victims of violence, by approving changes in the law that could send innocent people to their deaths. That in itself would be a dreadful crime.

We must be mindful that when we change the law, it applies to all, not just to the clever manipulators of the system that supporters of the habeas reform provisions of S. 735 seem to believe fill our death rows.

Consider the case of Nathaniel Carter, an innocent man wrongly convicted in 1982 of the stabbing death of his mother-in-law.

Mr. Carter is a man about my age. His story was told in the New York Times and in New York Newsday this past February. Ten witnesses placed Mr. Carter miles from the murder scene at the time the crime was committed. Nonetheless, he was sentenced to 25-years-to-life for a crime he did not commit, only because New York State at that time did not have a death penalty statute.

It does now, and if that statute had been in effect in 1982, the sentencing judge made it plain that it would have been imposed, on Mr. Carter, an innocent man.

Mr. Carter spent 28 months in prison before being exonerated. His former wife eventually admitted committing the crime.

Nathaniel Carter was lucky, but had conditions been different, his luck would not have saved him. His boyhood friend, George Pataki, now Governor of New York, earlier this year signed that State's new death penalty statute into law.

It is worth considering what would have happened if Mr. Carter had faced the death penalty and if he would have faced the habeas reforms included in S. 735. He might well be dead for a crime he did not commit.

So the question today is are we willing to put Mr. Carter and others like him to death for the sake of hastening other deaths of some guilty parties?

The U.S. Supreme Court has handed down significant habeas decisions this year in two separate cases, decisions that should be considered in this debate.

On April 19, the Court, in Kyles versus Whitley, reversed and remanded the first-degree murder conviction of a Louisiana man, Curtis Lee Kyles. Mr. Kyles was sentenced to death.

After his conviction, it was discovered the State had not revealed certain evidence favorable to Mr. Kyles' case. His appeals to State courts won him a remand for an evidentiary hearing, but the State trial court afterward denied relief. He then went to the State supreme court, which denied his application for discretionary review.

However, the U.S. Supreme Court ruled that Mr. Kyles was entitled to a new trial because there was a ''reasonable probability'' that the disclosure of that evidence would have produced a different result than the original conviction.

Had Mr. Kyles not been able to file his Federal habeas petition, as might well be the case if we pass S. 735 with its habeas reform provisions, which include a higher bar to habeas petitions and deference to State courts, he might still be sitting in a Louisiana prison, awaiting death.

Earlier this year, in January, the U.S. Supreme Court handed down its ruling in Schlup versus Delo.

In that case, Lloyd Schlup, a prisoner in Missouri, was convicted of participating in the murder of a fellow inmate and sentenced to death.

However, Schlup, who was filing his second habeas petition, argued his trial deprived the jury of critical evidence that would have established his innocence. The U.S. district court had denied relief, stating Mr. Schlup had not met the ''clear and convincing evidence'' standard that the habeas reform provisions of S. 735 would impose.

The U.S. Supreme Court adopted a less stringent standard, that the habeas petitioner need show that the constitutional violation complained of ''probably resulted in the conviction of one who is actually innocent.''

There is a body of evidence readily available to show that putting limits on the habeas corpus process could well mean innocent people will be affected in the ultimate way.

A 19-page staff report prepared last November for the House Subcommittee on the Constitution, formerly the Subcommittee on Civil and Constitutional Rights, found 52 cases in 20 years where innocent people were convicted of capital crimes and later won release, some of them by filing habeas petitions.

That document, entitled, ''Innocence and the Death Penalty: Assessing the Danger of Mistaken Executions,'' might be worth reading before we decide to reform this system in this way that reminds me very much of something that is quite the opposite of reform.

At one point, the report states:

> These 52 cases illustrate the flaws inherent in the death sentencing systems used in the states. Some of these men were convicted on the basis of perjured testimony or because the prosecutor improperly withheld exculpatory evidence. In other cases, racial prejudice was a determining factor. In others, defense counsel failed to conduct the necessary investigation that would have disclosed exculpatory information.

I would also call to the attention of my colleagues a Yale Law School Journal piece entitled, ''Counsel for the Poor; the Death Sentence Not For The Worst Crime But For The Worst Lawyer,'' published in May 1994, by Stephen Bright, the director of the Southern Center for Human Rights, based in Atlanta, GA.

Mr. Bright's piece is a sobering, I might even say chilling description of problems encountered by defendants in capital cases.

Mr. Bright points out instances of States not providing sufficient resources to assigned defense counsel for proper investigation of a case. Compared to the resources available to an aggressive prosecutor, a defendant can

begin with a significant disadvantage in a life-or-death fight.

Mr. Bright also describes cases of professional incompetence on the part of attorneys representing indigent clients in capital cases. Some of these defendants, after they were convicted and sentenced to death, were able to secure competent counsel, prove their innocence, and win just release.

Capital cases are complex, and the stakes are the highest imaginable, so experienced counsel is needed to properly represent a defendant. Still, we are seeing evidence that these cases are not always tried by such experienced counsel. Imagine sitting in the defendant's chair, your life on the line, knowing you are innocent, and watching your attorney fail to conduct proper investigation, fail to call witnesses, fail to present an adequate statement to the jury. Imagine that in this country.

When the day is done, that attorney walks home. You, the defendant, walk to death row. If you cannot find experienced, responsible counsel for an appeal, you walk to the gas chamber, the electric chair, or to a stark room with vials of poison to execute you.

We must not forget these stories as we debate reform.

Neither should we forget, in our frustration with the current system, that a habeas petitioner is not free to walk the streets while awaiting the ruling of the court. I think that is a misperception that some have. This man or woman is in prison, not sitting in a country club.

Many of the stories we hear during this debate rely on their persuasive power on the grief and rage many of us feel after a brutal murder. But let me speak a word of caution to those who stir those feelings. Grief and rage are not good foundations for making good policy, and emotions that strong can lead us to bad decisions and unintended consequences, and in this case, to conclude, although it may not be very frequent and apparently is frequent enough, it literally can lead to the execution of innocent people.

I urge that the habeas provisions of this bill be removed. I do not think they are appropriate to this piece of legislation. Certainly, the bill could go forward without them, and it would be a far better piece of legislation.

I thank the Chair. I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I came in at the very end to hear the remarks of my colleague from Wisconsin. I would like to thank him for his eloquence. I am not a lawyer, but I do believe that the Senator from Wisconsin has made an essential point. I think his point about habeas is as follows: Actually, regardless of your position about capital punishment—I think all of us in very good faith can have profoundly different views on this question—what you certainly do not want to ever see happen is that someone innocent is executed, and to in any way, shape, or form move away from the very rights that people have in the appeal process, which is a frightening possibility. I think the Senator from Wisconsin has spoken to this in a very eloquent way.

I thank him for his remarks.

AMENDMENT NO. 1252 TO AMENDMENT NO. 1199

Mr. HATCH. Mr. President, I send an amendment to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1252 to amendment numbered 1199.

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

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

The amendment is as follows:

Delete lines 4 through 7 on page 125.

Strike lines 20 through 24 on page 106 and insert the following:

''(h) Except as provided in title 21, United States Code, section 848, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as

Strike lines 9 through 11 on page 108 and insert the following:

''Except as provided in title 21, United States Code, section 848, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel who is or becomes financially unable

Mr. HATCH. Mr. President, this modification will correct the text. I want to thank my colleague from Delaware for bringing our attention to it, as well as my colleague from Pennsylvania, who has worked with us to try to resolve this. We think we can resolve this matter so that we can then vote on the Senator's amendment when the time comes.

Mr. BIDEN. I urge adoption of the modification.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 1252) was agreed to.

Mr. BIDEN. Mr. President, I thank my friend from Utah. As usual, he is always reasonable.

The effect of what the Senator has just done is to modify the underlying bill that he introduced, the Hatch amendment, the Hatch bill, the Hatch-Dole bill.

It maintains in capital cases the requirement that counsel be appointed at trial and in a habeas proceeding, and it makes discretionary the appointment of counsel at those stages in noncapital cases.

That leaves one part of my original amendment that still needs to be resolved. We can speak to it in a very short order.

There was a third section of the existing bill that was attempted to be amended by my amendment.

I send that modification of my amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is the Senator modifying amendment 1226?

Mr. BIDEN. No, the Senator is modifying, actually, it is a whole new amendment. I am attempting to modify the underlying bill.

Mr. President, I want to make clear. I may have done something inadvertently here.

I do not mean to modify, I am sending the amendment to the desk, the purpose of which is to amend the Hatch amendment. We need a vote on it. I am not seeking unanimous consent for that.

The PRESIDING OFFICER. If there is no objection, the clerk will report the new amendment.

Mr. HATCH. Parliamentary inquiry: As I understand it, this is a substitute that will replace the pending Biden amendment.

Mr. BIDEN. That is correct.

The PRESIDING OFFICER. The Senator can either withdraw the pending Biden amendment 1226 and send up a new amendment, or he can modify the Biden amendment No. 1226.

Mr. BIDEN. That is correct.

Mr. President, if there is one thing I have learned after years, it is that it is very difficult to listen to staff and the Presiding Officer at the same time. I apologize.

I should have been listening to the Presiding Officer.

Would he mind repeating his question to me?

The PRESIDING OFFICER. The Senator could either modify amendment 1226 or submit a new amendment, either one.

Mr. BIDEN. I am submitting a new amendment.

AMENDMENT NO. 1226 WITHDRAWN

Mr. BIDEN. President, I would like to withdraw amendment 1226. I hate numbers and acronyms. But that is what I wish to withdraw.

I send a new amendment to the desk, the number of which I have not the slightest idea.

The PRESIDING OFFICER. Amendment 1226 is withdrawn

The amendment (No. 1226) was withdrawn.

AMENDMENT NO. 1253 TO AMENDMENT NO. 1199

(Purpose: To amend the bill with respect to requring counsel for federal habeas proceedings)

The PRESIDING OFFICER. The clerk will report the new amendment.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 1253 to amendment No. 1199.

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

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

The amendment is as follows:

Strike lines 10–22 on page 125.

Mr. HATCH. Mr. President, as I understand it, that amendment has been

set over until some time at 1 o'clock, am I correct?

The PRESIDING OFFICER. No agreement has been reached on the disposition of that amendment.

Mr. HATCH. I move to table the amendment.

Mr. BIDEN. Mr. President, before he does that, I would like to be able to speak for 5 minutes to my amendment.

Mr. HATCH. I withhold that.

I ask unanimous consent that the vote occur on or in relation to amendment No. 1226, which is now 1253, at a time to be determined by the majority leader after consultation with the minority leader, but not before 1 p.m. today.

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

Mr. BIDEN. Mr. President, if I can speak very briefly now to my new amendment, let me make sure that I have it straight for myself, let alone for all of my colleagues.

My original amendment was designed to do three things, to change three provisions of the Hatch—I will call it the bill; it is technically an amendment—the thing we are debating, the counterterrorism legislation that is before us. In that counterterrorism legislation, there were a number of provisions, three of which were as follows: One deleted the existing statutory requirement that there be counsel appointed for an indigent at a trial. The second, deleted an existing statutory provision requiring counsel be appointed at a habeas corpus proceeding for an indigent. And the third amended existing law that says counsel for an indigent has the right to go before a Federal judge by himself without the prosecutor present and make a request to the Federal judge for additional resources in order to adequately be able to protect his client's constitutional interests, that is, go in to a Federal judge and say: Judge, I do not have the money to hire an investigator like the prosecutor has that I need to go to x town to interview three people.

The way the law exists now, that lawyer for the indigent can do just what a lawyer for a nonindigent can do and what the prosecutor can do. He does not have to tip his hand to the prosecutor to say this is what I am about to do; this is what I am about to investigate; this is what I want to check out.

It would be a little bit like in that God-awful O.J. Simpson trial in that if every time the defense hired someone to investigate something, they first had to go to the prosecutor and say: By the way, I am going to hire this investigator to go look at the background of one of the police officers, and I am going to do it on Tuesday, and I am going to interview the following three people.

No one would expect defense counsel to have to do that with the prosecution present, would not have to tell the prosecutor that.

Conversely, the prosecutor, when they are in the middle of a trial and they say: My goodness—or before a trial—we better check out a lead that we have; we have a lead that on September 12 the defendant was with Mary Jones in Oshkosh; we are going to send an investigator to go to see Mary Jones and find out whether that is true—if the prosecutor had to say: By the way, defense counsel, on October 3 we are going to send an investigator to meet Mary Jones in Oshkosh, that would prejudice the State's case because the defendant could pick up the phone and call Mary Jones and tell Mary Jones to leave town. It is not reasonable.

What we did in the law not long ago, we said an indigent should have the same rights. But an indigent does not have any money. The only reason a poor guy's lawyer, the one that is appointed by the court, goes to the judge is because he does not have the money. Otherwise, he would not have to go to the judge. All he would have to do is say: OK, I am hiring a guy to go check this out. But now he is able to go to the judge. The reason he goes to the judge is that the judge is the guy who dispenses the money. The judge is the guy to say: OK, I will give you the money to hire that guy. You proved to me you need it. I will give you the money.

Now, what my friends do here—and I understand their motivation; I think it is pure—is they say, wait a minute now. That is costing money, and should not the prosecutor, the State, have to be in that room when the defense attorney is in that room saying: Judge, I have no money, but I wish to hire an investigator to check this out.

They say that the State prosecutor should be able to be in that room while that is being done. Well, they would not say that if it were a civil case. You would not in a civil case say, by the way, you ought to tell the other side that you are about to hire two people to go investigate a witness who says they saw your client walking around perfectly healthy when they claim to have a bad back. They say, well, you would not have to telegraph that.

Just because somebody is poor, why should they have to give away their case in front of the prosecutor?

And, by the way, to put it another way, how is the State hurt by this? The State is not hurt in any way by this. There is a Federal judge sitting there deciding whether or not there is a legitimate case made to need this investigator or to need this additional resource.

And so what my amendment does is it strikes another provision in the underlying counterterrorism bill, the Hatch bill. It strikes the part that says that before a poor man's appointed counsel can ask a judge a question, he has to have the prosecutor in the room with him while he asks.

Now, my good friend from Pennsylvania, who is, along with the chairman of the Judiciary Committee, one of the best trial lawyers in this place, and their previous records demonstrate that, says basically: JOE, do not worry about that because our legislation says—and I will read it—''No ex parte proceeding, communication or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality.''

I understand what they intend by that. What they intend by that is to solve the problem I have just raised, but under the law the use of the phrase ''proper showing'' means that in front of the prosecutor you are going to have to say: This is why I need this money, judge, to hire this investigator.

The effect of that is in making your proper showing you have to make it in front of the prosecutor. You have now given away the very thing you wanted to avoid when you asked for the closed hearing. This closed meeting with the judge has nothing to do with the facts of the case, nothing to do with the outcome of the case, nothing to do with the evidence that can or cannot be submitted in the case, nothing to do with the substance of the case.

It has to do with the resources made available to a court-appointed lawyer. He may go in and say: Judge, you have not given me enough money to be able to send out the following 20 questions to prospective witnesses. I want that money. Can you give me that money to send out those letters? Or to provide transportation to get a witness.

Remember Rosa, that woman in the O.J. trial who was going to Mexico? Well, it may be a situation where he said: Look, I have an indigent witness who cannot get here. I do not have the money to get him here. Can you give us the money to get him here? The judge may say: No, I will not give you the money. I do not think it is essential for your case. But if the judge thinks it is essential, he can say: OK, you are authorized to buy a ticket to send that person here.

But what you do not want to do is to necessarily have to tell that to the prosecution at this point because it may be a witness you turn out not using.

Anyway, that is the crux of this thing, and although the intention to correct my concern in the underlying remaining amendment is the law says that ''upon a proper showing of the need for confidentiality'' you can have this secret hearing, or this closed hearing, it does not get it done because ''proper showing,'' we believe, is essentially a term of art in the law. You have to make your case before the other person.

Now, the last point I will make—and this is, I think, an appropriate point to make—is that the mere fact they put this in here evidences the fact they know I am right. The mere fact they acknowledge that there are circumstances under which confidentiality is appropriate makes my case.

Think about that now. If they thought everything I am saying here makes no sense, that it is not a legitimate point to raise, why would they

provide for any circumstance under which there could be a closed hearing in which only the judge and only the defense counsel were present? They acknowledge by implication. They try to correct it by saying ''proper showing.'' I spent, with my staff, 20 minutes trying to come up with some other phrase that would get it done.

But the truth of the matter is, it is real simple. It is human nature. If you have the prosecutor and the defense lawyer there and the judge, where the Presiding Officer is, and I have to make my case to you because you are not going to automatically grant what I request, you want to know why I want it. So you have to ask me, ''Joe, why do you want it?'' And in order for me to convince you to give me the resources, I have to say to you in front of the other guy, ''Well, I want it, Judge, because I think this witness is going to show that the witnesses for the prosecution are lying.'' Bingo, out of the bag.

Now, if I could say to you, ''Judge, I can't say in front of the prosecutor here. Could you ask the prosecutor to step out of the room and I will tell you?'' If you could say that, then that will get it done. I do not mind the prosecutor being in there as long as when it comes to me to make my case as to why I need the resources that the prosecutor is not there.

So I toyed with the idea of changing the law to say, ''No ex parte proceedings, communication, or request may be considered pursuant to this section unless a request is made concerning the need for confidentiality.'' A request is made—a request—not a showing, because when you move from request to showing, you are required to lay your cards on the table. ''The very cards I have to show you, Your Honor, in order to get you to allow me the money,'' I have to do it in front of those folks.

We do not ask that for a defendant who can afford a lawyer. We do not ask that for a prosecutor. We only ask that for somebody who is poor, and that is a double standard. That is a double standard. To put it another way, Mr. President, if we wanted to make it even for everybody, we should require the privately paid defense lawyer to have to tell the prosecutor every single investigator he or she hires and why they hired them, and we should have to tell the prosecutor they have to tell the defense lawyer every single thing their investigator is doing before they do it. That would be fair. Now everybody is on the same playing field. Now poor folks are treated just like wealthy folks. Prosecutors are treated just like defendants. That would be fair.

But what do we have here? We have a situation where I am poor, he is wealthy, and she is a prosecutor. She does not have to tell me anything about what she is investigating as a prosecutor. He does not have to tell her anything about what he is investigating as a defendant, he can afford it. But I have to tell everybody. It is not fair; not fair. That is what I am trying to correct.

The underlying statute is 848. My amendment strikes all of their reference to that statute. I would be willing to do it by just substituting the word ''request'' for ''a proper showing'' in their language, but I do not think they are willing to accept that. So I am willing, when it is the appropriate time for my colleague to respond, if he wishes to, or move to table this—the bottom line, Mr. President, is I just think this is about fairness.

Why should an indigent defendant have to tell the prosecutor all that he is investigating? You say, ''They don't have to under the law.'' They do practically, Mr. President, because they do not have the resources to hire these folks to do the investigation. Therefore, they have to ask for that. In order to get the judge to give them those resources, they have to tell him why they want those resources; thereby, the effect is they have to tell them. They should not have to do that. Wealthy defendants do not have to do it. Prosecutors do not have to do it. Poor people should not have to do it.

I yield the floor and thank my colleague.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate what my colleague is saying, and I know he, with his experience, feels very deeply about it. The real problem is and the reason we have to oppose this amendment is because at this point in the proceedings, we have had a trial, three appeals, we have had other proceedings, but at this point in the proceedings, to which Senator BIDEN is referring, all claims should have been out in the open. At that point, they should be out in the open. They should not be investigating new claims at this point.

Frankly, ex parte proceedings are simply unnecessary at this point in the proceedings. This is just simply another way of dragging out the process and the proceeding, permitting the defense counsel to argue his case outside the presence of the prosecutor. That is why we have to oppose this amendment.

I suppose we could argue that we should never finish these proceedings; that there is no finality; that people who do not like the death penalty want these things to go on forever hoping that nobody ever has to live up to the judgment of the court or the jury, but that is what we are trying to solve here.

The bill before the Senate protects constitutional rights. It protects civil liberties. We give them every chance under our bill to be able to pursue their claims. There is no reason why they should be able to walk into a court room and get an ex parte hearing without having counsel for the State present and having hired people to investigate new evidence over the last 6 months and then get a nunc pro tunc ruling of the court—in other words, that they should pay for that, the State is going to have to pay for that, from the time they hired them right up to the present time—in an ex parte proceeding. We both argued this pretty much to death.

Mr. BIDEN. Mr. President, I would like to make one brief response.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, let me explain why, although it sounds reasonable what my friend said. We have gone through the factfinding stage, the trial, this is just on habeas appeals, and why do you want to dig stuff up?

Many of the habeas appeals are premised on the following proposition: The defendant says, ''Hey, look, I got convicted, I got convicted unfairly because there was perjured testimony in my trial,'' like a couple trials that were mentioned here today, actually happened. I am not making these up, they happened.

It turns out, for example, the prosecutor had a witness that would have said, ''I was with Charlie Smith and he couldn't have committed the crime,'' and the prosecutor never let anybody know that. Conversely, someone gets on the stand in the trial and lies and it is later found out that they lied.

The reason why the defense attorney needs to be able to investigate is to be able to root that out. You have a defendant saying, ''Look, I am about to be put to death, but I'm telling you, Charlie Smith lied. If you just go find Harriet Wilson, I found out she knows he lied.''

This is what happened. I am asking my staff to check the Carter case. I am not sure of the facts in the Carter case. If I am not mistaken, there was additional evidence found out after the trial—after the trial. That is why the defendant needs the same tools available to him or her that a wealthy defendant would need or the prosecutor needs. That is all I am saying. Do not be misled by the notion that the trial is over, therefore, there is no other factfinding to go on, you do not need an investigator.

For example, in the Hurricane Carter case—I wanted to make sure I was right on my facts here—after the trial was over, Hurricane Carter's lawyers found out that there was a polygraph test given to one of the witnesses, and the outcome of that polygraph test sustained Hurricane Carter's assertion that he was innocent. It was never made available. They never told anybody such a test was done. Therefore, it took investigative work after the trial to go back and dig this out. They dug it out.

Old Hurricane Carter ''ain't'' dead now, and the reason he is not dead now is because they dug that, among other facts, out. That is the investigative work we are talking about. Keep in mind now, this does not in any way extend the number of appeals someone

can make. This does not in any way extend the time in which appeals have to be filed. This is just simple fairness. Treat poor people like you treat wealthy people during and after the trial.

I yield the floor.

Mr. HATCH. One more sentence. This is after direct appeals, after collateral appeals have been done, after the State has decided the issue on perjury, or to use his hypothetical, where they would have had the opportunity. All we ask is that the State not be hammered. We have had judges that do these things. States have had inordinate expenses, and there is little or no justification for it.

Mr. President, I move to table the Biden amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. I ask unanimous consent that the vote on the motion to table the Biden amendment No. 1253 be at a time to be determined by the majority leader after consultation with the minority leader, but not before 2 p.m. today.

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

Mr. HATCH. I ask that the Biden amendment No. 1253 be laid aside and that the Senator from Michigan be recognized to offer his amendment.

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

Mr. HATCH. I ask unanimous consent that at the conclusion or yielding back of time on the Levin amendment it be set aside and the vote occur on or in relation to the Levin amendment No. 1245 following the vote on the motion to table the Biden amendment.

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

Mr. HATCH. It is my understanding that the distinguished Senator from Oklahoma has asked for some separate time.

I ask unanimous consent that he be given that opportunity to speak at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. I ask that the time not be charged to Senator LEVIN or our side.

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

Mr. NICKLES. Mr. President, first, I wish to compliment Senator HATCH for his leadership on this bill, and I also compliment Senator DOLE for his leadership in bringing this bill to the floor and his willingness to bring it to the Senate this early.

Mr. HATCH. If the Senator will yield, before the Senator gets into his remarks, I want to also ask unanimous consent that immediately following the Senator from Oklahoma the Senator from Michigan be granted 10 minutes, without having the time count against any amendment.

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

Mr. NICKLES. Mr. President, again, I thank my friend and colleague from Utah for his leadership on this bill and for his willingness to bring it to the floor so quickly. I also thank Senator DOLE, because I remember after the tragedy of April 19 in my State, talking to Senator DOLE either that day or the next day, he stated to me his willingness to bring legislation forward to the Senate as quickly as possible. He has met that obligation. We do not usually move very fast in the Senate. I appreciate his willingness to schedule this as early as possible. I also appreciate the fact that finally we are going to bring this issue to a conclusion.

It was my hope that we were going to finish it last night. I wanted to be in Oklahoma today because of some base closing hearings both in Enid and in Oklahoma City, Vance and Tinker Air Force bases. That is very important. But I feel like this issue is most important for my State and for many people across our country. It is vitally important that we enact habeas corpus reform.

On Monday of this week I was honored to meet with about a dozen Oklahomans who had lost family members in the Oklahoma City bombing. These brave individuals came to their Nation's Capital to honor their loved ones by asking the U.S. Senate to do one meaningful thing—enact tough habeas corpus reform on the antiterrorism bill.

There are several important parts of the bill that is before us, but the one key element that will help the victims of the Oklahoma City bomber and other victims of violent crime in habeas corpus reform.

I will read a couple of the comments that some of the victim's families made:

> In Oklahoma City they had a press conference and came to the State capitol to urge Congress and the President to implement habeas corpus legislation that would significantly reduce the appeals process and expedite the imposition of death sentences. In strained, choked voices, they talked of the tragedy that tore at the city, leaving shattered families still only beginning to absorb the depths of their losses. Connie Williams wore a button with her dead son Scott's picture, bearing the words ''Beloved Scott, Our Special Angel.'' His pregnant wife, Nicole, said, ''I do not want his daughter to be in high school wondering why his killers are still on death row.''

She is right.

Some of the families came up to our Nation's Capitol on Monday. One was Diane Leonard. Her statement was, ''Our pain and anger are great.'' Her husband is gone, a Secret Service agent killed in the bombing in Oklahoma City. I might mention he was an agent of the Secret Service for 25 years. She added, ''But it would be much, much greater if the perpetrators of this crime are allowed to sit on death row for many years.'' She is talking about the pain and anger are great, but it would be much greater if the perpetrators were allowed to sit on death row for many years. She is a former Tulsa resident. Diane Leonard, her voice cracking with emotion, described in graphic detail the injuries her husband suffered. She urged Senators to have the courage to amend the law to allow death sentences to be carried out in 2 or 3 years.

I respect the fact that some of our colleagues feel differently on the death penalty. We have heard some of them speak eloquently today. They are opposed to habeas corpus reform in large part, in many cases, because they do not want the death penalty to ever be carried out. I respect their position, but I do not think they are correct. I think they are wrong.

Mr. President, I fear that our criminal justice system is in critical condition. The past couple of years have shown a dip in America's crime rate, but over the course of years our crime rate has gone up and up and up.

Today, an American is about 2½ times more likely to be a victim of a property crime than he or she was in 1960.

Today, an American is about four times more likely to be a victim of a violent crime than he or she was in 1960.

And in the face of these sobering numbers and the numbing real-life stories that appear on our television sets every night, our criminal justice system appears less and less able to dispense justice.

This bill, if it contains tough, new habeas corpus reforms, can be an essential step along the path to reform.

No adult in Oklahoma can consider the probable prospects for the Oklahoma City bomber without reflecting on the man who until a few weeks ago was Oklahoma's most notorious killer. That man is Roger Dale Stafford who, in 1978, murdered nine persons in two separate incidents. Roger Dale Stafford was given nine death sentences for those murders, but he is living still.

Roger Dale Stafford does have an execution date; it is July 1, 1995. But Roger Dale Stafford has had execution dates before, and they all have come and gone. Whether this date will be the last I do not know for his attorney has announced that he will seek another stay of execution. Incidentally, this is the same attorney who has been appointed to represent Timothy James McVeigh, the man being held in connection with the Oklahoma City bombing.

Roger Dale Stafford's crimes are well known in Oklahoma, but the fact that they are well known does not reduce their ability to shock and sadden anyone who hears of his wickedness.

On June 21, 1978, after searching unsuccessfully for a business to rob, Roger Dale Stafford, his wife, Verna, and his brother, Harold, decided to stop their car, raise the hood, and feign distress, in hopes that a wealthy and vulnerable Good Samaritan would come

along. They pulled their car to the side of the road, and Verna Stafford attempted to flag down passing cars. Roger and Harold Stafford lay in wait in the darkness.

Eventually, a blue Ford pickup truck with a white camper shell pulled off the road, and the driver, Air Force Sgt. Melvin Lorenz approached Verna Stafford with an offer to help. Sergeant Lorenz looked under the hood of the Stafford automobile and said that he could find nothing wrong. At that point, the Stafford brothers confronted Sergeant Lorenz and demanded his wallet. Roger Stafford was armed with a pistol. Sergeant Lorenz informed the Staffords that he and his family were on their way to his mother's funeral in North Dakota, and that he could give the appellant some money, but not all that he had. Roger Dale Stafford then shot Sergeant Lorenz twice, killing him.

Hearing the shots, Linda Lorenz, Sergeant Lorenz's wife, got out of the pickup truck and ran toward her husband. Verna Stafford knocked Mrs. Lorenz to the ground, and Roger Stafford shot her as she fell, killing her.

The murderers then heard a child calling from the back of the camper. Roger Stafford approached the camper, cut a hole in the screen, and fired his pistol into the darkness, forever silencing 11-year-old Richard Lorenz.

For the Lorenz murders, Roger Dale Stafford was convicted on three counts of first degree murder and sentenced to death for each murder.

That was first of Roger Dale Stafford's murderous episodes in Oklahoma. A month later, he struck again:

On July 16, 1978, Roger, Verna, and Harold Stafford robbed the Sirloin Stockade Restaurant in Oklahoma City. The trio waited in the restaurant's parking lot until all the customers had left, then knocked on the side door of the restaurant. When the manager answered, he was greeted by Roger and Harold Stafford pointing guns at him. They forced him to take them to the cash register and the office safe.

Harold and Verna Stafford held five employees at gun-point while Roger Stafford had the manager empty the office safe which contained almost $1300. All six employees were then ordered inside the restaurant's walk-in freezer. Once inside, Roger Stafford shot one of the hostages, then both men opened fire on the remaining employees. Roger Stafford told Verna that it was time for her to take part. He placed his gun in her hand and helped her pull the trigger.

All six Sirloin Stockade employees died as a result of the shootings. They were: Terri Michelle Horst, age 15; David Gregory Salsman, age 15; David Lindsay, age 17; Anthony Tew, age 17; Louis Zacarias, age 46; and Isaac Freeman, age 56.

For the Sirloin Stockade murders, Roger Dale Stafford was convicted on six counts of first degree murder and sentenced to death for each murder.

As I said, Mr. President, Roger Dale Stafford lives still, and each day his penalty becomes farther and farther removed from the crimes for which it is so eminently justified. Justice still waits for Roger Dale Stafford.

And, why the delay? Because since his convictions, Roger Dale Stafford has made at least 18 reported appearances in Federal and State courts. He has been before the U.S. Supreme Court six times—1985, 1985, 1985, 1984, 1984, 1984—before the U.S. Court of Appeals for the 10th Circuit once, 1994, before the Oklahoma Supreme Court once, 1986, and before the Oklahoma Court of Criminal Appeals nine times, 1993, 1992, 1991, 1990, 1987, 1985, 1985, 1983, 1983. This list does not include appearances which were not officially reported. It omits one pretrial appearance at an appellate court, 1979. And, it omits all activity at the trial courts.

Mr. President, 17 years ago he murders teenagers, he murders an innocent family that is trying to help him out, and he is still on death row. That is not justice delayed, that is justice denied.

What about the families that lost teenagers in that incident? What about the families that lost loved ones—178—in the Oklahoma City bombing incident; 178, with over 400 injured? Are we going to be telling them 15, 17, 20 years from now, ''Well, the appeals process is just very cumbersome,'' and have taxpayers paying not only the expense for taking care of the perpetrators of the crime, should they be convicted and receive the death sentences, as they surely should and hopefully will. What are we going to tell those families?

I met with some of the victims that lost two children. I met with them Friday. A young lady in her early twenties lost both her kids. I met with a daughter that lost her father just last Monday. I met with three spouses that lost their spouse. One of the individuals that was here was an uncle who lost his nephew, whose wife is expecting. What about that child who will never see her father alive? Are we going to tell that child, ''Well, we are sorry, but the person that was responsible for murdering your dad is still in Federal court, he is still in prison living pretty well, watching TV; Uncle Sam, or the Government, is taking care of him, giving him three meals, making sure all his rights are protected,'' and allow him to abuse the process for 15 years or so? I do not think so. That is not justice to the families. That is not justice, period.

So we need habeas corpus reform. We have needed it for a long time. I am glad the President has reversed himself and now agreed that we need this on this bill. This will allow the families to at least have some knowledge that there will be justice, and hopefully we will move very quickly.

Mr. President, I want to make some general comments on habeas corpus reform because we have needed this for a long time. First, our habeas system does not promote justice. The availability of habeas corpus to State prisoners, beyond the various remedies and layers of review available in State courts, has little or no value in avoiding injustices or ensuring that the Federal rights of criminal defendants are respected. The typical applicant has already secured extensive review of his case in State courts, having pursued a State appeal and often having initiated collateral attacks in State courts. The claims raised by such defendants are normally without substance and are likely to be technical, that is, to allege procedural irregularities which cast no real doubt on the defendant's guilt.

Let me just mention the cases in Oklahoma City. I talked to a Federal judge, the first judge I was responsible for getting appointed in Oklahoma. 1982 was his first year on the court. They had 193 prisoner appeals made to the Federal courts—193. That happened to be about 10 percent of their caseload. In 1992, 10 years later, they had 630. The number more than tripled, an increase to 25 percent of their caseload.

Prisoners are finding it pretty easy to make appeals, and they are appealing to the Federal system. There is no limit to the number of appeals. They can appeal for anything. They can appeal on habeas that they were incorrectly convicted, or they can appeal and say that somebody next door is smoking or somebody next door has a radio too loud. And they take it all the way to the Federal court. That is happening hundreds of times.

In Oklahoma City and the western district in 1992, there were 630 prisoner petitions. Some of the prisoners are specializing in this. There is nothing else to do. So they have legal access, they have access to the library, and they can abuse this process for all it is worth. And so what if it ties up the court? So what if it keeps them kind of busy? So what if they are as guilty as they possibly can be? So what if they have been convicted and gone through every appeal in the process and been to the Supreme Court?

Roger Dale Stafford has had his case to the Supreme Court six times, and every time the Supreme Court said, ''Guilty.'' Yet he files another petition. I expect he has another one in the typewriter right now. It just so happens his attorney is a very competent, very professional, very good attorney, Steven Jones. He also happens to be the same attorney that will be defending Mr. McVeigh. I do not want the victims of the Oklahoma City bombing to have to wait 17 or 20 years for justice. That is why we need habeas corpus reform.

Second, the habeas system demeans federalism. The present system of review is demeaning to the State courts and pointlessly disparaging to the efforts to comply with Federal law in criminal proceedings. A single Federal judge is frequently placed in the position of reviewing a judgment of conviction that was entered by a State trial

judge, reviewed and found objectionable by a State appellate court, and upheld by a State supreme court. An independent determination of the contentions raised by the applicant is required of the Federal judge although he may have no doubt that the State courts were conscientious and fair. State judiciaries are presumed to be incapable of applying Federal law, or unwilling to do so.

I know Senator KYL will have an amendment later that would address that, and I compliment him for his amendment and plan to support him in his efforts.

Third, habeas corpus defeats the demand for finality. The current system of Federal habeas corpus defeats the important objective of having an end to litigation. The costs of such a system were eloquently described by the late Justice John Harlan in *Mackey* v. *United States*, 401 U.S. 667, 690–91 (1971):

> Both the individual criminal defendant and society have an interest in insuring that there will at some point be the certainty that comes with an end to litigation, and that attention will ultimately be focused not on whether a conviction was free from error but rather on whether the prisoner can be restored to a useful place in the community. * * * If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the questions litigants present or else it never provides an answer at all. * * * No one, not criminal defendants, not the judicial system, not society as a whole is benefitted by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved.

Fourth, habeas procedures are wasteful. The current system is wasteful of limited resources. At a time when both State and Federal courts face staggering criminal caseloads, we can ill afford to make large commitments of judicial and prosecutorial resources to procedures of dubious value in furthering the ends of justice. Such commitments come at the expense of the time available for the stages of the criminal process at which the questions of guilt and innocence and basic fairness are most directly addressed. Former Chief Justice Warren Burger made the following points:

> I know of no society or system of justice that takes such scrupulous care as we do to give every accused person the combination of procedural safeguards, free legal counsel, free appeals, free records, new trials and post conviction reviews of his case. I have seen cases—and this occurs in many courts today—where three, four, and five trials are accorded to the accused with an appeal following each trial and reversal of the conviction on purely procedural grounds. * * * In some of these multiple trial and appeal cases the accused continued his warfare with society for eight, nine, ten years and more. In one case more than 60 jurors and alternates were involved in five trials, a dozen trial judges heard an array of motions and presided over these trials; more than 30 different lawyers participated either as court-appointed counsel or prosecutors and in all more than 50 appellate judges reviewed the case on appeals. I tried to calculate the costs of all this for that one criminal act and the ultimate conviction. The best estimates could not be very accurate, but they added to a quarter of a million dollars. The tragic aspect was the waste and futility since every lawyer, every judge and every juror was fully convinced of the defendant's guilt from the beginning to the end.'' 25 Record of the N.Y.C. Bar Assoc. 14, 15–16 (Supp. 1970).

Fifth, the way our habeas system is used nullifies capital sentences. The constitutionality of the death penalty has been settled since 1976. Thirty-eight States now authorize capital punishment, but the inefficiency of current court procedures has resulted in a de facto nullification of capital punishment laws. The public interest organizations that routinely involve themselves in capital cases have fully exploited the system's potential for obstruction. Delay is maximized by deferring collateral attack until the eve of execution. Once a stay of execution has been obtained, the possibility of carrying out the sentence is foreclosed for additional years as the case works its way through the multiple layers of State and Federal courts.

Mr. President, this country desperately needs reform in its criminal justice system. Habeas corpus reform is an important part of that necessary reform, and this bill is an excellent place to start reforming habeas corpus.

I agree with the families of the Oklahoma City dead: Habeas corpus reform is an inadequate, but necessary, memorial to the memories of those who died in that dreadful, murderous blast.

Again, I compliment Senator HATCH for his leadership, and Senator DOLE for bringing this to the floor of the Senate and Senator DOLE for pushing the Senate for the last several days, including last night.

I am glad that finally we are going to have this bill come to a conclusion and have cloture, and allow us to have habeas corpus reform which, again, in my opinion, is the most significant element of true crime control that we can enact.

I am hopeful we can send a positive signal to the families of the victims in the Oklahoma City bombing and tell them that, yes, we are going to have an end to these endless appeals, and that justice will be done and it will be done, as President Clinton said, in a timely manner as well.

The PRESIDING OFFICER (Mr. FAIRCLOTH). The Chair recognizes the Senator from Michigan.

Mr. ABRAHAM. Mr. President, I rise today in support of this legislation as well. I also pay tribute to my colleague from Oklahoma, whom I think today presented an extraordinarily strong and compelling argument in favor of the reforms of habeas corpus that we are looking at today, and against a series of amendments.

Later in my remarks I will address some of those reforms and that issue, although I am unable to think of how I can address them more vividly and effectively than the Senator from Oklahoma has already done.

Today I rise to also just indicate my overall support for this legislation. Clearly, the people in our country and in our State of Michigan in particular stand back and look at the events which took place in Oklahoma City with great concern. They have asked us to act. I believe this bill properly incorporates the best ideas as to the sorts of actions we should be taking at this time to address the problem of terrorism, wherever it may originate.

At this point I would like, in my remarks, to highlight a series of provisions in the bill I have worked on with our outstanding floor leader and my good friend, the Senator from Utah, with the majority leader, and others. These provisions would facilitate the deportation of aliens who have committed serious crimes while in the United States.

The provisions at issue, contained in title III, section 303(e) of the bill, require that aliens who are convicted of serious crimes in courts of law in this country be deported upon completion of their sentences without any further judicial review of the order of deportation. These expedited deportation procedures will apply to the almost half a million aliens currently residing in this country who are deportable because they have been convicted of committing serious felonies.

Under the Immigration and Nationality Act, aliens who are convicted of felonies after entry are already deportable. They are rarely actually deported, however, because criminal aliens are able to request equitable waivers from the courts and other types of judicial review that were never meant to apply to convicted felons. Such abuse of process operates to prevent the order of deportation from becoming final.

Notably, both the administration's antiterrorism bill and S. 735 contain expedited deportation procedures for a small class of aliens reasonably suspected of planning future terrorist activity. The administration's bill, however, makes no provision for rapid deportation of aliens who have actually committed crimes. This, despite the fact that the Attorney General has said that the removal of criminal aliens from the United States is one of the administration's highest priorities and that our prisons and jails are crowded with criminal aliens. The substitute to S. 735 remedies that omission.

According to the FBI, foreign terrorists have been responsible for exactly two terrorist incidents in the United States in the last 11 years: the World Trade Center bombing and a trespassing incident at the Iranian mission to the United Nations. While the World Trade Center bombing was obviously a very serious matter, it should not be the exclusive focus of our efforts to take strong action to protect American citizens from criminal conduct by noncitizens.

More than 53,000 crimes have been committed by aliens in this country recently enough to put the perpetrators in our State and Federal prisons right now. An estimated 20 to 25 percent of all Federal prison inmates are noncitizens; in California, almost one-half of the prison populations are noncitizens. According to a 1995 Senate Report on Criminal Aliens in the United States, a conservative estimate of the total number of deportable criminal aliens presently residing in the county is 450,000. All of these aliens have committed at least one serious crime in this country. For that reason all are deportable under the law. They have not been deported because they have been able to prevent the order of deportation from ever becoming final by seeking repeated judicial review.

The grounds on which criminal aliens are legitimately entitled to waivers of deportation are extremely narrow. To avoid deportation, criminal aliens essentially must prove a case of mistaken identity—that the alien is not who the Government thinks he is; that he is not an alien, at all; or that he has been pardoned or had his conviction overturned. Mistakes of this order do not happen often. Mistakes of this order certainly have not happened 450,000 times—for each of the deportable criminal aliens currently in the country. Rather, the alien's capacity to demand successive judicial review, even wholly merit less judicial review, grinds the deportation process to a halt.

Meanwhile, the Immigration and Naturalization Service does not have adequate facilities to house this many criminal aliens. As a result, the great majority of these convicted felons are released back to our streets after serving their sentences, with instructions to report several months later for a hearing before the INS.

Needless to say, the majority of criminal aliens released from custody do not return for their hearings. Having been returned to the streets to continue their criminal predation on the American citizenry, many are rearrested soon after their release. Thus, for example, a recent study by the GAO found that 77 percent of noncitizens convicted of felonies are rearrested at least one more time. In Los Angeles County alone, more than half of incarcerated illegal aliens are rearrested within 1 year of their release.

The provisions at issue will put an end to this abuse of process by doing the following:

First, they will prohibit the Attorney General from releasing criminal aliens from custody prior to deportation.

They will also eliminate judicial review for orders of deportation entered against criminal aliens—although criminal aliens will still be entitled to challenge their orders of deportation before the Board of Immigration Appeals.

In addition, these provisions will require deportation of criminal aliens within 30 days of the conclusion of the alien's prison sentence in most circumstances.

Finally, they will apply these expedited deportation to aliens who have committed the ''General Crimes'' listed in section 1251 of title 8 of the United States Code. These include crimes such as murder, rape, drug trafficking, espionage, sabotage, and treason.

These reforms are extremely reasonable. Aliens in this country who commit these crimes will still be afforded all the due process protections and lengthy appellate and habeas corpus review afforded U.S. citizens on the underlying offense. Moreover, once those appeals have run and the conviction has been upheld, the alien will continue to be entitled to a hearing before an immigration judge to determine whether an order of deporatation should be entered. And if an order of deportation is entered, the alien will still retain the right to appeal the order to the Board of Immigration Appeals. The substitute to S. 735 only eliminates additional judicial review for criminal aliens beyond this point.

Without the rapid deportation provisions for criminal aliens in this legislation, aliens who are convicted felons will continue to be deported at the current pace, that is about 4 percent a year. At this rate—assuming no alien is ever convicted of another felony—it would take 23 years to deport all the aliens presently residing in the country who are under felony convictions. Meanwhile, many will be released back into society to prey on more American citizens. No country, no matter how civilized, should continue to tolerate this abuse.

For that reason, as well as the many others that have been advanced over the past few days, we should enact this legislation, and quickly too. I urge the Senate to do just that.

Finally, Mr. President, I would like to say a few words about another very important set of provisions in this bill: the sections that would reform habeas corpus.

Like the provisions concerning deportation of criminal aliens, the habeas corpus reforms in the bill correct a common abuse of judicial process in our criminal justice system. In this case they correct the obstructive and abusive manipulation of the writ of habeas corpus by criminals who have been convicted of serious violent crimes.

Right now, the delay made possible by abuse of this writ allows convicted criminals to essentially overrule a State's entire criminal justice system. By filing repetitive or frivolous habeas corpus petitions, criminals are able to delay the imposition of capital sentences indefinitely. This delay in turn seriously undercuts the moral authority of the people, through their elected representatives, to impose this punishment on people who have committed extremely heinous crimes.

This is not fair to the people, who are entitled to determine the punishments to be accorded crimes committed in their States. Nor is it fair or even humane to the families of the victims of crime.

The habeas reforms in the antiterrorism bill impose reasonable limits on the use of the writ—reforms that are long overdue. I support these reforms and I urge the Senate to enact the antiterrorism bill.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1245 TO AMENDMENT NO. 1199

(Purpose: To retain an avenue for appeal in the case of prisoners who can demonstrate actual innocence)

Mr. LEVIN. Mr. President, I call up an amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 1245 to amendment No. 1199.

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

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

The amendment is as follows:

On page 106, line 12, strike ''and'' and all that follows through the end of line 17 and substitute the following:

''or

''(B) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish that constitutional error has occurred and that more likely than not, but for that constitutional effort, no reasonable factfinder would have found the applicant guilty of the underlying offense.''

On page 110, line 3, strike ''and'' and all that follows through the end of line 9 and substitute the following:

''or

''(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish that constitutional error has occurred and that more likely than not, but for that constitutional error no reasonable factfinder would have found the applicant guilty of the underlying offense.''

Mr. LEVIN. Mr. President, it is my intention to offer and modify this amendment. I will do that in a moment so that the amendment clarifies language that more precisely tracks the Supreme Court language which is the subject of the amendment.

I ask unanimous consent that the modification be in order.

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

AMENDMENT NO. 1245, AS MODIFIED, TO AMENDMENT NO. 1199

Mr. LEVIN. Mr. President, I send a modification to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 1245), as modified, is as follows:

On page 106, line 13, strike clause (B) and substitute the following:

''(B) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish that a constitutional violation has probably resulted in the conviction of a person who is actually innocent of the underlying offense.''

On page 110, line 4, strike clause (ii) and substitute the following:

''(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish that a constitutional violation has probably resulted in the conviction of a person who is actually innocent of the underlying offense.''

Mr. LEVIN. Mr. President, Justice Clark, discussing the Magna Carta, said the following:

Ever since the Magna Carta, the greatest right of personal liberty has been guaranteed, and the procedures of the Habeas Corpus Act of 1679 gave to every Englishman a prompt and effective remedy for testing the legality of his imprisonment. Considered by the founders as the highest safeguard of liberty, it was written into the Constitution of the United States that its privilege shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it. Its principle is embedded in the fundamental law of 47 of our States.

Justice Clark went on to say:

It has long been available in the Federal courts to indigent prisoners . . . both the State and Federal Government to test the validity of their detention. Over the centuries, it has been the common law world's freedom writ. We repeat what has been so truly said of the Federal writ. There is no higher duty than to maintain it unimpaired and unsuspended, save only the cases specified in our Constitution.

Mr. President, the right of habeas corpus over the years has been abused. It has been overused and excessively attempted to be utilized in many cases. Over the years, the Congress and the courts have attempted to rein in some of those excesses, and have done so. Both the Supreme Court and the Congress have in a number of ways attempted to restrict the utilization of the right of habeas corpus so that it would not be abused. The bill before us, in many respects, however, has reduced the utilization of the right of habeas corpus excessively. One particular that I want to address in the next few minutes would deny access to the writ on the part of somebody who a court believes is actually innocent.

I want to repeat that because this is a very narrow group of cases that we are talking about. The case which this amendment addresses is the case where a court determines that the prisoner filing the writ is probably actually innocent.

I hope that sounds startling because this is a startling subject. The subject is whether or not we are going to execute somebody where a court finds that the person is probably—that is the key word—actually innocent of the underlying offense. I want to go back into history in order to give the background of this issue.

As I have said, the court as well as the Congress has found that the writs of habeas corpus have been used excessively—the petition, more accurately, seeking a writ, has been used excessively. This has been happening for many, many years.

The court in the Schlup case, which is the case I want to discuss at some length, a 1995 case, went through the history of writs of habeas corpus, and they found that the writ had been excessively sought, that there had been repetitious petitions, there had been successive writs sought, and that the burden on the courts became too great.

So in the Schlup case, the majority said the following about the history of the applications for writs of habeas corpus.

To alleviate the increasing burdens on the Federal courts and to contain the threat to finality and comity, Congress attempted to fashion rules disfavoring claims raised in second and subsequent petitions.

And they then went through congressional enactments starting in 1966. They also then talked about what the Court has done to restrict the applicability and the availability of petitions for writs of habeas corpus, and said the following in the Schlup case.

These same concerns—

And that is the overutilization—

resulted in a number of recent decisions from this Court that delineate the circumstances under which a district court may consider claims raised in a second or subsequent habeas petition. In these decisions, the Court held that a habeas court may not ordinarily reach the merits of successive claims absent a showing of cause and prejudice.

The Court then quotes an opinion written by Justice O'Connor in the Carrier case. And they said in Schlup that Justice O'Connor has noted the following:

In appropriate cases the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration.

So there is an exception if the Court finds a fundamental miscarriage of justice. That is what courts are for. Courts can be abused but ultimately what they must seek to do is avoid a fundamentally unjust incarceration and a fundamental miscarriage of justice. And this is what the Schlup court wrote.

To ensure that the fundamental miscarriage of justice exception would remain ''rare'' and would only be applied in the ''extraordinary case,'' while at the same time ensuring that the exception would extend relief to those who are truly deserving, this court explicitly tied the miscarriage of justice exception to the petitioner's innocence.

That is what we now must address this afternoon. It is what do we do, what standard do we adopt when, on a second application for a petition of habeas corpus raising a constitutional defect, a petitioner persuades a court that he or she is probably innocent of the underlying crime? Will we permit a second petition to be granted so that there can be a hearing? We are not talking about now release from prison. We are just talking about whether a hearing will be available to somebody who persuades a court that he or she is probably innocent and is awaiting execution.

Now, Justice O'Connor in the previous Carrier case, which is relied on heavily in Schlup, said the following:

In an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a Federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default.

And the Court went on to say:

Explicitly tying the miscarriage of justice exception to innocence

And I want to repeat that word because that is the heart of this amendment. We are only talking about people who are probably innocent as found by a court and as to whether or not they should be denied a hearing on the ground that their application is a second application for the writ and not the first application but where a court now for the first time, faced with new evidence, is satisfied that that applicant is probably innocent.

And here is what the Court said:

Explicitly tying the miscarriage of justice exception to innocence thus accommodates both the systemic interest in finality, comity, and conservation of judicial resources, and the overriding individual interest in doing justice in the ''extraordinary case.''

The Court went on to say the following:

Experience has taught us that a substantial claim that constitutional error has caused the conviction of an innocent person is extremely rare. To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial. Because such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful.

And the Court said that:

A petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.

Now, that is a pretty strong test for being eligible for a hearing on a second writ, that a court must find an applicant is probably innocent, meaning that no reasonable juror—no reasonable juror—would find that person guilty beyond a reasonable doubt. And the issue becomes whether or not we want to require that person to be executed. Is that person going to be executed? Are we going to deny, as this bill does, a Federal court the right to grant a hearing on a second writ of habeas corpus when a petitioner introducing new evidence convinces a court

that he or she is probably innocent? Will we deny that court that opportunity?

Now, what the bill does is adopts the dissent in Schlup, which has a higher standard—not the standard of probability but the standard of clear and convincing. And that is the issue on this amendment, whether or not we, in the Senate, are going to overturn the Supreme Court decision in Schlup, which said that if a court is convinced that a person is probably innocent, that is enough for that court to grant a hearing on a second or subsequent application for writ of habeas corpus, or will we adopt the dissent in Schlup, which says, no, probability of innocence is not enough. Even if somebody is probably innocent of the underlying offense, we are going to execute that person unless there is clear and convincing evidence, evidence above and beyond probability.

The case itself in Schlup was a case where this man was already a prisoner and was convicted of first-degree murder, a murder that occurred in prison, and was sentenced to death. In the habeas corpus proceedings, he produced a videotape showing him in a cafeteria lunch line at the time the killing occurred in a different place, sworn testimony from a prison guard stating that Schlup could not have committed the murder, and sworn testimony of five eyewitnesses that Schlup was not present and did not participate in any way in the murder.

The Federal court of appeals judge found—this is the court of appeals now, before the Supreme Court—the court of appeals judge found ''truly persuasive evidence that Mr. Schlup is actually innocent.'' Despite that, the majority of the court of appeals upheld the death sentence and refused to grant a hearing on the new evidence. The court held that under the clear and convincing test, the test that they thought they should follow, they would not grant a hearing in his application.

Earlier this year, the Supreme Court overruled that court of appeals saying that the clear and convincing test, which is the test in the bill before us, failed to provide a meaningful avenue by which to avoid a manifest injustice in cases of actual innocence.

The Court ruled that the fair test for the relief sought is whether ''a constitutional violation has probably resulted in the conviction of one who is actually innocent.'' I am going to repeat it because that is the issue in this amendment. The issue is whether we ought to adopt the majority in Schlup or whether we ought to reverse it. The bill reverses it and goes with the dissent. The amendment would allow the majority of the Supreme Court in Schlup to utilize that test in habeas corpus proceedings, the test being that whether a constitutional violation has probably resulted in the conviction of one who is actually innocent.

I think most of us feel that habeas corpus has been abused, that technicalities have been raised by people who are guilty. This amendment raises the opposite issue. This amendment raises the question of whether or not we are going to use a technicality to deny a hearing to someone who is probably actually innocent.

''Probably actually innocent,'' is that enough for a hearing when someone is on death row or not? Or will the procedural technicality be used to deny that person—a rare case—a hearing because there had been a previous petition filed? And to meet the test of the Supreme Court, the lower court must find that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence.

Mr. President, we are having to face up to the narrowest group of cases, the case where there is a claim that a court finds probably correct that an applicant for the great writ is probably innocent of the underlying crime. We cannot avoid this by talking about technicalities. We are the ones who will determine whether a procedural technicality will stand in the way of a hearing for that small group of prisoners who persuade a court that they are probably innocent of the underlying crime.

This may be and probably is only a very few percent of persons who are in prison on death row, but we know that these cases exist. There were two of them in 1995. In addition to the Schlup case, we had the case of Curtis Kyles. In that case, the Supreme Court found that the prosecution had improperly suppressed evidence of Mr. Kyles' innocence and that this evidence would have made a different result reasonably probable—reasonably probable. The Court agreed with Judge King of the fifth circuit, who expressed ''serious reservations about whether the State has sentenced to death the right man.''

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 4 minutes 7 seconds.

Mr. LEVIN. I thank the Chair and reserve the remainder of my time.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah has 25 minutes.

Mr. HATCH. Mr. President, again, what we are trying to do here is put some finality into the habeas corpus procedures. The Senator's amendment just allows another loophole that is unjustified and allows further appeals. Because liberal judges who are opposed to the death penalty do not want the death penalty imposed, there will be an incentive for them to find that there is probable innocence under this amendment and the whole process will have to start over again, regardless of whether the petitioner is truly innocent of the crime.

The Hatch substitute, our bill, the Specter-Hatch bill, permits successive habeas corpus petitions in death penalty cases where the petitioner may be innocent. If the petitioner is innocent, he or she can have successive habeas corpus petitions and our bill contains a safety valve which permits Federal courts to hear legitimate claims. The Levin amendment, however, weakens the standard of review for determining whether someone is innocent from a ''clear and convincing'' standard, which is what we have in our bill, to a subjective ''probably'' innocent standard.

In addition, the amendment guts the bill's prohibition against subsequent provisions by allowing successive habeas corpus petitions where the death row inmate does not dispute his having committed the homicide in question but claims the death penalty should not be imposed.

The amendment offered by Senator LEVIN, while it seems reasonable, is problematic. When the Court rules on these issues, it does not write on a clean slate—and I am talking about the Supreme Court. The Supreme Court has repeatedly held, for example, that Federal courts are not the forums in which to relitigate criminal cases. At the initial trial, society's resources have been concentrated in order to decide the question of guilt or innocence. Therefore, a petitioner making a claim of actual innocence falls well short of satisfying his burden if the reviewing court determines that any juror reasonably could have found the petitioner guilty of the crime.

The proposed amendment attempts to follow the Supreme Court's recent decision in Schlup versus Delo in which the Court exacerbates the confusion in the lower courts, undermines the finality of lawful convictions and creates a greater uncertainty as to the standard under which a court must hold an evidentiary subsequent hearing.

I know that I have said this many times before, but we are dealing with postconviction collateral proceedings, not a trial. This is posttrial. Habeas corpus review is a postconviction remedy. This is postjury verdict. This is postsentence by the court. What it means is the jury has already convicted the individual and his conviction and sentence have been upheld on appeal. The individual had at least two State appellate reviews which are subject to Supreme Court review. The individual has gone to the intermediate appellate court and has gone to the supreme court of the State.

I might add, the appellate courts have upheld the conviction and the State habeas petitions have thus been exhausted. In other words, there has been the trial, there has been a review by the intermediate court, there has been a review by the supreme court of the State. The State procedures have been exhausted. It also means that petitions to the Supreme Court have been filed. In other words there have been two rounds of State review both of which were the subject of a petition for certiorari to the Supreme Court of the United States of America, and that both of those Supreme Court petitions

have been denied; and at least in collateral cases, as a general rule, the Governor also has ruled on the case because there has been a petition for clemency; and the Government has also reviewed the claim in a clemency petition and has denied it, too. At this point, the prisoner's conviction has been proved beyond a reasonable doubt. It has been upheld on direct and State collateral review. The conviction has also been upheld on the death row inmate's Federal habeas petition. It is at this point in the process—after all of these reviews—where my colleague from Michigan wants to give individual Federal judges broad, subjective authority to determine whether someone is innocent of the crime he or she was convicted of. We allow such a determination by a Federal court but we propose a more certain standard rather than the subjective standard employed in my colleague's amendment.

The proposed amendment would require the district court to hold an evidentiary hearing or grant a second successive petition if it could be shown that a constitutional violation probably resulted in an erroneous conviction.

First, what does probably mean in the law? Who knows? This standard will gut our habeas corpus proposal here today. Would it be a 50-percent chance of innocence? Is that what it means? If that is so, then I think if the prisoner were probably innocent, his conviction would have been overturned long ago in all of these proceedings up through the State courts to the Supreme Court, to the Governor, for clemency.

Second, the proposed amendment would let a court decide independently that a defendant might be innocent. We go through that every day in the current system. Judges who do not want the death penalty to be imposed, who are violently opposed to it, for any reason, decide there is another reason to let this be prolonged again, all at a tremendous cost to the States and the victims of these crimes.

So what we are saying is, the proposed amendment would let a court decide independently that a defendant might be innocent, that there was constitutional error, and that he should not have been convicted. This is a wholly appropriate standard that we have in the bill.

The Levin amendment will simply serve to permit these prisoners who have been duly convicted, their convictions upheld, all of their constitutional rights protected, their civil liberties protected to continue to raise new claims. It allows judges who does not like the death penalty to make subjective determinations, many years after the conviction, to proclaim the probable innocence of a long-convicted murderer. It simply serves to permit a prisoner to drag out his proceedings and further delay justice.

Delayed justice is justice denied. We are frustrated by that all the time. We have a man in California sitting on death row almost for 50 years—successive habeas corpus petitions all the time, on and on. In Utah, we had the Andrews case. It lasted 18 years. He filed over 30 different habeas corpus petitions—30 different habeas corpus proceedings—over that 18 years before the death penalty was finally carried out.

All this does is continue the old system, the old business as usual. Frankly, because we all know the distinguished Senator from Michigan is one of the most eloquent advocates against the death penalty in this body—and I have respect for him; I believe he is very sincere on this issue—I think it is fair for him to argue against the death penalty straight up. But to just provide a mechanism whereby there can be another appeal because some liberal judge decides there ought to be an appeal and will delay a sentence that the law allows, I think is wrong. I know of no case—not one—that has been cited to the Judiciary Committee, in its years of study on this issue, in which Federal habeas corpus review has been successfully employed to release an innocent individual from an erroneous State court conviction. It is a myth.

This amendment is just another method to try to get another appeal and delay the ultimate imposition of the sentence.

Where is the case of an innocent person needing Federal habeas corpus review in order to prove his or her innocence? Take Randall Dale Adams, the Texas death row inmate who was the subject of the documentary ''The Thin Blue Line.'' How did he establish his innocence after he was convicted? Not through Federal habeas corpus, but through the Texas State court proceedings—procedures similar to those available in virtually every State in the Union today.

Take the case of Walter McMillan, who was wrongfully convicted and sentenced to die for the brutal robbery-murder of an Alabama convenience store clerk. Was it habeas corpus that saved his life? No, it was the State of Alabama. Despite being granted relief through the States, both of these men were called before the Senate Judiciary Committee by a colleague of ours, who opposes the death penalty, to demonstrate why our Nation needs more Federal habeas corpus review rather than less. Federal habeas corpus review had nothing to do with it.

The State procedures were adequate and did the job in protecting their innocence and finding their innocence. Yet, they brought them up here to try and show that Federal habeas corpus review is important.

I do not know of one case where Federal habeas corpus review has saved the defendant. But the State procedures have. In the Federal courts, the Federal direct appeal procedures have. That sort of logic, as in the present amendment, cannot even be called reform even when it expands the rights of convicted murderers.

I mention these cases—Randall Dale Adams and Walter McMillan—not because I advocate abolition of Federal habeas corpus. It is clear that we protect it in the Specter-Hatch antiterrorism bill. I am not advocating abolition of Federal habeas corpus. The responsible scholars and lawyers and law enforcement professionals do support banning and getting rid of Federal habeas corpus. There are many bright people who think that this system is out of whack and that we do not need Federal habeas corpus. But I am not arguing that position.

We have provided for protection of Federal habeas corpus, but we do it one time and that is it—unless, of course, they can truly come up with evidence of innocence that could not have been presented at trial. There we allow successive petitions. Any time somebody can show innocence, we allow that. I simply wish to provide my colleagues some perspective on this issue. We in the Senate, whose duty it is to enact into law the community's legitimate interest in seeing justice done within the parameters of the Constitution, should soundly reject the present amendment to the Dole-Hatch bill. Indeed, the Senate has a particular duty with respect to habeas corpus. As the inscription on the Dirksen Senate Office Building states, ''The Senate is the Living Symbol of our National Union of States.''

The amendment before us will not only hinder and potentially defeat our efforts to pass a true crime bill this year, but in so doing, this amendment will also force an unprecedented and substantial intrusion into the State criminal justice system.

So I hope that our colleagues will vote against this amendment, as sincere as it is and as sincere as it is being offered. It is another way of just delaying the process because some people do not like the death penalty. I understand that. I think there are good arguments on both sides of the death penalty. I myself would very seldom use the death penalty and only in the most heinous of cases. On the other hand, I think it is essential that we have it on the books. There are those who would just as sincerely argue the other side, that there should be no death penalty, that it is cruel and unusual—even some of our Supreme Court Justices of the past and maybe now and in the future. But do not try to do it by gumming up the procedural process posttrial that has plenty of protections for defendants.

There is no reason for this expensive litigation process with frivolous appeals to continue. That is what we are fighting today. And we are acknowledging that we protect the constitutional rights and civil liberties of the defendants in these matters.

I know the Senator from Michigan is very sincere and I acknowledge that. I have a great deal of respect for his sincerity and intelligence. But this amendment should not pass because I

think it would make this process a continuation of the current process, and I think that would be a tragedy.

I reserve the remainder of my time.

Mr. LEVIN. Mr. President, I will take 30 seconds to tell my friend from Utah this is not a death penalty amendment. This is a habeas corpus amendment. The language in the bill reverses the Supreme Court opinion in the Schlup case. That opinion found that the man in that case was probably innocent. I do not think anyone in this body wants to execute someone who is probably innocent and deny that person a hearing.

Now, Justice O'Connor said—not your liberal judge—one of the majority in the Schlup case, said, ''The court today does not sow confusion in the law. Rather, it properly balances the dictates of justice with the need to ensure that the actual innocence exception remains a 'safety valve' in an 'extraordinary case'.''

The issue is that the bill before the Senate reverses the Supreme Court. The Levin amendment is not trying to bring something new into this. The Levin amendment is trying to preserve a Supreme Court opinion of a few months ago, joined by Justice O'Connor. That is the issue.

I yield the remainder of my time to my friend from Illinois.

Mr. SIMON. Mr. President, I thank my colleague, and I rise in strong support. I think we all know that I oppose the death penalty. It is a penalty we reserve for those of modest means. If a person has enough money, that person will never get the death penalty in this country. That is the reality.

That is not the question, though I find it of interest that today's New York Times has a story that the South African Supreme Court yesterday unanimously outlawed capital punishment in South Africa. We are one of the few countries left in the Western world that still has the death penalty.

The question is whether someone who is probably innocent—that is the language of the Levin amendment—probably resulted in the conviction of a person who is actually innocent of the underlying offense.

Now, whether a person is for the death penalty or against it, no one wants to send someone to prison who is probably innocent. We have done that.

I can remember when we were debating this issue when I was in the Illinois General Assembly and a man was about to be executed, and suddenly someone in the State of Georgia confessed that he had committed the crime.

Now, that case is clear and convincing evidence. I have to say that the bill without this amendment would take care of that case.

There are a lot of other marginal cases. We are not just saying a marginal case. The Levin amendment says where a person is probably innocent, a person ought to have that chance to appeal. I cannot believe anyone who really looks at this—the Senator from North Carolina, the Senator from Utah, my colleagues—I cannot believe they will vote against that.

Maybe Members will vote against it if they are not aware of what the amendment does, and a briefing is right at the desk on either your side or our side. These briefings—and I do not mean this disrespectfully to the fine staff—but it is very difficult to condense in a few words what these amendments do.

The Levin amendment says ''If you are probably innocent, you ought to have the chance to appeal.'' I have a hard time believing that is not going to be accepted unanimously. Apparently, it may not be.

I am pleased to support the Levin amendment, proud to support it and vote for it.

I believe I have consumed my time, Mr. President. I hope I have been able to get the message across.

Mr. President, I ask unanimous consent to have an article printed in the RECORD.

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

[From the New York Times, June 7, 1995]

SOUTH AFRICA'S SUPREME COURT ABOLISHES DEATH PENALTY

(By Howard W. French)

JOHANNESBURG, SOUTH AFRICA, June 6.—In its first major decision, South Africa's recently created supreme court abolished the death penalty today, ending a decades-old practice of executing criminals convicted of serious crimes that had once given the country one of the world's highest rates of capital punishment.

Announcing the unanimous decision, Arthur Chaskalson, president of the Constitutional Court, said, ''Everyone, including the most abominable of human beings, has a right to life, and capital punishment is therefore unconstitutional.''

That the Constitutional Court chose the death penalty issue for its first major ruling underscored the importance of the issue in a country where for decades execution was used not just as a weapon against common crime, but as a means of terror in enforcing the system of racial separation known as apartheid.

''Retribution cannot be accorded the same weight under our Constitution as the right to life and dignity,'' Mr. Chaskalson said. ''It has not been shown that the death sentence would be materially more effective to deter or prevent murder than the alternative sentence of life imprisonment would be.''

In a strong show of support for the ruling, each of the court's 11 judges issued a written opinion backing the decision. The Constitutional Court was created earlier this year as an equal to the executive and legislative branches.

South Africa stopped executing prisoners in 1992 on the orders of the former National Party Government. With violent crime rampant, the number of prisoners awaiting execution on death rows has since swollen to 443. Over 1,100 people were executed in the 1980's. Death sentences were carried out by hanging.

Reacting to the ruling, Justice Minister Dullah Omar said the prisoners would be quickly moved off of death row. According to prison wardens, the announcement set off a round of wild celebration among condemned inmates at Pretoria's Central Prison.

Elsewhere, however, comments on the ruling revealed the continuing depths of political division among South Africans that typically run along racial lines, one year after the formal end of apartheid.

On radio talk shows today, reactions were deeply split between black and white, with the former typically applauding the abolition of the death penalty, while the latter, invoking high crime rates, criticized what many whites say in a gradual slide away from law and order.

''Under the A.N.C., the message is that people can commit any crime and get away with it,'' said one caller to a Johannesburg radio station, referring to the African National Congress, the party of President Nelsen Mandela.

Crime has become a highly emotional issue among many whites here, even though blacks are overwhelmingly represented among the victims of violence. Last weekend in Johannesburg alone, 42 people were killed, 477 businesses and homes were broken into and 34 women were reported raped.

While whites complained of a spreading sense of impunity, many blacks reacted by noting that they had been disproportionately made victims of the death penalty in the past through wrongful arrests and convictions.

Moreover, with the death penalty much more likely to be applied to blacks than to whites under apartheid, capital punishment had become as powerfully emotional an issue for many blacks as crime has become for many whites.

Mr. Mandela himself made this point in a point in a statement to the court during his trial for incitement in 1962. ''I have grave fears that this system of justice may enable the guilty to drag the innocent before the courts,'' he said. ''It enables the unjust to prosecute and demand vengeance against the just. It may trend to lower the standards of fairness applied in country's courts by white judicial officers to black litigants.''

Two years later, in another trial, Mr. Mandela was sentenced to life imprisonment for conspiracy to overthrow the government, a judgment that his supporters saw as a victory because the death sentence was not imposed, even as they deplored Mr. Mandela's conviction.

Conservative white groups condemned the ruling while many predominantly black political organizations portrayed it as a victory for racial justice.

The predominantly black African National Congress, the country's largest political party and the leading force in the fight against apartheid, hailed the ruling as a victory for the country's new democracy, saying, ''never, never and never again must citizens of our country be subjected to the barbaric practice of capital punishment.''

''It's making us a civilized society,'' Archbishop Desmond Tutu, the Anglican primate of Southern Africa, told the South African Press Association. ''It shows we actually do mean business when we say we have reverence for life.''

Archbishop Tutu, a leading campaigner against apartheid, called the death penalty ''obscenity,'' saying it, in effect, said to criminals, ''We want to show you that we care about life so we kill you too.''

Amoung white political groups the reaction to the ruling was typically negative, running from carefully worded statements of displeasure to outright hostility.

Saying that the overwhelming majority of South Africans supported the death penalty, F.W. de Klerk, vice president in the country's coalition transition Government, said that his National Party, a predominantly white party that had governed the country for decades under apartheid, would campaign to reinstate capital punishment.

Other conservative white groups reacted even more harshly. ''The rights of murderers

and rapists are being held in higher regard than those of their victims,'' said one Afrikaner youth organization.

For his part, Mr. Mandela, who served 27 years of a life sentence under a succession of apartheid governments made no public comment today on the ruling. The President's office, however, issued a statement intended to reassure those who fear a growing leniency toward crime.

''The President also wishes to emphasize that this decision has no bearing on the commitment of the Government to tackle the problem of crime, and particularly violent crime, with all the resources and determination it can muster.''

Mr. BIDEN. Mr. President, parliamentary inquiry. Is there any time remaining?

The PRESIDING OFFICER. There is no time.

Mr. BIDEN. I ask unanimous consent that I be able to speak 2 minutes on the Senator's amendment.

The PRESIDING OFFICER (Mr. INHOFE). Without objection, it is so ordered.

Mr. BIDEN. Mr. President, this is pretty clear here.

What the Senator from Michigan does in his amendment is stick with one part of the change in the law. Right now there is no requirement in the law to file the successive petition that says that the defendant has to explain why he did not file the petition before.

Now, under the Hatch approach and under the approach if adopted by Senator LEVIN, that is tightened up. Even Senator LEVIN is saying we have to show cause why this was not raised before. There is only one disagreement before the Senate. That is, what standard of proof do you have to bring forward to show you are innocent?

By implication, they are agreeing a person ought to be able, if there is evidence of innocence, ought to be able to have another petition. Senator LEVIN says the same thing.

I think every American would say you ought to have another crack at it. The difference is, they say ''clear and convincing.'' Right now, the Supreme Court says, no, you do not have to go that far, but you have to go pretty far. You have to sufficiently establish the constitutional violation. You said what happened to you in the lower court, you say your constitutional rights were violated in a way that probably resulted in the conviction of a person who is actually innocent.

Are we going to quibble over putting someone to death on whether or not we abide by the Supreme Court majority that says all you have to do is say ''probably'' this resulted in a conviction of an innocent person?

But they want to go even further. They want to say, no, ''probably'' is not enough. You have to show that there is clear and convincing. The only thing they do not say is ''beyond a reasonable doubt.''

Keep in mind, folks, what everybody misses, when we talk about habeas corpus, is this is not about having a convicted person go free. That is not what this is about. Nobody under habeas corpus petition goes free. They get a new trial. That is all they are saying here. I sure think this is distinction with a difference that can mean the difference between life and death of an innocent person. I hope they will yield on ''probably'' and not ''clear and convincing.''

Mr. HATCH. Mr. President, I do not want to prolong this. I think I have 11 minutes left. I will just take a minute or two.

What I am saying, there has been a trial, conviction, there have been posttrial proceedings, there has been an appeal to the intermediate court in the State, an appeal to the supreme court of the State, then a petitioner of certiorari to the Supreme Court, all of which are denied, and a petition for clemency to the Governor. He denies. In every case where we found actual innocence, or any kind of innocence, it has been through those proceedings, not in Federal habeas.

I have to say that all of this is another attempt to just prolong the process and allow—call it what it is—a liberal judge who does not believe in the death penalty to prolong the process, again at a tremendous cost to the States, everybody concerned, and I think a cost to justice.

People out there are starting to say, my goodness gracious, is there no finality to the decisions, the just decisions, of the court?

I have to say the cases that we can cite where people have been helped, where innocence has been proven, have been through that State process, not through the Federal habeas process. It is just another layer of expense.

I am not going to knock those who are trying to do this because they will sincerely do anything to stop the death penalty. I respect that.

If I was a defense lawyer again, I would do anything to try and preserve somebody's life. But I have to say it would be pretty cynical to keep doing what is being done in some of these cases today. We can call it sincerity, but the fact of the matter is it is a legal obligation to do what you can. But there is an element out there in the legal community which, having failed to convince the public and the courts that the death penalty is wrong, has set about to eliminate the death penalty defect by making death penalty litigation too costly and protracted.

As a lawyer I do everything I can within the law, and if we provide this law, I will be doing that, and so will every other defense lawyer. It is another appeal, another cost to the States, another frivolous appeal which we are trying to limit here while still giving the protections we need in these matters.

The Levin amendment relies on the term ''actual innocence.'' Actual innocence means—and let me just read out of the leading Supreme Court case on it, Sawyer versus Whitney. This is what they held:

1. To show actual innocence one must show by clear and convincing evidence that but for a constitutional error no reasonable juror would have found the petitioner eligible for the death penalty under the applicable State law.

The amendment before us, the Levin amendment, will not help the truly innocent. This amendment will further undermine the proper role of habeas corpus and that is the effect of the amendment. The effect of it is not meant to overturn the fundamental defects. The Specter-Hatch habeas bill has the safety valve. It has a safety valve available for the truly innocent. We provide successive petitions for those who prove innocence. The proposed amendment will do nothing to help the truly innocent. It is merely another means of delaying justice. There are plenty of procedures and mechanisms in the Specter-Hatch bill to protect the truly innocent. So we do not need to continue to prolong this.

I move to table the Levin amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Does the Senator yield his remaining time?

Mr. HATCH. I yield my remaining time.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I ask unanimous consent the vote on the motion to table the Levin amendment be deferred to a time to be determined by the majority leader, after consultation with the minority leader, after 2 p.m. today.

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

Mr. HATCH. I now ask the Levin amendment be laid aside so the distinguished Senator from Arizona can call up his amendment. I understand there is to be a 1-hour time agreement.

I ask unanimous consent there be a 1-hour time agreement with the time equally divided—in the usual form, we will put it that way.

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

Mr. HATCH. I also ask unanimous consent at the conclusion or yielding back of the time on the Kyl amendment that it be set aside and the vote occur on or in relation to the Kyl amendment following the vote on the motion to table the Levin amendment.

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

The Senator from Arizona is recognized.

AMENDMENT NO. 1211

(Purpose: To stop the abuse of Federal collateral remedies)

Mr. KYL. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 1211.

At the appropriate place, insert the following new section:

STOPPING ABUSE OF FEDERAL COLLATERAL REMEDIES.

(a) IN GENERAL.—Chapter 153 of title 28, United States Code, is amended by adding at the end the following:

"§ 2257. Adequacy of State remedies

''Notwithstanding any other provision of law, an application for a writ of habeas corpus in behalf of a person in custody pursuant to a judgment or order of a State court shall not be entertained by a court of the United States unless the remedies in the courts of the State are inadequate or ineffective to test the legality of the person's detention.''.

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

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . STOPPING ABUSE OF FEDERAL COLLATERAL REMEDIES.

(a) IN GENERAL.—Chapter 153 of title 28, United States Code, is amended by adding at the end the following:

"§ 2257. Adequacy of State remedies

''Notwithstanding any other provision of law, an application for a writ of habeas corpus in behalf of a person in custody pursuant to a judgment or order of a State court shall not be entertained by a court of the United States unless the remedies in the courts of the State are inadequate or ineffective to test the legality of the person's detention.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 153 of title 18, United States Code, is amended by adding at the end the following:

''2257. Adequacy of State remedies.''.

Mr. KYL. Mr. President, the reason I asked the key provision of that amendment be read is to illustrate its simplicity. It is very simple and yet I think very important and necessary as an improvement to the bill which is before us now.

I want to begin by complimenting the manager of the bill, the Senator from Utah, for not only getting the bill to this point but for insisting that we have habeas corpus reform in this important piece of legislation.

My amendment will improve the habeas corpus reforms by, as was just read, ensuring that a case in the State courts can be reviewed in the State court system, but that as long as the State court system provides adequate and effective remedies, that person does not have the authority to go over to the Federal courts and relitigate all of the same claims in the Federal courts.

Of course, it should go without saying that there is always a review in the U.S. Supreme Court from any decision of the highest court of a State. So there is ultimately still the potential for Federal review of a State court decision.

I would like to illustrate exactly what we are talking about here with a hypothetical and a real case. The Senator from Oklahoma is here. One of the reasons the Senator from Oklahoma is so interested in this provision is because of the recent tragedy in his State. Let us assume two cases in the State of Oklahoma. In the first case, there is a robbery and in the course of that robbery someone is shot. The person is tried in the State courts, there is an appeal to the appeals court and on up to the supreme court of the State—eventually a prosecution, a conviction and a sentencing.

Thereafter that State court prisoner may file writs of habeas corpus in the Oklahoma State court system as often as that person can find grounds for doing so. Those writs can be determined legally in the appeals and supreme court of the State of Oklahoma, and eventually of course, after the supreme court of Oklahoma has ruled, they can be considered by the U.S. Supreme Court. So that State court prisoner has virtually an unlimited right to take these writs of habeas corpus up and down the State court system.

In today's law he also has the right to go to the Federal court system and essentially relitigate the exact issues. ''I have some newly discovered evidence that will prove I was innocent of the crime. I have gone up and down the State court system, now I would like to try my luck in the Federal courts.'' Under existing law, that person can do it.

What the bill says is we are going to put a couple of roadblocks in the way. It should not be quite so easy for you to you do that. You at least ought to have some time limits within which to file these habeas corpus writs in Federal court, and the Federal courts at least ought to give great weight to the previous decisions of the supreme court. Those are both sound provisions but they obviously do not preclude the State court prisoner from going to Federal court.

Let us take, on the other hand, the perpetrators of the heinous tragedy in Oklahoma City a few weeks ago. They will probably—he or they—will probably be tried in the Federal district court in Oklahoma. If convicted, there could be an appeal to the Tenth Circuit Court of Appeals and eventually to the U.S. Supreme Court. But those people, having been convicted, will have their writs of habeas corpus reviewed only in the Federal district court and circuit courts of the United States of America. They do not have the right to go over to the Oklahoma State court system and relitigate those same claims. So, whereas the State court prisoner can use both the State system and the Federal system, in duplicate appeals, a Federal prisoner may only use the Federal system.

The constitutionality is obviously clear. Either the State courts or the Federal courts are competent to adjudicate constitutional claims. That is established. There is no legal question about that whatsoever. But the Federal court prisoner has one set of options. The State court prisoner, under the stats quo, has two sets of options. And we are limiting them a little bit by the bill before us.

My amendment says: No, a Federal court prisoner adjudicates his claims in Federal court. A State court prisoner adjudicates his claims in the State court. The only time the State court prisoner can go to a Federal court is from an ultimate appeal to the U.S. Supreme Court.

This will end the duplicative appeals that we have all been complaining about. This and only this amendment will end those duplicative appeals. Because it will still be quite possible for State court prisoners under the bill before us to adjudicate their claims in State court and then go to the Federal court so long as they do it in a timely manner. So long as they meet the time limits we impose in this bill, they can still go to the Federal court and relitigate exactly the same claims.

What ordinarily happens is that the Federal district courts or circuit courts of appeals say, ''Wait a minute, the State court has already decided that. Your appeal is summarily denied.'' But that takes time.

I just spoke to the presiding judge of the Arizona court of appeals and he said we summarily dismissed many of these. But he said every one of them has to be considered. And that is the point. From a very small number to a very large number, the district courts and the circuit courts of appeals are having to handle these writs that have already been decided by the State court and, as the Federal courts have said over and over again, the State courts are perfectly able to resolve these issues.

Mr. President, this is not just an idea that I have come up with. This is what is happening in the District of Columbia today, and has been for the last 25 years, because 25 years ago the Congress passed a law and established that in the District of Columbia courts—by the way, the District of Columbia has in effect a State court system which parallels the U.S. District Court and the Circuit Court of Appeals for the District of Columbia.

So it is similar to States in that it has its own system of courts. We in the Congress 25 years ago said that prisoners in the District of Columbia can only use that quasi-State court system here in the District of Columbia. That was tested in the U.S. Supreme Court and the constitutionality was upheld in the case of Swain versus Pressley in 1977. And there have also been other opinions with respect to the constitutionality of what was done. One judge, as a matter of fact, even wrote that because of this experiment in the District of Columbia, which has worked very well for the last 25 years, that the Congress ought to consider the same kind of limitation of remedies in the State courts, exactly what we are proposing here today with my amendment.

So at the invitation of Judge McGowan, we are proposing an amendment which says in the State courts,

you do like the District of Columbia. You exhaust your remedies in the State court. You can go to the U.S. Supreme Court, but not jump over to the Federal District Court and the Circuit Court of Appeals to litigate the same claims.

Judge Robert Bork has written a letter in support of my amendment. He writes, in part:

> Your proposed amendment to the antiterrorism bill to stop the abuse of Federal collateral remedies is an excellent and much-needed reform. There is no doubt about the constitutionality of the provision you propose, nor is there any doubt about the need for your amendment. Your amendment is a sorely needed reform to a situation that is now out of hand.

Mr. President, the constitutionality of what I propose is beyond question. It has been tried for 25 years here in the District of Columbia. It is found to be very workable. Everybody agrees that we need to limit duplicative appeals.

Therefore, it seems to me that, if we are to really make the provision of habeas corpus reform in this bill work, we do not just play with it at the edges by proposing some time limits and providing for deference to State court proceedings. We go right to the heart of matter and say if you have a complete and adequate remedy in the State courts, then that is what you will get except, of course, for your ultimate appeal to the U.S. Supreme Court. You cannot jump over to the Federal system of courts to readjudicate those very same claims.

The Senator from Oklahoma is on his feet. I would like to yield time to the Senator from Oklahoma to further discuss this particular amendment.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I would like to compliment my friend and colleague from Arizona for his leadership. He brought this amendment to my attention. I told him I was not very familiar with it, but I told him I would do a little more homework. I have. I have become more convinced that he is on the right track.

I talked to the Federal judge in the Western District of the State of Oklahoma, and I asked him about the number of appeals; prisoner petitions. We find out in the last 10 years they more than tripled, and have actually consumed about 25 percent of the work load in the western district. The court has before them hundreds of prisoner petitions and appeals that have to be reviewed.

The Senator from Arizona makes an excellent point, and says the States have ajudicated these cases thoroughly. They have gone all the way through the State courts, through the appeals process, State supreme courts, and then all the way even—with capital punishment cases—to the Supreme Court.

Yet, they continue to press, and want to run through the Federal court system as well where the Federal judges do not have time to go through the entire case, where there is almost a presumption that, if they have to do that, maybe the Federal Government knows better, which is not always correct. The Federal judges I have talked to said we are in serious need of habeas corpus reform.

I compliment my friend and colleague from Arizona for, I believe, truly making more significant reform. I think Senator HATCH's bill has some good reform. I compliment him for it. The reforms in S. 735 will help expedite the procedures. There are time limits under the proposal now before us from the Senator from Utah. Senator KYL's amendment would go much, much further. It would eliminate these hundreds of, in almost all cases—at least, in my State, frivolous petitions placed before the Federal courts, frivolous but yet they still take time. At 25 percent of the caseload, you are talking about a very significant amount of time and energy and dollars that now are being expended by frivolous appeals because many prisoners become quite good at filing petitions, and there is no limit whatsoever on the number of petitions that they can file.

So I compliment my colleague from Arizona for his leadership and for coming up with very significant reform. I appreciate the fact that we have outstanding scholars such as Judge Bork and others who have endorsed the reforms in this amendment.

I urge my colleagues to adopt the amendment.

Mr. KYL. Mr. President, I would like to yield 7 minutes of additional time to the junior Senator from Oklahoma, Senator INHOFE.

Mr. INHOFE addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Thank you, Mr. President.

First of all, let me thank the Senator from Arizona for bringing this up. I think it is significant for all of us to realize that had it not been for the bombing in Oklahoma City, we would not be here today. We would not even be having a discussion. There would not be a debate on habeas reform. There would not be a counterterrorism bill.

Certainly, this contentious item of habeas that we have been trying to bring up, at least for the last 9 years that I know of, would not even be discussed in an open debate as it is today. So it is very significant for people to understand this is all precipitated by the tragedy that took place in April of this year in Oklahoma City.

On Monday of this week, we had a group of people that came up from Oklahoma. Among others, they were Diane Leonard, whose husband, Don, a Secret Service agent, was killed in the bombing; we had Glenn Seidl, who lost his wife, Kathy; Kay Ice, who lost her brother, Paul, a Customs Agent; Mike Reyes, who lost his father and was injured himself; and Danny McKinney, Linda's husband. It goes on and on. There is not time to name all of them. But they were here for one reason. That reason is that they wanted to be sure that we had the strongest possible habeas reform in this bill.

So when you stop and realize what has happened in Oklahoma, and what happened in Oklahoma as I mentioned once before on this floor, but I think it is worth bringing up again at this point because it gives you an insight into what the families of the victims in Oklahoma are thinking about because it is something that is contemporary right now—a guy named Roger Dale Stafford is scheduled to be executed on July 1. I do not know whether he will be. It is hard to say. In the spring of 1978, someone stopped to help him with his car. He was broken down in Oklahoma. He murdered in cold blood a Sergeant Lorenz, and the sergeant's wife and small son, and drove 60 miles to Oklahoma City, and committed a great crime known as ''The Sirloin Stockade Crime,'' where he rounded up six people and took them into the refrigerator, tied them up, and executed the six of them. He has been found guilty on all nine counts and has nine death sentences. That was 17 years ago.

I might suggest that Roger Dale Stafford today is 100 pounds heavier than he was 17 years ago. So I am sure he is eating well. He has been in the cell, probably living under better conditions than he was before, for the past 17 years.

I cannot help but think when anyone is considering a crime of the magnitude of that which we had in Oklahoma City, Mr. President, that they spend a lot of time thinking, ''What is the downside? What is the worst thing that can happen to me if I get caught and convicted? It is going to be that I will be executed. Wait a minute. The average time between conviction and execution in America is 9½ years. So I will be there for 10 or 15 or 20 years watching color TV in an air-conditioned cell.''

That loses its deterrent value for those of us who are narrow enough in our thinking to believe that punishment is a deterrent to crime.

So without this, we have no way of delivering the message to other individuals who might be considering such a heinous crime as that which was committed in Oklahoma City.

So let me just say that I am here today on behalf of multitudes of people in the State of Oklahoma who were killed in the brutal bombing, the mass murder that took place last April in Oklahoma City.

The message they told us last Monday to deliver on the floor of this Senate, the loud and clear message, was yes, if this does not pass, we still want to support the bill as it is right now and the habeas element that is in the bill. That is fine. But the message was let us get the strongest possible habeas

reform that we can have. That happens to be the John Kyl amendment.

So I am not here speaking on behalf of one U.S. Senator from the State of Oklahoma. I am speaking on behalf of the families of those individuals who were killed in that very brutal act in April of this year.

Thank you, Mr. President.

Mr. KYL. Mr. President, does the Senator reserve the remainder of his time?

Mr. INHOFE. I yield.

Mr. KYL. Both Senators from Oklahoma have conducted themselves in an exemplary manner following the tragedy in their State in a way both to help the people of their State but also to try to do everything they could to assist law enforcement officials to bring to justice the responsible parties and to see to it that there are changes in the law that perhaps can help prevent those kinds of things from happening in the future and, in the cases where they cannot be prevented, that the people are brought to justice.

I very much appreciate the support of both of the Senators from Oklahoma.

Mr. President, I would like to reserve the remainder of my time at this point should anyone from the minority wish to speak.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Let me say while our colleague from Oklahoma is in the Chamber that I, too, admire the way in which he and his senior colleague have conducted themselves in the wake of such a horrible tragedy. I do not in any way question that the victims' survivors, families of the victims in Oklahoma City, want what he states, and that is a change in the way habeas corpus works. They do not want any more Staffords. They cannot understand, nor can I, why Stafford is in jail for 17 years after having filed apparently successful petitions to delay his execution, and they want action.

But I would say that we would be on habeas corpus whether or not that godawful tragedy in Oklahoma had occurred. The Republican crime bill has the habeas corpus petition in it. We are scheduled to take up the Republican crime bill. We were scheduled to take up the Republican crime bill before we left for our Easter recess. Then we were scheduled to take it up before we left for Memorial Day. Now we are scheduled to take it up before the Fourth of July recess.

In that Republican crime bill is the reform of habeas corpus. In the crime bill that I offered 2 years ago, 18 months ago, there was a reform of habeas corpus. So I just want to make it clear that the Senate's attention is not focused on habeas corpus at this moment because of what happened in Oklahoma and the counterterrorism bill. It is a convenient—and I mean that in a literal sense; I do not mean that in a disparaging way—it is a convenient vehicle to move up the debate on this issue, but the debate was necessary and inevitable.

Let me point out there are three sort of teams in this debate. One team says keep habeas corpus the way it is; we do not want any changes in habeas corpus. I got a bite out of that apple over the last couple years because every time I would offer amendments on habeas corpus I would read in the editorial page of the New York Times about how Senator BIDEN is emasculating habeas corpus, and what a terrible thing he is doing, and the compromises Senator BIDEN is working out are—and it went on and on. Every liberal newspaper in America pointed out that wanting to change habeas corpus from the way it is to make sure that the Staffords of the world are executed——

Mr. INHOFE. Just for a moment, will the Senator yield?

Mr. BIDEN. I would be happy to yield.

Mr. INHOFE. Let me clarify. I used the words ''at this level.'' I do not believe we would be having the debate at this level if it had not been for the fact it did not happen.

I might also observe that the same attorney, who is a very capable and competent attorney in Oklahoma, Steven Jones, the one who so successfully got the delays in the Stafford case, is the same attorney that is handling Timothy McVeigh's case here, too.

Mr. BIDEN. I thank the Senator.

But there are basically three points of view on this floor in a broad sense. One is, do we maintain the status quo on habeas corpus? That is made up of half a dozen to a dozen Members on my side and one or two Members on the Republican side. And they do not want to see any change in habeas.

There is a second school of thought in a broad sense represented by the distinguished Senator from Arizona, who is a capable and competent lawyer in his own right and knows this area well, as he demonstrated by his presentation. And that is to say, in effect, as I read what he says but what others have said as well, that State courts are fully competent to determine whether or not somebody's constitutional rights have been violated. And that is a respected, understood, and clearly articulated school of thought that has existed for some time and has been in a very articulate manner stated here today.

There is a third school on this floor that says status quo is bad. We do not want habeas corpus to continue as it statutorily has and has been interpreted by the courts over the last couple decades. We want it changed.

Now, we differ. There are limits to that third group, and they range somewhere between Senator SPECTER and probably me. And Senator SPECTER and I have been for years debating this issue, agreeing and disagreeing, but we are into that school that says, wait a minute, do not take the Federal courts totally out of this or, in effect, take them totally out of it but drastically curtail the time within which someone is able to file a habeas petition and how many times they are able to file one and what constitutes a successive petition.

Now, I am certain that the Senator from Oklahoma was right when he ticked off the names of the families of the victims and said they want action. I would respectfully suggest that it is unlikely that they know the difference between a successive petition based upon probable innocence versus clear and convincing evidence. Most lawyers on this floor do not know the difference. Most lawyers who practice law do not know the difference; 85 percent of the highest paid lawyers in America, if you brought them in and sat them down in these chairs and asked them to define what a successive petition is, could not do it, could not do it. I am talking about the thousand-dollar-an-hour guys. They could not do it.

Now, I do not mean that to malign the legal profession. They do not handle these cases. Death penalty cases, habeas cases are complicated. Just like I could not, if I were back in the practice of law, explain to you a complicated antitrust provision. I did not practice antitrust law.

So with all due respect, what I am proposing and will propose —and my opposition to the Kyl amendment is just as likely to be acceptable to those folks in Oklahoma as anyone else's because the effect of what I wish to see happen—and I think a majority in here—is to make sure that we are no longer in a situation where this fellow Stafford could be gaining weight in an air-conditioned cell after having filed 17 petitions.

If we adopt the amendment that I am going to offer after this amendment, Stafford would be dead. No more Staffords. There is no legal way in which anyone could hang around, after having been convicted of a capital offense, for 17 years, let alone 7 years, because there are strict time limits and strict circumstances under which a second petition could be filed.

Now, one of the problems here is that we confuse all crimes with apples and oranges. We hear about delay all the time, and it is true, with all due respect, even the Kyl amendment will not fundamentally change the delay. If you take a look at where the delay occurs—and just pick this one case that we talk about—and I will get the second graph, if I can, about the length of delay in State courts versus Federal—the case often cited is this Guerra case, to find out how long this fellow, after having been convicted, languished in, at the expense of the taxpayers, a prison avoiding the inevitable.

Of the delays that took place, only—still, there are delays—24 percent of them were because of what the Federal courts did. And 76 percent, or 9 years 2 months' worth of delays had nothing to do with the Federal courts. They were all in the State court in the State of Texas.

Leave that graph up for another moment, please. I want to make sure everybody understands. The State of Texas, under State court and State law, provided for 9 years 2 months' worth of delay.

The Federal courts, having Federal habeas available, did, in fact, add to the delay, 2 years and 10 months. But let us eliminate, as my friend from Arizona wishes to do, in effect, the ability of the Federal courts to get into the game. There still would have been a 9-year-2-month delay in the execution of a man who was convicted and should have been put to death. The point is, the end result of all this was he ended up with a granting of habeas in the end. The point is, it was 9 years 2 months in the State court.

In the State of California, we heard a lot of talk about how Federal habeas corpus causes all these delays. The delays in execution of the death penalty, much of the responsibility is in the State courts. The California experience: California's Supreme Court has on its docket four capital cases that have been fully briefed for over 7 years, but the State court has not even heard the argument yet. It has nothing to do with the Federal courts. You have four cases, as of a month ago, when this chart was made up for a hearing. Maybe something has happened in the last month, but as of a month ago, there were four capital cases in the California Supreme Court where the petitioners seeking redress filed their briefs 7 years ago, and the State court has not even acted yet. Translated, that means 7 years living off the taxpayers in an air-conditioned cell because the California State Supreme Court has not even looked at the briefs or, if they looked at them, have not told anybody they looked at them.

The California Supreme Court has taken more than 8 years to decide 24 of the cases in which it affirmed the death penalty.

One State habeas petition has been pending for 4½ years and another has been pending for 6 years. This is not even getting to the Federal court.

The reason I cite this is the distinguished former Member of Congress and attorney general of the State of California, Mr. Lungren, came before our committee and said, ''The Federal courts should work like the State courts work. My State of California really knows what it is doing.'' Look at what the State of California knows.

I understand the anger. I feel angry and aggrieved as an American citizen that convicted killers are in California sitting in the jails for 7 and 8 years because the court has not even gotten around to listening to what they have to say. You cannot put them to death, because they filed a petition but they have not gotten around to looking at the petition.

What are we doing, though, when we decide that we are angry about that? We are saying the answer is get the Federal Government out of this, the Federal courts out of this. That does not solve the problem, but it creates another problem. The problem it creates when there is no Federal habeas corpus is bad decisions. Bad decisions made by State courts allow people who deserve another trial to not get it. Their constitutional rights are violated. A significant number of the habeas corpus petitions that are filed are granted.

I admit I cannot change the State of California. I have no authority as a Federal official to tell the State of California how they should look at their petitions. But I can do one thing. When it gets to the bottom here and they finally act, under the proposal I want, they get one chance to get into Federal court, to say the State court judges did not know what they were doing on the Constitution.

Keep in mind now, what I am proposing means when all this is done, within 6 months, the person in jail has to file a petition in Federal court. If they do not, they are out of luck, and they can only file a second petition under the same ground rules that my friends from the Republican Party, that Senator SPECTER and Senator HATCH's bill says, where we differ, which I will debate later, where we differ, Senators SPECTER, HATCH and BIDEN, is on what they are allowed to look at once they get that petition in front of them. I will speak to that later.

But look, I really think, to quote my old friend Sid Balick again, ''You gotta keep your eye on the ball here.'' The vast majority of us in this body want to and have been trying for years to change the old system to limit the time in which a petition can be filed and to limit the number of petitions that can be filed. So essentially you get one bite out of the apple.

What my friend from Arizona would do would deny that one bite. I ask you, what damage is done to the Nation allowing a person who, after the fact, learns that perjured testimony was used against him; after the fact, learns that information was made available to the prosecution which went to his innocence that was never made known to him; after the fact, after the fact, after the trial, after the appeals?

If you have to file it within 6 months, I do not know how much additional weight old Stafford would have gained in 6 months, but it would not have been 100 pounds. What is the alternative? The alternative, for example, in this Guerra case was when they finally got down to it, they granted his appeal. They said, ''Wait a minute, you did not get it right at the trial.''

But I, with the greatest amount of respect, suggest that although I understand the motivation, it will not speed up the process. All it will do is enhance the likelihood that a person whose constitutional rights have been denied—and those constitutional rights usually relate to whether they are innocent or guilty—whether they have had a chance to make their case.

Senator Kyl's amendment would bar a prisoner even from being able to file a habeas petition if the State court system has in place what are determined to be adequate and effective procedures to test the legality of the prisoner's detention.

This amendment makes clear that the State court need not have gotten the result right in a particular case and, in fact, it need not even have applied its system fairly in a particular case. All it says is they have to have had a process, and if they had a process, even though it may not have been applied fairly in a particular case, even though it may not have gotten the result right on a constitutional basis, the Federal court cannot look at it.

Everyone agrees that there is a need to end the delays in the system. It just does not work right now. But I also think everyone agrees that there should be a fair process and one that does not execute innocent people.

We know most prosecutors and law enforcement officers are honorable. Most cases proceed fairly, and we can have confidence in the result. Under my approach, after the first petition, most of that will be made clear. They will be rejected and they will be put to death. And I support the death penalty. The Biden crime bill is the only reason why, if McVeigh is convicted in Oklahoma, he would be put to death. I wrote the law. If he is tried in Federal court without that law having been passed, he could not be put to death. I support the death penalty. But I do not support a reasonable ability for a person, if they have a strong case, to suggest they did not get a fair trial, to be able to have one bite out of the apple to determine in Federal court whether that was true.

We all know that occasionally prosecutors or cops act in bad faith, as Senators do, as doctors do, as lawyers do, as housewives do. Every one of our professions, every one of them, has some bad apples. So, occasionally, prosecutors or cops act in bad faith and there are cases which have demonstrated that. As we all know, our judicial system will make honest mistakes and has done so.

The recent case of Kirk Bloodworth is one example. Bloodworth was convicted and sentenced to death for the rape and murder of a young girl. After a new trial, he was again convicted and sentenced to life imprisonment. Subsequent DNA testing confirmed his innocence. Bloodworth lost 9 years of his life because of the error in our legal system. Habeas corpus has existed to correct just such errors, and to ensure that there will never be another Leo Frank, another innocent person who has been executed.

You do not have to have 17-year delays to ensure that. You do not have to have any delay to ensure that. But what you have to have is the ability of a Federal court, on one occasion, to look at the facts in the petition and

make a judgment as to whether or not a new trial is warranted.

So I respectfully suggest that the debate between the Senator from Arizona and me is not about maintaining the status quo; it is about how we change the status quo. I respect the Senator's intelligence and motivation greatly. But I also respectfully suggest that his approach, A, does not solve the real problem—State court delay—and, B, takes away the one last shot, as a practical matter, that one has to get before a Federal court.

Now, I will acknowledge—and I suspect he would agree—that 75 years ago Federal review was probably needed much more than it is today, because the competence of State court justices was, in some cases, de minimis. And the prejudice that existed in some States—my own included—was real and palpable, making it very difficult for some people to get a fair trial and get their constitutional rights guaranteed. I acknowledge that. That is why the Leo Frank case generated a change in statutory habeas corpus. He was a Jew and he was put to death in large part because he was a Jew. Facts were overlooked, and a decade later it became clear from witnesses that he did not commit the crime.

Most States do not operate that way anymore. I will pick a State so that I am not being parochial and bragging about my State court system, and I will not brag about the Arizona State court system, which is very good. I know several of their State supreme court justices and State court judges. They are first rate. I will pick a State. I would rank the New York State court of appeals, their highest court, over the last 50 years, up against any Federal district court or Federal circuit court of appeals in the Nation. But I cannot say that for probably 20 States that I will not name, because it would be a violation of Senate rules, and because I would be maligning the justices of other States. But I will say, as Barry Goldwater once said, ''In your heart, you know I am right.'' In your heart, you know there are certain States you would just as soon not be tried in for a capital offense as other States.

So what this does—although I acknowledge that State courts get it right the vast majority of the times, I will put this in the negative—what damage is done by the proposal of time limits built into the proposal I am making and that are made, I might add, in the underlying bill, that say you have to file a petition within a certain amount of time and there is a limited circumstance under which you can file a second petition.

So for those reasons, and others which I will not take the time to speak to, I am going to oppose the amendment of my distinguished friend from Arizona.

Mr. President, Is any time left in opposition?

The PRESIDING OFFICER. The opposition has 12 minutes 42 seconds.

Mr. BIDEN. I reserve the remainder of my time.

The PRESIDING OFFICER. If I was not clear, the Senator from Arizona has 12 minutes. The Senator from Delaware has 4 minutes.

Mr. BIDEN. I reserve my 4 minutes.

Mr. KYL. Mr. President, I will yield myself 6 minutes of my remaining time. I would like to respond to the comments of the Senator from Delaware. They were well put and thoughtful, and I think they contribute to the debate. I am going to consider the arguments that he made, with the primary arguments in reverse order, if I might.

The last argument he made essentially was what happens when, after the fact, the defendant finds something out that might enable him to win his freedom? That, of course, is the rationale for the writ of habeas corpus. Of course, the answer is, if you are a Federal court prisoner, you have the opportunity to file a writ of habeas corpus in the Federal courts. If you are a State court prisoner, you have the right to file a habeas corpus petition in the State courts. So that is your remedy for something that happens after the fact.

The Senator from Delaware said it must be a fair process, and indeed it must be. Under my amendment, one of the things that can be contested, and could be contested in Federal court, is that the remedy of the State is not adequate or fair. Finally, with regard to this last point, the Senator from Delaware said he will be proposing an amendment that at least gives the prisoner in the State court system one shot in the Federal courts and primarily base that argument on the notion that while great strides have been made in State courts' competence over the years, there may still be some situations where the State court would not be as competent as the Federal court.

I would like to respond to this in a couple of ways, Mr. President. First of all, we do have one shot in the Federal system under my amendment. It is directly to the U.S. Supreme Court. That right exists today, and it could not be taken away in our amendment, and we do not do that, of course. So if a State court prisoner believes that, despite all of the hearings he has gotten in the State court system, he still has not gotten a fair shake, and that he has really two things that he can claim—first, the State court system is not fair, and secondly, he can go to the U.S. Supreme Court and make his final point there.

Let me read something that Justice Powell wrote not too long ago that I think goes to this point:

He said this nearly 20 years ago:

> We are unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States. State courts, like Federal courts, have a constitutional obligation to safeguard personal liberties and to uphold Federal laws.

That was in the case of Stone versus Powell, in 1976.

Later, speaking to the American Bar Association, Justice Powell said:

> Another cause of overload in the Federal court system is conferring Federal habeas corpus jurisdiction to review State court criminal convictions. Repetitive recourse is commonplace. I know of no other system of justice structured in a way that assures no end to the litigation of a criminal conviction. Our practice in this respect is viewed with disbelief by lawyers and judges in other countries.

So, Mr. President, I think that particular issue is disposed of by, among other things, the words of Justice Powell.

A second point the Senator from Delaware said is that most of the delay is in State courts. He is correct, although the chart he has there represents one case. He has about 25 or 24 percent of the delay in the Federal courts, and the rest in the State court. Actually, there is a better figure than that, and the figure is about 40 percent in the Federal courts, 60 percent in the trial courts.

This is from the Powell committee report, and it talked about overdue process. The Powell committee report on page 27 notes ''Federal habeas corpus made up 40 percent of the total delay from sentence to execution, in a sample of 50 cases.'' That is 50 cases as opposed to one case.

The point of the matter is the Senator from Delaware is correct in noting that most of the delay would be State courts. I submit, however, that that is due to several factors. I am not sure the statistics fail to account for the fact that most of the cases are in State court. As a matter of fact, there are not that many in the Federal court.

Say it is between 25 and 40 percent. At least under my amendment we are dealing with 40 percent of the problem. That is not insignificant. Or, the least, taking the number of the Senator from Delaware, 25 percent of the problem.

Whereas the Senator from Delaware would simply make it more difficult to get into Federal court if you are a State court prisoner, we say you cannot. As Federal legislators, what we can do something about, the Federal court, we do something. We say you cannot go there. It is up to the States to deal with the rest of the problem which is before them.

Finally, Mr. President, the Senator from Delaware made a point with respect to Senator INHOFE's presentation, and it was a valid point. But I think it makes a point too far, or one point too much.

The Senator from Delaware said it is doubtful that Senator INHOFE's constituents understand the difference between the Hatch and Kyl amendment, and mentions a lot of lawyers could not identify the difference. He is correct. I do not believe that makes the case.

It is true we have to be careful about what we do here. It is also true that

while the common citizen may not understand the technicalities, the legalities, even the word habeas corpus coming from Latin, the common citizen does understand when something is broken. And the Senator from Delaware made an eloquent case for the proposition that something is drastically broken when people can stay on death row as long as they do.

The Senator from Oklahoma made the same point, 16 or 17 years, with the average being over 9 years. The system is drastically broken. It does not take a lawyer to figure that out.

Mr. President, let me conclude at this point that the ordinary man may not understand all of the technicalities we are talking about, but he knows something is broken here. The fix in my case is quite simple. Federal prisoners go to Federal court, State prisoners go to State court with an ultimate appeal to the U.S. Supreme Court, but State prisoners do not get the extra bites of the apple in the Federal court. It is a simple solution.

The solution in the bill and the solution of the Senator from Delaware is much more complex. We will impose some limitations on how you get into the Federal court. That does not stop you from getting in the Federal court. So if you want to solve between 25 and 40 percent of the problem, voting for the Kyl amendment will definitely do that.

It has been held as constitutional. It is supported by Judge Bork and by many others. I submit it would be a good addition to this bill. I am happy to yield to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask the distinguished Senator from Delaware to yield.

Mr. HATCH. Mr. President, I believe the Senator from Delaware needs his remaining 4 minutes. How much time does the Senator need?

Mr. SPECTER. I shall be brief, holding to 5 minutes.

Mr. HATCH. I ask unanimous consent that the Senator be granted 5 minutes.

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

Mr. SPECTER. Mr. President, I am opposed to the amendment by the distinguished Senator from Arizona. At the outset, I acknowledge his experience in the field. But it is my view that Federal review of State criminal convictions, especially in capital cases, is very, very important in order to guarantee appropriate constitutional safeguards.

I believe the death penalty is an effective deterrent against crimes of violence. I spoke earlier about my own experience as a district attorney of Philadelphia, and before that as an assistant district attorney where I tried murder cases. My thought is that it discourages many professional robbers and burglars from carrying weapons because of concern that a killing might result and they would face the possibility of first-degree murder and the death penalty.

I believe that it is very, very important, Mr. President, if we are to retain the death penalty, we have to use it very, very carefully.

There are some 37 States which favor the death penalty. Thirteen jurisdictions in the United States oppose it. It took many years to bring back the death penalty on the Federal level, having achieved that only last year.

The news from South Africa is they have abolished the death penalty. The death penalty is not in use in many jurisdictions, in many nations. I think it is very, very important to retain the death penalty as an effective weapon. Therefore we have to use it very, very carefully.

I have objections to the pending amendment both on constitutional grounds and on public policy grounds. I am well away of the contention that there is constitutional support to it. Frankly, I doubt that the constitutional support would stand up.

When we are dealing with the question of jurisdiction of the Federal courts to entertain questions on Federal issues, on constitutional issues, I believe it is necessary that the Federal courts retain that jurisdiction as a constitutional matter.

I am aware of ex parte McCardle and aware of the distinctions on habeas corpus where there is supposedly an adequate State habeas corpus remedy. When someone comes into the Federal courts on habeas corpus, especially in a capital case, and makes an assertion of denial of actual rights on privilege against self-incrimination or coerced confession or ineffective counsel or absence of counsel or search and seizure issues, I believe it is necessary as a constitutional matter that the Federal courts retain that kind of jurisdiction.

In our Judiciary Committee hearings, this is a question which I frequently ask the nominees as to whether they believe the Congress has the authority to take away jurisdiction on constitutional issues from the Federal courts. It is too lengthy a subject to discuss at any length today.

Beyond the constitutional issue is a matter of public policy. I think it is very important to have the kind of detached, objective review that the Federal courts give.

In many of our States we have elected judges. I think that is, in some circumstances, perhaps in many circumstances, an impediment to the kind of review we have by judges who have life tenure.

I recall reading for the first time in law school the case of Brown versus Mississippi, 1936, a decision by the Supreme Court of the United States saying that the due process clause which limited State action warranted the Supreme Court of the United States to reverse a conviction in a State court in a capital case. Without reciting the case of Brown versus Mississippi and the horrendous facts there, it was not until 1936 that the Supreme Court of this country intervened in a State criminal matter to say that it violated the U.S. Constitution.

The Federal courts have been providing the safeguards on constitutional rights significantly through Federal habeas corpus. I believe that has to be maintained. In urging the adoption of the Specter-Hatch amendment, our amendment really goes to the issue of curtailing the time.

Some might say that it is a restriction on defendant's rights. I think, actually, it is not, for reasons I stated earlier, on the challenge to cruel and barbarous treatment, keeping someone on death row for a protracted period of time.

The international court I referred to earlier this morning, refused an extradition from England to Virginia, because Virginia kept prisoners on death row for 6 to 8 years, which was deemed a violation of cruel and barbarous treatment.

I think, Mr. President, on constitutional grounds and on public policy grounds we ought not to restrict the jurisdictions of the Federal courts.

Accordingly, I urge my colleagues to oppose this amendment. I yield the floor.

Mr. KYL. Mr. President I appreciate the remarks of the Senator from Pennsylvania. He makes some good points that I would like to respond to, but at this point I would like to ask unanimous consent that the Senator from Mississippi be allotted the same amount of time that the Senator from Pennsylvania spoke on, so that I may utilize the remaining amount of my time to close the debate.

The PRESIDING OFFICER (Mr. INHOFE) Without objection, it is so ordered.

Mr. LOTT. Mr. President, I thank the distinguished Senator from Arizona for letting me have this time and for his effort on this amendment. I certainly am pleased to support it because I think it really does what needs to be done in this area of habeas corpus, because it provides that when a State—State—provides adequate and effective remedies for considering prisoners' claims, there is simply no basis for allowing additional rounds of litigation on the same claims in the lower Federal courts.

I am not a constitutional expert. But let me just read what Judge Robert Bork has said about this particular amendment. He says:

> [This] . . . amendment to the anti-terrorism bill to stop the abuse of federal collateral remedies is an excellent and much-needed reform. . . . There is no doubt about the constitutionality of the provision you propose. . . . Nor is there any doubt about the need for [the] amendment. . . . [The] amendment is a sorely needed reform to a situation that is now out of hand.

Again, I am not a constitutional expert and I know when we have bills like this the lawyers descend on the floor and start arguing. There are very good merits on both sides. But let me just say what I hear from the American people when I go to my State and other

States. They think there is horrible abuse in this area. They think these endless appeals are totally out of control and that it should be cut back and cut back significantly.

I want to emphasize, this does still allow for the Supreme Court to be involved. But how many rounds are we going to have? The American people understand how this system is being abused. That is what is so applicable in this case. If we have a process whereby the people who were involved in the bombing in Oklahoma City are found, apprehended, indicted, convicted and sentenced, if you will, perhaps to death, and then we go through a long, protracted process of appeals through the State courts, appeals through the Federal courts, the American people are going to be even more horrified at our judicial system in America.

They are looking now at the Simpson trial and wondering what have we wrought? This is one small step in the right direction.

Under current law, habeas corpus claims that are rejected after thorough consideration in the State courts are readjudicated in the lower Federal courts. It is duplicative review in the Federal courts and it is needless and time consuming. The habeas corpus provision in S. 735 reduces this redundancy, but it does not eliminate it.

I commend the Senator from Utah, Senator HATCH, for the good work he has been doing in this area for years. Finally he has brought this issue almost to a climax. But I think now Senator Kyl will go one step further and that will really help in dealing with this problem of abuse, delay, and repetitive litigation in the lower courts, the State courts, and the Federal courts.

Under current law, criminal defendants in the State present their claims at their trials, in State court appeals, in State collateral proceedings, and in applications for review by State supreme courts and then by the U.S. Supreme Court. After exhausting these State remedies, prisoners can then go back and initiate additional rounds of litigation through the habeas corpus proceedings in the lower Federal courts, presenting the same claims that have already been raised and decided in State court review. As a result of this redundant review, the criminal justice system in the United States really now is plagued with problems of delay and abuse.

We talked about, I guess it was, cruel and inhuman punishment in the past. The Supreme Court addressed the question of people staying in jails awaiting final conclusion of their trials or convictions, and that was ruled as being wrong. What about the fact that many of them now sit on death row for years and years with access to libraries and computers and everything they could possibly need so they continue to drag out this process? There has to be an end to it.

The habeas corpus provisions in the bill, S. 735, do moderate the redundancy of the current situation through the time limits on Federal habeas filings, stricter limits on the repetitive habeas filings, and more deferential standards of review. But they do not address the underlying problem of pointless readjudication in the lower Federal courts. The Kyl amendment addresses the root cause of the existing problems of delay and abuse by eliminating these habeas corpus reviews of the State judgments.

I think we have seen where this has been changed in the District of Columbia. That has worked quite well. The experience here in DC demonstrates that the rights of defendants can effectively be protected without the redundancy of these habeas corpus reviews in the lower Federal courts. This amendment, as I understand it, would extend those benefits to all the other States.

Punishment is intended to be a deterrent to heinous crime. Under the present system, however, many killers do not fear the punishment because they know of the delays that will be involved. The Kyl amendment addresses this problem, and I commend him for his efforts. I certainly support this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield myself the remainder of the time.

Let me respond quickly to my friend's comment in response to what I had said.

First of all, he said this is about winning freedom. This is not about winning freedom. Habeas corpus is granted—no freedom. It means a new trial.

He points out very forthrightly that he attempts to prevent folks from going to Federal court except as it relates to being able to go to the Supreme Court. It is not the Supreme Court's job to take a detailed look at every State court conviction. It is for the Supreme Court to decide weighty issues of Federal constitutional law. That is why we have Federal courts and that is why my committee spends so much time, a significant portion of it, considering the nomination of Federal judges. Our system depends on Federal courts, all the Federal courts, being the safeguarders of Federal law.

Let us just put this in very practical terms. Let us assume he is right, the State courts are fully capable and do not need any Federal review. What you end up with is as many as 50 different interpretations of the Federal Constitution; 50 different ways in which 50 different States could interpret whether or not a constitutional right has been denied or not denied. Just from a very practical standpoint that is not good policy. Whereas, when you have the appeal to the Federal court system, that becomes the law, the law of the land governing all 50 States.

I also point out that the State—as the Senator said: Look, we allow folks who are convicted in State court to go to State courts for their appeal and folks convicted in Federal court to go to the Federal courts for their habeas corpus petitions. The problem is that Federal court judges are trained in their experiences in interpreting the Federal Constitution. State courts hardly deal with the Federal Constitution. They deal with the State constitutions. We should have the people who are trained and experienced in interpreting the Federal law relative to the Federal Constitution being able to determine whether there has been a violation of that Federal law or, in this case, the Federal Constitution.

Last, Justice Powell, I am confident—and I am willing to bet; you are not allowed to bet on the floor—but figuratively speaking, I would be willing to bet him dinner at any restaurant in America that Justice Powell does not support his amendment. I can say that with certainty because Justice Powell's commission came forward with an explicit guarantee that there would be access to Federal courts; an explicit guarantee. They made it absolutely clear that it is essential there be access to the Federal courts. I do not doubt that Judge Bork would support this, I do not doubt that at all. In fact, I am certain he would and we should all keep that in mind.

So I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. How much time remains?

The PRESIDING OFFICER. The Senator from Arizona has 6 minutes. The Senator from Delaware has 1 minute 1 second.

Mr. HATCH. Mr. President, I ask both sides to allow me to have a few minutes just to make—I ask unanimous consent I be given a few minutes just to make some short comments.

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

Mr. HATCH. Mr. President, I have listened to this debate and I really want to compliment the distinguished Senator from Arizona. I think this has been one of the most spirited parts of this whole debate on the habeas corpus provisions of the bill. I deeply appreciate, of course, the frustration some have with the Federal court's micromanagement of State court decisions. Indeed, I think the abuses of Federal habeas corpus practice fuel the desire to remove the Federal courts altogether from the review process. The Kyl amendment would effectively end Federal habeas review of State convictions where the State already has postconviction collateral review. And I can appreciate my colleague's willingness to address the gross abuse that currently occurs under our Federal habeas process. We are all sick of it. Something has to be done.

Senator KYL's amendment would return habeas review to its original moorings, as a corrective process where no other real remedy exists. And it deserves consideration.

In the early history of this country, habeas review was not available at common law to review by any other court a conviction of a felony entered by a court of competent jurisdiction. The function of the writ was to free people who had been imprisoned illegally. Let us understand what I am saying. The constitutional great writ is preconviction.

That is the Constitution writ. The writ of habeas corpus we are talking about is postconviction, and it is a statutory writ that can be changed readily by the Congress of the United States. Senator KYL has cogently pointed out that that is exactly what it is. The writ is guaranteed against suspension by the Constitution. The earlier great writ was well understood to refer to habeas for Federal prisoners, only Federal prisoners. The Kyl amendment appreciates the history of the writ and attempts to return it to its original understanding. He has argued that nobly and well.

I think the proposal of the Senator from Arizona deserves close scrutiny, and he should be complimented for his efforts to address this difficult problem. I have to say that I believe there needs to be postconviction habeas corpus review. But I also believe that the Senator makes a very strong point because, as a lot of people do not know, the District of Columbia has done away with postconviction habeas corpus review, collateral review. And it has worked very well in the District of Columbia. All the Senator is saying perhaps is that we should consider doing that for the country as a whole.

So I just wanted to make these few short comments. I have to say that I compliment my friend and colleague from Arizona for his intelligence on this issue, and for the very, very spirited debate that we have had here on this. I want to express that for all concerned.

The PRESIDING OFFICER. Who yields time?

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I would like to use the remainder of my time and close the debate, if there are no others who wish to speak.

Mr. President, first of all, let me compliment the Senator from Delaware who has conducted a very intelligent and thoughtful debate. I appreciate that. I very much appreciate the comments of the Senator from Utah just now. It is only because of his tenacity that this issue is before us. As he said, he has been fighting this issue for years to try to bring some reform to the Senate and was able to do that finally in the bill that he brought to the Senate floor. I appreciate very much his efforts.

I also appreciate the comments he just made. He is exactly correct in describing my amendment as an attempt to return the habeas petition to its original meaning. There is a statutory postconviction remedy, as he points out. I believe he is very familiar, as a matter of fact, with Congress' law of 25 years ago under which the District of Columbia uses a purely quasi-State court system for the review of its writs and does not allow prisoners to go into the Federal system, a system which has worked very well and which we have been invited to consider as a result by Federal judges who have written on the subject.

Let me also address briefly two points, one made by the Senator from Pennsylvania, and one by the Senator from Delaware. The Senator from Pennsylvania questioned the constitutionality of what we are doing here. I understand the point he was making. But I do not think that the constitutionality of what we are proposing here is in doubt. The U.S. Supreme Court has upheld this procedure unanimously in a 1977 opinion, Swain versus Pressley. The opinion was written by Justice Stevens. That was—to use the phrase—''bandied about'' a fairly liberal court in 1977. Subsequently, the Federal courts have consistently held that the remedy provided in this District of Columbia court system, which does not permit a Federal writ of habeas corpus, is adequate and effective to test the legality of detention.

Among the cases are, for example, Garris versus Lindsay in 1986, a D.C. Circuit Court case, and Saleh versus Braxton, a District of Columbia District Court case in 1992. So consistently the courts have upheld, and I also cited the U.S. Supreme Court decision upholding the constitutionality, as well.

The Senator from Delaware argued finally that there could be 50 different interpretations of the constitutional law, if the State court prisoners are relegated only to a State court habeas remedy. With all due respect, I do not think that is correct because, as we all know, those of us who are constitutional lawyers anyway, the U.S. Supreme Court precedents must be followed when State supreme courts—or as in New York's case, it is called the court of appeals, or the circuit courts—are adjudicating constitutional questions, they must follow U.S. Supreme Court precedents.

Therefore, it is not possible for there to be 50 different interpretations of Federal law by State supreme courts unless those courts are dealing in bad faith, and I am sure that no one is suggesting that is the case. It has always been the case that under our Constitution, the Framers contemplated that State courts would be making these interpretations. As a matter of fact, there is an interesting book by Curt Sneideker who writes to this point. He said that in our judicial system it has been understood from the very beginning that State courts could pass on Federal questions. And, by the way, he cites Federalist Papers No. 82 for that proposition. Indeed, the Constitution itself expressly directs them to do so in article VI, clause 2.

So very clearly, the State courts have always been thought of as a place where Federal constitutional issues could be resolved. As I noted earlier, Justice Powell has made a very convincing case, and he is not the only one. But he specifically has made a convincing case that the State courts have the competence to rule on these issues.

Mr. President, just in summary, again I compliment both managers of this bill for the very intelligent way in which they have approached this issue. I appreciate the opportunity to debate my amendment in this way, and I will simply say that in summary, what I am trying to do with my amendment is to ensure that there is an adequate remedy for all habeas petitions for both Federal and State court prisoners, Federal prisoners in the Federal system, State court prisoners in the State court system, but to limit State court systems to the State just as Federal writs are limited to the Federal system.

The only exception which we could not take away, even if we tried—and, of course, we do not want to—even in the State court system, prisoners have the ability to go to the U.S. Supreme Court, the ultimate Federal court, to test the propriety of the final decision of the State court, in most cases called the State supreme court. So there is adequate ability to protect the constitutional rights of both State and Federal prisoners.

My amendment simply helps to solve this problem of overburdened Federal courts by taking out of the Federal courts somewhere between 25 and 40 percent perhaps of the cases that are currently adjudicated not only in State courts but in a duplicative way in the Federal courts, as well.

I urge that my colleagues support my amendment.

Mr. BIDEN. Mr. President, do I have any time left?

The PRESIDING OFFICER. The Senator from Delaware has 1 minute and 19 seconds.

Mr. BIDEN. Mr. President, my staff pointed out to me, as I sat down when I said we should keep that in mind, I said in jest that we should keep that in mind, my reference was to Judge Bork. I believe Powell does not support this, the Powell Commission would not support this, and that Justice Bork would. We should keep in mind the distinction.

But I would also like to point out, as my staff pointed out to me, in Wright versus West, the Supreme Court case decided a couple of years ago, where the Bush administration sought to ask the Supreme Court to rule on the standard of full and fair, which is what Senator KYL is proposing, Justice Rehnquist, from his home State of Arizona, refused to adopt the standard that Senator KYL is proposing. He is certainly no liberal. He refused to adopt the standard and insisted that there be access to the lower Federal courts.

But I thank my colleagues for their indulgence.

I yield the remainder of my time.

Mr. KYL. Mr. President, let me again compliment both managers of the bill. I think this has been a good debate. I reiterate my amendment simply restricts the State court prisoners to the Start court as prisoners until they are able to go the to U.S. Supreme Court. I believe this will significantly reduce the number of duplicative appeals. That is what this is all about on the habeas corpus reform, to strengthen the bill. In any event, I reiterate that this is a good bill that we should all support.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Utah.

Mr. HATCH. Mr. President, I compliment both Senator KYL and Senator BIDEN. Both have presented very interesting and good arguments. They both deserve being listened to.

Mr. President, I ask unanimous consent that the vote on the Kyl amendment be at a time to be determined by the majority leader, after consultation with the minority leader.

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

Mr. KYL. Mr. President, do we first have to ask for the yeas and nays?

Mr. HATCH. Yes. I ask for the yeas and nays on the Kyl amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Ms. SNOWE. Mr. President, I would like to join my colleagues in supporting S. 735, the Comprehensive Terrorism Prevention Act. This legislation contains a broad range of needed changes in law to enhance our country's ability to combat terrorism, both at home and from abroad. The managers of this bill have described its provisions in some detail, so I will not repeat their comments. Briefly, however, this bill would increase penalties: for conspiracies involving explosives, for terrorist conspiracies, for terrorist crimes, for transferring explosives, for using explosives, and for other crimes related to terrorist acts.

The bill also contains habeas corpus reform to curb the abuse of habeas corpus and to address the acute problems of unnecessary delay and abuse in death penalty cases. The bill also includes provisions to combat international terrorism, to remove aliens, to control fundraising for foreign terrorists, and procedural changes to strengthen our counterterrorism laws. Among those strengthening laws are a requirement to use chemical tagging in plastic explosives, to criminalize a threat to use a weapon of mass destruction, and to add conspiracy crime to certain terrorism offenses.

Finally, the bill authorized increased funding for Federal law enforcement agencies, providing $1.5 billion over 5 years for the FBI, DEA, assistant U.S. attorneys, the INS, and the U.S. Customs Service.

Mr. President, I would like to concentrate the remainder of my comments of two provisions of mine that are included in this bill with the assistance of the chairman of the Judiciary Committee, Senator HATCH, and our distinguished majority leader, Senator DOLE. These two provisions are the Terrorist Exclusion Act and the Law Enforcement and Intelligence Sources Protection Act, both of which I have introduced separately this session of Congress.

Traditionally, Americans have thought of terrorism as primarily a European, Middle Eastern, or Latin American problem. While Americans abroad or U.S. diplomatic facilities have been targets, Americans have often considered the United States itself largely immune from acts of terrorism. Two events have changed this sense of safety. The first was the international terrorist attack of February 26, 1993, against the New York World Trade Center, and the second was the shocking domestic terrorist attack this April 19 against the Federal building in Oklahoma City.

I first introduced the Terrorist Exclusion Act in the House 2 years ago, and this year I have reintroduced the legislation in the Senate with Senator BROWN as my original cosponsor. The Terrorist Exclusion Act will close a dangerous loophole in our visa laws which was opened up in the Immigration Reform Act of 1990. That bill eliminated then-existing authority to deny a U.S. visa to a known member of a violent terrorist organization.

The new standards required knowledge that the individual had personally been involved in a past terrorist act or was coming to the United States to conduct such an act. This provision will restore the previous standard allowing denial of a U.S. visa for membership in a terrorist group.

The elimination of authority to exclude a foreigner from the United States for mere membership in a terrorist group happened in the context of Congress' rewrite of the old McCarran-Walter's Act. The McCarran-Walter's Act contained a wide range of visa exclusions for ideological or associational reasons. But in narrowly refocusing all visa exclusions on personal acts, it perhaps inadvertently treated foreigners who join violent terrorist organizations no differently than if they had merely joined a political club, or fraternal order. This removed a valuable tool for protecting American lives. In my view, and I am sure the view of the vast majority of Americans, there is a difference.

I discovered this dangerous weakness in our visa laws in early 1993 during my investigation of the State Department failures that allowed the radical Egyptian cleric, Sheikh Omar Abdel Rahman, to travel to and reside in the United States since 1990. I undertook this investigation in my role as ranking Republican of the House International Operations Subcommittee, which has jurisdiction over terrorism issues, a role I have continued in the Senate as chair of the International Operations Subcommittee of the Foreign Relations Committee.

Sheikh Rahman is the spiritual leader of Egypt's terrorist organization, the Islamic Group. His followers have been convicted for the 1993 bombing of the World Trade Center in New York, and the sheikh himself is now on trial for his alleged role in planting and approving a second wave of terrorist acts in the New York City area.

The significance of Sheikh Abdel Rahman is that he was clearly excludable from the United States under the old pre-1990 law, but the legal authority to exclude him ended with enactment of the Immigration Reform Act that year. He was admitted to this country through an amazing series of bureaucratic blunders.

But then, the 1990 law came into effect, and the State Department was forced to try to deport him on the grounds that he once bounced a check in Egypt and had more than one wife, rather than the fact that he was the known spiritual leader of a violent terrorist organization. This was before the World Trade Center bombing.

A high-ranking State Department official informed my staff during my investigation that if Sheikh Abdel Rahman had tried to enter after the 1990 law went into affect, they would have had no legal authority to exclude him from the United States because they had no proof that he had ever personally committed a terrorist act, despite the fact that his followers were known to have been involved in the assassination of Anwar Sadat.

The urgency of passing this provision comes from the sad truth that every day American lives continue to be put at risk out of deference to some imagined first amendment rights of foreign terrorists. This is an extreme misinterpretation of our cherished Bill of Rights, which the Founders of our Nation intended to protect the liberties of all Americans.

In my reading of the U.S. Constitution I see much about the protection of the safety and welfare of Americans, but nothing about protecting the rights of foreign terrorists to travel freely to the United States whenever they choose.

The second of my bills contained in S. 735 is the Law Enforcement and Intelligence Sources Protection Act. This legislation would significantly increase the ability of law enforcement and intelligence agencies to share information with the State Department for the purpose of denying visas to known terrorists, drug traffickers, and others involved in international criminal activity.

This provision would permit denials of U.S. visas to be made without a detailed written explanation for individuals who are excluded for law enforcement reasons, which current law requires. These denials could be made

citing U.S. law generically, without further clarification or amplification. Individuals denied visas due to the suspicion that they are intending to immigrate would still have to be informed that this is the basis, to allow such an individual to compile additional information that may change that determination.

Under a provision of the Immigration and Nationality Act [INA], a precise written justification, citing the specific provision of law, is required for every alien denied a U.S. visa. This requirement was inserted into the INA out of the belief that every non-American denied a U.S. visa for any reason had the right to know the precise grounds under which the visa was denied, even if it was for terrorist activity, narcotics trafficking, or other illegal acts. This has impeded the willingness of law enforcement and intelligence agencies to share with the State Department the names of excludable aliens.

These agencies are logically concerned about impeding an investigation or revealing sources and methods if they submit a name of a person they know to be a terrorist or criminal—but who we do not want to know that we know about their activities—who then goes on the lookout list, is denied a visa, and then is informed in writing that he or she was denied a visa because of known drug trafficking activity. That drug trafficker then will know that the DEA knows about his or her illegal activity and may be developing a criminal case. This information is something the United States would want to protect, until the case against is completed and, hopefully, some law enforcement action is taken. At the same time, however, for the protection of the American people we should also make this information available to the Department of State to keep the individual out of our country.

The key issue is that travel to the United States by noncitizens is a privilege, not a constitutional right. There is no fundamental right for extensive due process in visa decisions by our consular officers overseas. While I believe that our country should do what we can to be fair in our treatment of would-be visitors to the United States, in cases where providing information to an alien would harm our own national security, complicate potential criminal cases or potentially reveal sources and methods of intelligence gathering, we should err on the side of protecting Americans, not the convenience of foreign nationals.

Mr. President, I again congratulate Senator DOLE, Senator HATCH, and all of my other colleagues—on both sides of the aisle—who have been instrumental in bringing this comprehensive counterterrorism bill to the Senate floor for swift action. This is an example of our capacity to act quickly on a bipartisan basis and in cooperation with the administration on critical issues. It is my hope that this bill is an example of what we can accomplish together in this body, and I hope we will continue to approach issues important to the future of our Nation in this manner.

I urge adoption of the bill.

Mr. HATCH. I now ask that the Kyl amendment be laid aside and the Senator from Delaware be recognized to offer the last amendment to this bill as soon as we have a quorum call.

Mr. President, I suggest the absence of a quorum.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The distinguished majority leader is recognized.

Mr. DOLE. Mr. President, what is the pending business? Are we on the final amendment?

The PRESIDING OFFICER. The Chair would observe we just dispensed with the Kyl amendment. There is no pending amendment at this time.

Mr. DOLE. Is there a time agreement on the Biden amendment?

Mr. HATCH. Mr. President, I ask unanimous consent that the amendment of the distinguished Senator from Arizona be laid aside; that as soon as the distinguished majority leader is finished, we can move to the final amendment, the Biden amendment.

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

Mr. DOLE. How much time is the Biden amendment?

Mr. HATCH. Mr. President, I ask unanimous consent that there be 90 minutes equally divided between Senator BIDEN and myself.

Mr. COHEN. Reserving the right to object, I might indicate to the Senator from Utah that Senator BIDEN indicated he will allow me to have an additional 15 minutes separate and apart from this agreement.

Mr. HATCH. Let us make it 105 minutes with 45 minutes——

Mr. DOLE. I have a better idea. Why not the Senator from Utah give him 15 minutes of his 45.

Mr. HATCH. That will be fine.

Mr. COHEN. I do not want to take the time of Senator HATCH.

Mr. DOLE. We want to finish this bill.

Mr. HATCH. That is fine with me. Half-hour to me, an hour to Senator BIDEN.

The PRESIDING OFFICER. Is there objection? Does the Senator from Maine object?

Mr. COHEN. No.

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

Mr. DOLE. Mr. President, then it would appear to me that we are not going to finish this bill until after 5 o'clock. But we will take up the telecommunications bill. We will be here late because we have frittered away the afternoon here. We hoped to conclude action on this bill by 1 o'clock. It is now 3:30, and it is going to be 5 or 6 o'clock. So we do not have any recourse because Senator PRESSLER and Senator HOLLINGS have been waiting all day long to take up the telecommunications bill, and there will be votes and there will be amendments probably until 10 or 11 o'clock tonight. So if we can finish, whenever we finish this bill, we will be on the telecommunications bill.

I understand the Senator from Delaware is now prepared to offer his amendment, which will be the final amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I see the distinguished Senator from Maine is prepared to speak and utilize his 15 minutes.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, first let me thank the Senator from Utah for allowing me to use 15 minutes of his time. I will try and cut it down if I can, because I do not want to trespass on his time, especially since I am going to be speaking in opposition to his position. So it is kind generosity on his part, superimposed by the majority leader, I might add, but nonetheless I appreciate it.

Mr. President, I have in my past life been both a prosecutor and defense counsel. I believe firmly that some reform of habeas corpus is necessary. Successive and repetitive petitions, appeals and Supreme Court reviews have led to excessive delays and imposed costs on State prosecutors' offices that otherwise would be dedicated to law enforcement. I think these delays have rightly been perceived by the American people as an abuse of the judicial process by those opposed to the death penalty.

I also want to point out that I oppose the death penalty, but I cannot support a system that allows respect for the law to be undermined. Consequently, I believe many of the procedural reforms contained in S. 735 are appropriate and necessary.

I support limits on successive, repetitive petitions. I support a statute of limitations for filing habeas petitions. And I support time limits on judicial consideration of habeas cases. I think these reforms should be sufficient to eliminate the abuses of the habeas system that have led to decade-long delays in many capital cases.

But the goal of habeas corpus reform ought to be that prisoners have one complete bite at the apple.

The bill before the Senate gives prisoners one bite at the apple but changes the law so that the bite is incomplete. It weakens the standards under which Federal courts review constitutional errors that take place in State courts by requiring a Federal court to defer to a State court's reasonable interpretation and application of constitutional law.

By weakening the effectiveness of the writ in this way, I think it is going to erode what has been a cherished procedure over the centuries, the hallmark

of Anglo-American jurisprudence. The writ of habeas corpus is the last line of defense for constitutional rights.

An effective habeas remedy is especially necessary in modern times because of the poor caliber of legal representation capital defendants are being provided in capital trials.

Many of the States that produce a large number of capital cases have no minimum competency standards for defense counsel. One State limits the compensation for court-appointed counsel to $1,000 for all pretrial preparation and trial proceedings—I repeat, $1,000 for all pretrial preparation and trial proceedings.

Another State pays a maximum of $2,500. A survey by the Mississippi Trial Lawyers Association estimated that the average capital defense attorney is compensated at a rate of $11.75 an hour, just 2½ times the minimum wage.

There are reported cases of trial counsel sleeping during trial, not presenting any mitigating evidence during the penalty phase of the trial, having only 6 months of legal experience and no criminal trial experience, or filing a one-page brief on appeal.

In one of his last opinions from the bench, Justice Blackmun listed six egregious examples of the poor representation many capital defendants receive. One case Justice Blackmun described was that involving John Young, who was represented in his capital trial by an attorney who was addicted to drugs and who a few weeks after the trial was incarcerated on Federal drug charges. The court of appeals of the eleventh circuit rejected Young's ineffective assistance of counsel claim on Federal habeas review and the Supreme Court denied certiorari. Young was executed in 1985.

In another case, Larry Heath was represented on direct appeal by counsel who filed a six-page brief before the Alabama Court of Criminal Appeals. The attorney failed to appear for the oral argument before the Alabama Supreme Court and filed a brief in that court containing a one-page argument and citing a single case. The eleventh circuit found no prejudice, and the Supreme Court denied review. He was executed in 1992.

The bill before the Senate does nothing to remedy the serious problem of incompetent counsel in State court capital cases. But in light of this, I think the Biden amendment is all the more imperative to maintain the effectiveness of habeas under these circumstances. When trial counsel has done little to protect a capital defendant's constitutional rights at trial, at the very least, it seems to me the Federal Government ought to provide effective Federal court review of the State court conviction and sentence to ensure that the core constitutional requirements have been satisfied.

Mr. President, I think Senator BIDEN has already talked at some length about the case of Rubin ''Hurricane'' Carter. I read a book that was written some time ago called ''The 16th Round.'' In ''The 16th Round,'' we have a description of what happened to Rubin ''Hurricane'' Carter, the one time the middleweight prizefighter. It was not a death penalty case, but it was a case of an innocent man being convicted for a crime he did not commit, primarily because he was a black man who was in the vicinity when a triple murder was committed.

It was way back in June 1966. Two light-skinned black men, one described as thin, about 5 feet 11 inches, shot and killed three people in a Paterson, NJ bar. Carter, a very dark-skinned, stocky, prizefighter, 5 feet 8 inches tall, was driving in the vicinity with two other people. They were stopped by the police and then released because they did not match the description of the killers. Later that night, Carter and a man named John Artis were again picked up by the police, but the survivor of the shooting failed to identify them as the killers. They were given lie detector tests and they passed.

In the meantime, a small-time thief who was robbing a factory nearby the murder site told the police he had seen the commission of the crimes, and in an attempt to curry favor with the police, he told them Rubin ''Hurricane'' Carter was the killer.

Based on that information, Carter and Artis were tried, convicted, and sentenced. Carter himself was sentenced to life in prison.

Ten years later, after the thief recanted his trial testimony, Carter and Artis were given new trials. Then at the time of trial the thief recanted his recantation. Carter and Artis were convicted again. The New Jersey Supreme Court affirmed Carter's conviction by a vote of 4–3.

Then a habeas corpus petition was filed in Federal court. In 1985, the court issued an opinion finding two serious constitutional violations: The prosecutor's misuse of a lie detector test and the denial of equal protection due to the prosecutor's unfounded racial allegations against the defendants. The prosecution argued that the defendants were simply out to murder white people when, in fact, the evidence was that they both had many white friends.

The third circuit upheld the lower court's decision to grant the petition. The Supreme Court denied certiorari. And the State of New Jersey finally dismissed the indictment.

Here we have a situation where a person spent over 20 years in prison over charges that were false. The attorney for Mr. Carter has written to Senator HATCH to point out that if a proposal similar to the one on the floor right now were law today, Carter's habeas corpus petition would have been dismissed. He said, ''I do not see what legitimate criminal justice purpose would be achieved by such a result.''

Indeed, the 16th round never would have occurred. The 15th round would have knocked Carter out for the rest of his life, without him ever having a legitimate opportunity to challenge the injustice that took place 20 years ago.

So let us not fool ourselves. The substantive changes to the habeas bill being proposed are not designed just to eliminate frivolous cases. They are designed to weaken the Federal courts' role in scrutinizing State court verdicts for constitutional error. Prof. Henry Monaghan from Columbia University said it very well in a letter to Senator HATCH. He acknowledged that he is ''no fan of habeas corpus.'' But he was satisfied that the changes in the Supreme Court law and the procedural reforms in this bill ''would go a long way to eliminating abuses.'' He went on to urge that the substantive standards not be altered:

> I believe the writ's core function of affording independent Federal review to mixed questions of law and fact should be retained and that the deference provision in S. 735 should be withdrawn. The deference provision in S. 735 would keep habeas corpus from serving any meaningful role. Effectively, it would repeal the habeas corpus statute.

Similarly, a former State prosecutor recently wrote to me that the ''reasonableness'' rule of deference in this bill is not the way to speed up habeas corpus review. It is not a way to prevent the same prisoner from filing more than one petition. Rather, ''it is an unprecedented attack on the rule, as old as the Republic, that Federal courts have the last word on what the Federal Constitution means and how it is to be applied. It would require Federal courts to stand by and do nothing even if presented with a State court ruling that was wrong, and the cause of the person being unjustly imprisoned or even executed.''

So, Mr. President, I think it is important that those accused of serious capital crimes have one complete bite at the apple. I believe the Biden amendment will make sure that one bite is complete and not incomplete. I hope that it will receive the endorsement of the Senate, because habeas corpus without it will become a hollow remedy, one that I do not think would be worthy of the title ''the Great Writ.''

A strong case has been made for the procedural reforms in this bill. They will increase respect for the law by stopping the endless delays and appeals of capital sentences. But no case has been made for changing the substantive standards applicable in federal courts for well over a century. When we are making such radical changes in our legal system, we should act prudently. We can always cut back on habeas in the future if the procedural reforms in this bill do not work. But we may never recover the habeas process once it has been effectively been repealed by the substantive changes being proposed.

I yield the floor.

Mr. BIDEN. Mr. President, I thank the Senator from Maine. The Senator from Maine has a reputation in this

body of being one of the most thoughtful, and when he speaks in debates, unlike the Senator from Delaware, a most measured Senator, and one whose career has been marked by observable high points of principle. And this is, I detect, from his speech, a principled issue here. This is an important issue. This is not one where we should, quite frankly, be guided by the legitimate but sometimes not fully articulated concerns of our constituents.

I believe what our constituents want is what the Senator from Maine has outlined. I doubt whether there is a man or woman in America who thinks that Hurricane Carter should not be free today. I doubt whether there are any people in America today who would have been happy had this been the law and had he been denied the opportunity to make that final plea in Federal Court.

Yet, if we amend the law along the lines of the Biden amendment, which Senator COHEN supports, we would have drastically cut down frivolous appeals and drastically cut down successful appeals. As a matter of fact, there is no difference in the time limitation for filing an appeal and the number of successive appeals that are allowed between what Senator HATCH wants and what we want. The big difference in what the Senator from Maine and I are saying is the standard the court is able to apply when the Federal court looks at, as Professor Monaghan states, those mixed questions of fact and law. This would essentially not allow them to look at fact, just theoretically the law.

So what I propose to do is precisely what Professor Monaghan, who is not a fan of habeas corpus, wants done. Let us be real clear right from the start here what we are arguing about and what we are not arguing about. Again, as my old buddy Sid Balick, says, ''keep your eye on the ball.'' What are we arguing about and what are we not arguing about? We are not arguing about whether or not to speed up the process of habeas corpus review, and we are not arguing about reducing the current abuses in the system.

I agree with my Republican colleagues from Utah and Pennsylvania that we have to have a strict statute of limitations and a strict limit on successive petitions. Put another way, how many times after that first one, or under what circumstance, can you file another petition if you are able to at all. Nothing I am trying to do today, nothing in my amendment would change what the Republicans propose for speeding things up or cutting down on abuses. They have a 6-month statute of limitations in their bill. I am not trying to make that 9 months or 1 year or 2 years. I am not proposing to change a single word in the statute of limitations. As this chart up here shows, in the Biden amendment the time limits for filing a petition are the same as in the Specter-Hatch provision. We both set limits on time.

Nothing in my amendment, nothing at all, would change what the Republicans propose for speeding things up or for cutting down on abuses.

The Republicans have a new strict limit on successive petitions in their bill. Many of my liberal friends think these restrictions are excessive. I do not. I have not attempted to change a word. I have not attempted to change a word on their bill relating to successive petitions. Not a period, not a comma of their proposal is changed by my amendment.

Put another way, at the end of the day, or the end of today, even if I were to win everything I am asking for, the statutory right of habeas corpus will be drastically altered from what it is today. No longer will we see a guy filing petition after petition. No longer will my friend from Utah, my distinguished friend from South Carolina, Senator THURMOND, my friend from Pennsylvania, my new friend and colleague from Oklahoma, be able to put up on a board or reference cases which are real and exist today where someone has sat, after having been convicted for a capital offense, on death row for 2, 5, 10, 12, 15, 16, or 19 years. That will not be possible if we adopt my amendment.

Now, usually, the Senator from Utah has a chart out here listing the number of petitions in several cases. I am not making light of that. When he brings out that chart, if he does in his response, I want everyone to look at it and understand that if the Biden amendment passes, that would be the end of charts like that.

There would no longer be an ability for a convicted prisoner, convicted of a capital offense, to be able to file those successive petitions and delay for the number of years the charts have always shown.

I also point out that we will still have the problem of irresponsible State courts who do not read briefs, who do not take the time to follow through. I cannot affect that, nor can they. At a Federal level, we will have eliminated the ability to have those successive petitions.

So let the Senate be clear on what we are not arguing about. What we are arguing about is whether we should dismantle the habeas corpus process by dramatically restricting the Federal power of the Federal courts to decide whether a State court got it wrong, whether a State court wrongly convicted a person, whether a State court is wrongly sending a person to death. That is what we will be changing.

That is where I part company with my Republican friends. I want to fix the problem. They want to do away with the right. I want to get a habeas corpus petitioner in and out of Federal court quickly. I do not want to make it practically impossible for him to get into Federal court. I want to say you get in, and you must get in quickly, and you can only get in under certain circumstances, and you are out. The Republicans want to slam the door of the Federal courthouse closed.

I know there are a lot of things about Federal overreaching, but one thing I do not think most Americans—whether they are liberal or conservative, whether they are moderate, whether they are Republican or Democrat—I do not think they believe that is a remedy, to slam the Federal courthouse door. They do not want it swinging off its hinges, but they do not want it slammed shut.

What I propose is—to be able to use this silly metaphor—to be able to open the door once, walk through the door, and say, ''Federal judges, experts on the Federal Constitution, listen to my plea. Make a decision. If you decide against me, I'm out, but listen to it.''

As the Senator said, the lawyer for Hurricane Carter, and I suspect everyone else would agree he would be a man in jail the rest of his life were that door slammed shut, had it been slammed shut in the way I believe this present bill does.

So that is what we are arguing about.

AMENDMENT NO. 1224

(Purpose: To amend the bill with respect to deleting the rule of deference for habeas corpus)

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 1224.

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

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

The amendment is as follows:

Delete page 105, line 3, through page 105, line 17.

Mr. BIDEN. Mr. President, let Members be clear about what we are talking about.

A petition for habeas corpus—I want to complicate this—a petition for habeas corpus is literally and simply a piece of paper on which a State prisoner says, ''I have been denied my constitutional rights in the following way,'' and takes that paper or has his lawyer take the paper and file that in a Federal court.

In almost all instances, this is after his remedies have expired in a State court system. The issue is whether he or she should be able to file that in Federal court and under what circumstances.

The piece of paper that a habeas corpus petition is written on says that the prisoner claims to be held or sentenced to death in violation of the Federal Constitution, the U.S. Constitution. It does not ask that the prisoner be released, but it does ask that he be given a new trial.

Habeas corpus is the means by which Federal courts ensure that State

courts are following the Constitution. It ensures that those in jail or on death row were not only not put there mistakenly, but that they were not put there in violation of the U.S. Constitution.

I might add, if we, in fact, eliminate Federal habeas corpus or in effect eliminate Federal habeas corpus, what we do is we leave to 50 different States the potential for 50 different interpretations of fact and law.

We all know if a Federal court makes a judgment on a Constitution in a circuit or in a district, it usually goes to a circuit, and then to the Supreme Court. We get a final national judgment on how to read that provision and that fact/legal mixture under the Federal Constitution. We have a uniform application of the law.

The writ of habeas corpus, known historically as the ''great writ,'' is enshrined in the Constitution itself, which provides that ''The writ of habeas corpus shall not be suspended,'' article I, section 9.

Unfortunately, under the current system, guilty people can sometimes delay their death sentences by filing frivolous habeas petitions. There is no time limit on when the petition has to be filed, and there is no statutory limit on the number of petitions.

I have, in years past, proposed legislation that would reform this system to generally limit a petitioner to one petition in Federal court, and to impose strict limits on when that petition had to be filed. But my legislation also recognized in that one round of Federal review, the prisoner is allowed and must be allowed a full and careful review to ensure that we do not execute innocent people.

The death sentence is unlike any other. There is no turning back once it has been carried out; to state the obvious, a mistake cannot be fixed. Because of that, we cannot allow the death penalty to be used against innocent people and we cannot allow it to be carried out unfairly.

I am certain all of my colleagues would agree that, although the death penalty should be applied swiftly and with certainty, the worst thing in the world would be for it to be applied wrongly.

My amendment tries to preserve the important role that habeas plays, while reducing delays. It strikes at what I believe is the issue that truly rises above all else in the Republican bill. It strikes the provision in the Republican bill that I think is the most troublesome, and that is the so-called rule of deference, which has been known around here the last 20 years that I have been here as the full and fair rule.

This, in my view, and probably in the view of advocates of both sides of the habeas corpus debate, is the single most important provision of the Republican bill and the single biggest difference between my approach and their approach.

As the chart I have just had put up illustrates, when it comes to speeding things up, Senator HATCH and I are in the same spot. Both our bills have time limits on when a petition can be filed. Both our bills have limits on successive petitions. But our bill differs when it comes to the issue of deciding these petitions.

I said the Federal courts should exercise independent review while the Specter-Hatch bill requires Federal courts to defer to the States.

It is important to realize that the deference standard in the Specter-Hatch bill effectively makes the rest of the bill irrelevant. After all, what difference does it make what the time limits are if the Federal courts are going to be precluded from examining what the State courts did in any event? What difference do the time limits make? That is the fundamental difference in our approaches, because that is what the result of the Specter Hatch bill will be.

Let me give a hypothetical example. Suppose an innocent man is charged with a capital crime and during the investigation one of the witnesses identifies someone else as having committed the crime other than the defendant, a fact which is concealed from the defendant. And there are cases where this has occurred.

At trial the witness identifies the defendant, the innocent man, even though the prosecution has in its possession the evidence that another witness identifies someone else as having committed the crime. But at trial, the second witness identifies the defendant, the innocent man.

In addition, the witness testifies that he has never met the defendant before when, in fact, the prosecutor knows that the witness harbors a grudge against the defendant, the witness who identifies the defendant.

Now, the prosecutor goes ahead and does not tell the defense about the details of what the witness previously said, that he previously said, no, I identify somebody else, and where the prosecution knows that the identifying witness has a grudge against the defendant.

The State courts go ahead and uphold the conviction anyway, reasoning that the truthful evidence would not actually prove the defendant innocent.

Let me get this straight now. If in a trial the stenographer here is accused of killing John Doe and the prosecutor interviews me as a witness. I say no, he did not kill John Doe, Charlie Smith killed John Doe. But then I say, no, I change my mind. I think he did kill John Doe.

The prosecutor investigates and finds out that the stenographer and I have hated one another for the last 20 years, or I have held a grudge against the stenographer because he took down one of my speeches incorrectly.

They never do that, I might add.

Now, the prosecutor does not tell the defendant about my grudge against the defendant and about the fact that I initially identified somebody else. So, now there is a trial and he is convicted.

After the conviction takes place, he files a petition for the writ of habeas corpus and proves that this information was withheld from him; that it would have made a difference to the jury. And the State court of Delaware says: No, no, even if that is true, it does not prove that he is innocent. It just proves that I have a grudge against him and it just proves that the prosecution was not totally honest. But it does not prove his innocence. Therefore, hang him. Or, in Delaware, lethal injection.

Now, the fact of the matter is under the language of this bill the State court's decision on this issue, that is the scope of the prosecutor's duty to turn over the information, would be the absolute last word because, as long as the State court decision could be described by a lawyer as being reasonable, the Federal court could not overturn it. In this example, an innocent man may be put to death because, under this bill's provisions, the issue before the Federal court would be, was it reasonable for the State court to say that they are upholding the conviction because the information withheld would not have proved his innocence?

The probability is the Federal court would have to say that is reasonable. It may not be right. We might not have decided it that way, but it is reasonable. A reasonable man could say, all right, even if the jury had known this, it did not prove his innocence. They still may have convicted him. The Republican bill says:

> An application for 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 adjudicated on the merits in State court proceedings unless the adjudication of the claim * * * resulted in a decision that * * * involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

That is a heck of a standard to have to apply.

So, I say goodbye to the stenographer. He is off to death row. He probably thinks he is off to death row when he has to come out here and take down my speeches. But he is off to death row. Because even though—even though—the prosecution withheld evidence that goes to his innocence, instead of the court saying, ''This would have made it difficult for the jury to find beyond a reasonable doubt he was guilty,'' which would have been a reasonable conclusion to reach as well, they said ''This does not prove that he is innocent so we are not going to overturn the conviction.'' So he is gone. Because, as long as the State court decision could be described by a lawyer as being reasonable, the Federal court has to defer to the State court.

The effect is there is no habeas corpus review on matters of fact and law at a Federal level. My amendment simply strikes this language. It leaves in the bill the rest of the reforms—time limits, limits on second petitions—but it strikes the deference rule and allows

the current practice of independent review by the court, the Federal court. The Federal court should be able to say in that circumstance: We understand what the State court did but under our interpretation of the Constitution and his constitutional rights we believe that withholding this information was so prejudicial that he should get a second trial with all the facts being known. They should be able to do that. This would preclude them from doing that.

I think there are four parts of this long sentence I read up here on the board, four parts of this long sentence which have a devastating effect.

(Mr. THOMPSON assumed the chair).

Mr. BIDEN. First, the language sets out clearly what the general principle is. The general principle in this language in the Hatch bill is that Federal courts shall not grant a claim that was adjudicated in State court proceedings. That is what is at the top. It seems to me that is what the sponsor of this bill views as the most desirable outcome in a habeas petition. Of course, this is directly contrary to the purpose of habeas corpus, which is to have Federal courts, and in particular the Supreme Court, decide issues of Federal constitutional law.

The second problem, in this instance, the bill seems to allow an exception to the general rule but one that is likely to be illusory because a claim can be granted only if the State court's application of Federal law to the facts, before it was unreasonable, not merely wrong but unreasonable. It could be wrong but viewed as reasonable. This is an extraordinary deferential standard to the State courts, and I believe it is an inappropriate one. It puts the Federal courts in the difficult position of evaluating the reasonableness of a State court judge rather than simply deciding whether or not he correctly applied the law, not whether he did it reasonably. You can have a reasonable mistake. They could reasonably conclude that on a constitutional provision, it should not apply, when in fact the Supreme Court would rule it must apply. Reasonable people could have reached the conclusion prior to the application of the Miranda decision that it was reasonable not to tell someone their rights. That is a reasonable decision. It may not be born out of animus. The Supreme Court said no. You have to tell people their rights. A reasonable standard of review is the lowest standard used by Federal courts.

In reviewing the constitutionality of statutes, for example, in cases where courts used the reasonable or rational standard, it looks only at whether there is any rational basis supporting the statute. It is a cursory standard of review. In fact, looking at thousands of cases since the late 1930's, our Supreme Court has found—to the best of my knowledge—no statute invalid when they have applied the reasonable standard.

Reasonable people, like Senator HATCH and I, are going to be arguing on the floor about the regulatory reform bill and about the takings clause and all of those issues, right now if the U.S. Congress passes a law saying you cannot have more than 2 parts per billion of a carcinogenic substance in the liquid effluent coming out of your factory, the Supreme Court says not whether that does or does not cause cancer, they say it is reasonable for those folks in the Senate and the House to conclude that is dangerous and, therefore, they will uphold the statute.

It is the lowest standard. It is one thing to apply that when we are protecting the public against environmental pollution. It is another thing when we are applying that standard to the application of constitutional rights to individuals. There we have always applied the highest standard. The Government has been required to meet the highest standard before they can put someone in jail or put them to death. This reasonableness standard reduces to its lowest common denominator.

The court also uses a reasonableness standard in reviewing Federal agencies' interests, and the administrative statutes. I will not get into it now. But the Chevron case and others are cases we debated about whether or not, in applying civil law, which standard we should apply. But the bottom line is this, folks. If the standard is reasonableness, it is the lowest common denominator. And, if the Federal court is required to give deference to a State court on the grounds that it acted reasonably as opposed to correctly, a lot of folks—I should not say a lot; I do not know how many—but there will be individuals who will be put to death where they otherwise would not have been put to death if the Federal court were able to apply the standard that determines their ability to go back and look at the facts and the law and make an independent judgment.

By the way, let me say the whole reason to have the ability of a defendant to go into Federal court is to allow Federal judges to apply the Federal Constitution and determine whether they think the State court applied it correctly. But if you limit what they can look at and the standard they use in review, you have in effect undercut the very rationale for allowing the defendant to get into that Federal court in the first place.

The third problem with this language is the bill's reasonableness exception is limited not only by the requirement that the decision must have been unreasonable, but that it must have been unreasonable in light of Supreme Court law. So even if there is a Federal court decision directly on point, the State court could ignore it as long as the application of law had not been directly decided by the Supreme Court.

As the Presiding Officer knows, as a former prosecutor and a first-rate trial lawyer, there are a number of lower Federal court decisions that never get to the Supreme Court because no one bothers to conclude that they were wrongly decided. And they are accepted as Federal law. In this case, you could have all the districts or the circuits agreeing on one application of the law, and the State court ignore what the Federal courts have said because there is no Supreme Court decision on point. That seems to me to be a very dangerous precedent. Even so, if there is a Federal court decision directly on point, under this language, the State court could ignore it as long as the Supreme Court has not spoken to it. In other words, State courts could ignore the decisions of the lower U.S. courts interpreting the Constitution without any prospect of being corrected by Federal courts.

For example, an appeals court recently held that a defendant cannot be prosecuted criminally and have his property forfeited under the civil forfeiture laws because of the double jeopardy clause prohibiting that. That ruling is clear. It is unambiguous. But it is not a Supreme Court ruling. Under this bill, a State court, which subsequently refused to follow that interpretation, could not be corrected by habeas corpus review because it could never get back into the Federal court system.

This limitation on Supreme Court laws is particularly nonsensical because the Supreme Court generally does not accept for review decisions by circuit courts of appeal unless there is a split in the circuits, as the Presiding Officer knows. If all the circuits agree on a principle of law, the Supreme Court would have no reason to address it.

So under this standard that we are about to write into the law, a State court could ignore a rule that all the circuit courts agreed on and no Federal court could correct that State decision. That is preposterous; maybe unintended, but that is the effect.

Fourth, the exception to the general rule in habeas shall not be granted if the State court ajudicating the claim is further narrowed by the language in the statute requiring that the Federal law at issue must have been clearly established. Not only must the decision of the State court have been unreasonable, and not only must it have been unreasonable in light of Supreme Court law, not Federal law, but it must have been unreasonable in light of Supreme Court law that is clearly established.

The one thing we know is that where lawyers are involved, there is little that can be said to be clearly established. So where the application of a U.S. Supreme Court decision to a new set of facts is unclear, the State court need not worry about it.

For instance, the Supreme Court quite logically has held that the prosecution must give to the defendant any evidence it has that is favorable to him. It is called justice—justice. This is not a game. Prosecutors are not

there to determine whether they can win. They are there to do justice. And so the Supreme Court has said that, if the prosecution has at its disposal evidence that goes to the innocence of the defendant, that has to be made available to the defendant. But is a certain kind of evidence favorable to the accused? That might not be clearly established. And so the State courts will be free to go their own way.

For example, a clear case would be assume that in the State court, the prosecutor had evidence there were two witnesses at the same time who said the defendant did not do it. Well, they cannot withhold that from him. But they may conclude at the State court level that they have evidence there is a motel receipt that indicated the defendant was at such and such a place when this crime was committed. They can reasonably conclude at a State court level we really do not think that goes to the innocence, that is not favorable to the defendant, that is a marginal question so we are not going to tell him.

Now, what you have to do, if you are filing a Federal habeas corpus appeal to get them to go back and get them to look at that, you have to prove that judgment was unreasonable even though there is a Supreme Court decision out there saying you have to make things that are favorable to the defendant available to the defendant, because it is not clearly established law, because it is not around long enough to have been applied to 10, 20, 30 fact circumstances.

Now, it seems to me that we are requiring an awful lot of hurdles and limitations on what a Federal judge can look at once we get to court. Again, keep our eye on the ball here. We are not talking about successive abilities to get into Federal court. We are not talking about extended time limits to get into Federal court. We are not talking about whether or not you can get into Federal court repeatedly. We are only talking about when you get to Federal court what is the Federal judge able to look at. And right now the Federal judge is able to look at the whole thing from ground up if he wants to. He can make an independent decision based on what the specific statement by the defendant is in his petition as to why they should be granted a new trial. They can go back and look at the facts in the case and the law and apply them in conjunction with one another.

So let me summarize what I think this language in the Hatch bill says. First, it states that habeas relief cannot be granted by a Federal judge if a State court has adjudicated the claim, which is directly contrary to the entire purpose of Federal habeas corpus.

Second, it creates what looks to be an exception but one that is largely illusory. It requires that a State court merely behave reasonably—not correctly, reasonably. It requires that a State court merely act reasonably in relation to a Supreme Court decision, not in relation to decisions of lower Federal courts in their State. And it requires them to act reasonably only if the Supreme Court law can be said to be clearly established. All this amounts to is that State courts in almost every case will be free to reach virtually any decision without any chance of Federal review later. This rule, the so-called rule of deference, turns habeas on its head. The purpose of habeas is to correct State court errors. But if Federal courts have to defer to State court decisions, they will not be able to correct their mistakes except in the most egregious circumstances.

Now, through the years we have fought in this Chamber battles over the so-called full and fair standard, essentially what Senator KYL had introduced. At least he was straightforward and blatant about it. He said: Look, my purpose here is to do away with any State prisoner being able to get into a Federal court, period, and because the Constitution says you can go to the Supreme Court under rare circumstances, I am not going to try to eliminate it. But he said 40 percent of the delay is in Federal court, so what I am going to do is do away with the ability to get into Federal courts.

Straightforward. This provision suggested by my Republican friend essentially does the same thing, making it sound like we are really letting someone get in.

Admittedly, the most egregious cases, which would not be captured by the Kyl amendment, would be captured in this amendment. But the vast majority of cases are in a gray area. And again my proposal to delete this standard will in no way slow the process up and will in no way increase the number of opportunities that a prisoner has to file a petition.

While this language looks different than full and fair, the language in this bill would have virtually the same effect. It would prevent Federal courts from granting relief for a violation of the Federal Constitution because it would require deference to the State decision unless that decision were unreasonable. Being wrong would not be enough to get it overturned. It would have to be unreasonable.

If I can make an analogy to the Presiding Officer—who is the only one here at the moment and so that is why I am speaking to him, although I always like to speak to him—it is like this deal with good-faith exceptions to the fourth amendment, search and seizure. All of a sudden, by the way, my friends on the right side of the Chamber, my right and on the ideological right, all of a sudden are beginning to realize: Wait. Maybe we do not want to do away with that so quickly. But at any rate, there is an exception that if a cop violates the fourth amendment but did it in good faith, it should be admissible in court.

Well, you can theoretically argue that makes sense. But how about where a court wrongly but in good faith, in good faith wrongly decides a provision in the Constitution, wrongly decides it, the result of which is the person goes to death. Are we going to reward ignorance? Are we going to reward reasonableness just because it came from the State? It may be reasonable that he reached that decision but wrong. Wrong. This would preclude Federal courts from looking at the merits—whether it was wrongly decided. They only get to do it if it meets the threshold that it was an unreasonable application of the facts and the law.

When the Supreme Court announces a constitutional wrong such as the right of the defendant to know about evidence held by the prosecutor that suggests he is innocent, it necessarily leaves open the question of how that general rule applies to specific facts. Does that mean evidence that could be used to impeach a witness must be turned over? How strong does the evidence need to be before the requirement kicks in? The Supreme Court cannot possibly decide all of these issues in one case.

But lawyers arguing in courts will be able to come up with all sorts of different ways of applying that general rule in individual cases. And many of those ways of applying them may be reasonable. That means that Federal courts will be unable to review State decisions through habeas corpus and begin to establish some uniform law in that portion of the country. Instead, virtually any decision a court reaches will have to be considered acceptable solely because it was reasonable.

I ask everybody listening to this, do we want 25 different interpretations of what is reasonable? Do we want 25 or 50 different versions of what is reasonable? That flies in the face of the notion of a uniform application of the only unifying document that exists in our Nation, the U.S. Constitution. This would mean that the Federal Constitution would be determined by State court judges.

Placing primary responsibility for the Federal Constitution in the hands of State courts is a dramatic departure from this country's historical principle, and that is that it is the Federal courts that should be the final arbiters of Federal law. It would relegate us to a system in which the 50 State court systems and in fact the individual judges within those systems are the separate and ultimate arbiters of what the Constitution means. The meaning of the Federal Constitution could be different, depending on what State you are in.

Independent review is the only sensible approach, I suggest. Even Justice O'Connor has said in rejecting a judicially created full and fair rule—which is what this rule is—that:

> We have never held in the past that Federal courts must presume the correctness of State court legal decisions.

Let me stop there and read it again:

We have never held in the past that Federal courts must presume the correctness of State court legal decisions.

This requires us to presume—presume—the correctness of State court decisions. I am not certain that the State of Mississippi would apply the Constitution the same way the State of New York would, as the State of California would, as the State of New Hampshire would. I do not know if anybody else is very sure of that.

Let me go on and read the entire quote from Justice O'Connor:

We have never held in the past that Federal courts must presume the correctness of State court legal decisions or that State courts' incorrect legal determination has ever been allowed to stand because it was reasonable. We have always held that Federal courts, even on habeas, have the independent obligation to say what the law is.

That is the Federal constitutional interpretation by the Supreme Court. I quote her again:

We have never held . . . that State courts' incorrect legal determination has ever been allowed to stand because it was reasonable.

This would allow incorrect State court decisions to stand because they are reasonable, although incorrect.

That quote, I might add, was from Wright versus West, decided in 1992. Even Justice Rehnquist——

The PRESIDING OFFICER. All the time of the Senator from Delaware has expired.

Mr. BIDEN. Mr. President, I ask unanimous consent, although I have much more, that I be allowed to have 7 more minutes.

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

Mr. BIDEN. Mr. President, even Justice Rehnquist publicly stated that this full and fair doctrine goes further than is wise, and the Supreme Court, reflecting that view, has on at least five occasions refused to apply this doctrine. Let me give some of the cases.

The effect of the deference rule is best illustrated, I think, by looking at some of the real-life cases. The last time the Federal courts were required to defer to State courts, we executed an innocent man. That was in 1915. There is a chart I have to illustrate that.

Leo Frank, a Jewish man, had been convicted and sentenced to die by a jury intimidated by an angry lynch mob outside the courtroom. The mob could be heard inside the courtroom. Mr. Frank's lawyers were so intimidated that they left the courtroom at times because they feared for their lives.

Nevertheless, the State court reviewing the conviction concluded the trial had been fair and upheld the conviction. A majority of the Supreme Court voted to uphold the conviction and, after determining that they were required to defer to the State court decision, upheld the conviction. The dissenters thought independent review was appropriate and, on that basis, they concluded that the State court decision was wrong.

The Supreme Court applied the rule of deference in 1915, and Mr. Frank was killed in prison by an angry mob, and later the actual offender confessed and Frank was posthumously pardoned. But because of the deference rule, an innocent man was executed, and that is what is at stake today. We are talking about going back to the 1915 standard.

Several years later, after the Frank case in Moore versus Dempsey, 1923, the Supreme Court was faced with another similar case. Again, this time several African-American men were on trial for murder, which they claim was self-defense, when a mob attacked them in their church and set the church on fire. At the trial, the same mob armed and surrounded the courthouse. The State court held that there had been no violation of the constitutional right to a fair trial by an impartial jury, notwithstanding those little incidental facts.

This time, the Supreme Court rejected the deference rule and concluded that independent review is required and the dissenters argued that the Federal court should defer to the State court decision and voted to uphold the conviction.

Many years later, in the famous 1953 case of Brown versus Allen, the court considered a case in which the defendant had confessed after being subjected to psychological and physical coercion, sleep deprivation, and other types of pressure that put the confession and the resulting conviction in serious doubt.

The State court found the confession to be voluntary, notwithstanding the circumstances. The Supreme Court overturned the conviction, applying independent review. Had they been required to apply this standard, they would have been required to hold that person guilty, even though he had been subjected to psychological and physical coercion and sleep deprivation before the confession was granted.

These Supreme Court cases, and others I will not take the time to go into, illustrate in concrete terms what the effect of the deference rule is. There are also lower court cases in which habeas relief has been granted. These cases would be decided differently under the deference rule.

Consider the recent case of Herrera, who was convicted of murder and sentenced to death. The State court denied his appeal and the habeas petition. A few months ago, a Reagan appointee of the Federal bench granted habeas relief because the prosecutor had threatened and intimidated witnesses and failed to disclose evidence that proved Mr. Herrera innocent and knowingly used false evidence in a closing argument to the jury.

That was not some wacko liberal judge appointed by a liberal President. That was a judge appointed by Reagan. If, in fact, this law had existed at the time, he would not have been able to make that judgment. For instance, one woman told the police Herrera had not committed the killing. She was threatened by a police officer who said he would take away her daughter unless she cooperated. The prosecutor knew this. The prosecutor also insisted she change her testimony to implicate Herrera, and the judge found many other such violations of law, but the State court concluded, no, he was guilty; the conviction should stand.

The Federal court corrected it. Based on this severe misconduct, this Reagan-appointee judge said but for the conduct of the police officer and the prosecutor, either Herrera would not have been charged with the offense or the trial would have resulted in acquittal. The prosecutor's misconduct was designed to obtain a conviction and another notch in their guns despite the overwhelming evidence that another man was the killer and the lack of evidence pointing to Herrera.

This remarkable finding that a constitutional violation would put an innocent man on death row would not have occurred under the Hatch-Specter bill. The same claims had been made to the State courts. There was nothing new in the Federal court habeas petition, but the State court found that they did not amount to a constitutional violation. If the bill's deference rule had been in effect, the Federal judge would have been foreclosed from correcting the State court's decision and saving an innocent man's life.

Let me pose the question to Senator HATCH. In the Herrera case, the court was confronted with various questions, including whether the conduct of the police officer, when intimidating witnesses and withholding evidence, amounted to a violation of the Constitution.

I would like to ask him when he comes back, would not his bill, which requires deference to the decisions of the State court, have prevented the judge from granting Federal habeas relief?

Mr. HATCH. As I understand it, it is the Herrera case.

Mr. BIDEN. It is the Herrera case.

Mr. HATCH. I do not think so. The fact of the matter is, let me just take a second and look at that Herrera case.

Mr. BIDEN. I would like to describe another case: Fred Macias. He was convicted of murdering two people in their homes. The main evidence was the testimony of another man who admitted having been in the house when the murder occurred, but who then claimed Macias was with him and committed the murder. Macias' lawyer did such a poor job. He did not investigate and discover a credible witness who provided an alibi.

The State court rejected Macias' claim that his lawyer had failed to give him an effective representation. Only when a Federal court looked at the fact an innocent man was facing the death sentence was the conviction thrown out.

The prosecution still tried to reindict Macias, but on being presented with all the evidence, a grand jury in that same jurisdiction refused to indict Macias again.

Again, as I read the Hatch-Specter bill, the Federal court would have been forced to defer to the State court. So I would like to also point out another case, that of Hurricane Carter, which has been referred to. Carter was convicted of the murder of three people—despite the fact that he did not match the physical description of the killers, and was sentenced to life in prison.

The prosecution used the eyewitness testimony of a thief who at first denied seeing Carter at the scene. But the police then showed the witness a manufactured lie detector test that falsely showed he was lying.—In the face of this pressure, the witness changed his testimony. The fact that the witness had been pressured into his testimony using a false lie detector was not disclosed to the defendant, and was concealed from the jury.

The New Jersey Supreme Court upheld the conviction—but the Federal courts concluded that the prosecutor had unconstitutionally withheld evidence favorable to Carter. After habeas was granted, the State dismissed the indictment rather than seek a retrial in which it would have to give all the evidence to the defendant.

The deference rule in this bill would have prevented the Federal courts from correcting the State court's decision that the prosecutors had not violated the Constitution.

In fact, in that case, the State of New Jersey tried to win the case by arguing that the Federal court should defer to the State court. The Federal court instead exercised independent review, and ruled for Mr. Carter.

Let me also discuss the case of Walter McMillian. McMillian was convicted of murder and sentenced to death. The main evidence at trial was the testimony of a white man who claimed to have been an accomplice, and who was granted immunity. Two other witnesses testified that they had seen McMillian's truck in front of the dry cleaners. The jury ignored the testimony of a number of friends and family members who said he was at a fish fry.

After trial, a new investigation showed that the alleged accomplice who testified against McMillian at trial did not even know him at the time of the offense.

That, in fact, he had denied McMillian's involvement in three interviews before finally fingering McMillian.

That witnesses who claimed to have seen McMillian's low-rider truck could not have done so since the truck was not a low-rider at the time of the offense.

That the accomplice had complained to prison doctors that he was being pressured to frame McMillian, and that the doctors told the prosecutors about this before trial.

And that the State had interviewed other inmates who said the ''accomplice'' had told them he was going to frame a man.

The new investigation into the McMillian case showed that all of this evidence was withheld from the defendant at trial.

Despite this new evidence, the Alabama trial court refused to grant relief, turning down the constitutional claims about perjured testimony and Government misconduct. Eventually, the Alabama Appeals Court reversed. But, had the Alabama Appeals Court come out the other way, the deference language would have barred the Federal court from preventing the execution of an innocent man.

While my colleagues rightly point out the crush of repetitive petitions—many of which are frivolous, they leave the impression that habeas is no longer needed.

The cases I have just described demonstrate how important it is to preserve independent Federal review. While most State courts try to apply the law properly, sometimes they fail because of police or prosecution misconduct, or simply because they make mistakes.

Here are a few more examples of recent cases in which Federal courts granted habeas relief:

In Brown versus Lynaugh (5th Cir. 1988), Habeas relief was granted because the presiding judge left the bench, took the witness stand and provided evidence against the defendant. Even though that type of conduct seems to make the trial patently unfair, the State court didn't think so. The rule of deference has prevented the Federal Courts from correcting that error.

In McDowell versus Dixon (4th Cir. 1988), the conviction of a dark-skinned African American was reversed because the prosecutor had withheld eye-witness statements that the assailant was white. The state courts found that this error did not deprive the defendant of a fair trial. The Federal court overruled and granted habeas relief. The deference rule would have prevented the Federal courts from granting relief.

These cases demonstrate that habeas corpus is still needed—and that injustices continue to occur. Without habeas, those injustices would be left to stand uncorrected.

CONCLUSION

Everyone agrees that there is a need to end the delays and that the current system just doesn't work right. But I also think everyone would agree that we should have a fair process—one that does not execute innocent people.

We know that most prosecutors and most law enforcement officers are honorable. Most cases proceed fairly, and we can have confidence in the result.

But occasionally, prosecutors or cops act in bad faith—and there are cases which have demonstrated that. And, as we all know, our judicial system can make mistakes—and has done so.

The recent case of Kirk Bloodsworth is one example. Bloodsworth was convicted and sentenced to death for the rape and murder of a young girl. After a new trial, he was again convicted and sentenced to life in prison. Subsequent DNA testing confirmed his innocence. Bloodsworth lost 9 years out of his life because of an error in our legal system. He was lucky to escape with his life.

Mistakes do happen. Innocent people are convicted and sentenced to die.

Habeas corpus has existed to correct such errors—and to ensure that there will never be another Leo Frank—that there will never be another innocent person—man who is executed.

I urge my colleagues to support this amendment.

I hope that the Senator from Utah, when he gets an opportunity, will respond to my question relating to the case I raise. I thank the Chair for the time.

I yield the floor.

Mr. HATCH. Mr. President, this chart, I think, says about everything that needs to be said on this. Everything that Senator BIDEN has said can be answered by the Specter-Hatch bill. These are the inmates on death row versus the actual executions. There were 2,976 inmates on death row as of January 1995. The yellow bar on the chart shows 281 executions since 1977. There are multiple frivolous appeals in almost every one of these almost 3,000 death row cases. If they lose on one, they conjure up another one, and then they conjure up another one, and they conjure up another one, just like Andrews in Utah—18 years, 30 appeals. Every one of them were frivolous; every one was denied. No question of guilt. No question of problems. No question he did the murders. Yet, it took 18 years. And every time he brought up a habeas corpus petition, the victims and their families had to relive the whole murder situation again. You wonder why people in this country are worried about the laws and do not believe in them.

There is no finality, no way of solving these problems. It is a farce. Why is it? Because liberal judges—and I have to say active defense lawyers who are doing their jobs under a system that allows this charade to go on and on—continue to allow this to happen because they do not like the death penalty.

I think we ought to face that death penalty straight up and down. If you have arguments against the death penalty, I understand that. I know there are two sides to it. I do not like it myself, except in the most heinous of cases. I would never use it unless it was a really heinous case, like the Andrews case, or like any number of other cases, like the Manson case. He was saved by the Furman case, the Supreme Court case where we had a temporary law on whether or not the death penalty is to be inflicted. There are many others you can talk about.

Mr. President, I have to oppose this amendment. It is offered to modify the standard of habeas corpus reform that we have proposed in this antiterrorism

bill. Our present system of multi-layered State and Federal and collateral appeal has resulted in enormous delays. I have just made the case between sentencing and judicial resolution as to whether the sentence was lawful, without any improvement in the quality of the adjudication. The resulting lack of finality saps public confidence in our criminal justice system and undermines the proper roles of the State and Federal Government. I know there are people here who believe that only the Federal courts tell the truth. That just is not true. State courts, in many respects, are just as good, if not better, than the Federal courts—in these areas, just as good. I get a little tired of the Federal courts being demeaned and maligned because, basically, people do not like the death penalty.

A system incapable of enforcing legally imposed sentences cannot be called just and must be reformed. I mentioned in my home State of Utah, for example, the William Andrews case. He delayed imposition of a constitutionally imposed death sentence for 18 years, and we went through 30 appeals, and the survivors—I think there was one where they poured Drano down his throat. There were others, too, and they would drive pencils through their eardrums before killing them. This survivor had to be there each time and had to go through it each time, had to have it recollected each time. There was no question of guilt, no question of the sentence, and no question it was constitutional. Yet, it took 18 years and 30 appeals and millions of dollars to get done. He was not an innocent person seeking freedom from an illegal punishment. Rather, he committed a particularly heinous crime and simply wanted to frustrate the demands of justice.

The Andrews case is hardly an isolated example. As I have said, as of January 1995 there were almost 3,000 people on death row. Yet the States have executed only 263 since 1973—38 last year. Now, Federal habeas corpus proceedings have become, in effect, a second round of appeals in which convicted criminals are afforded the opportunity to relitigate claims already considered and rejected by the State courts.

The abuse of habeas corpus litigation, particularly in those cases involving lawfully imposed death sentences, has seriously eroded the public's confidence in our criminal justice system. It has drained our State criminal justice resources and has taken a dreadful toll on the victims' families and those who have to live through that every time there is a habeas petition found.

The single most important provision contained in the habeas reform proposal in S. 735, the bill today, is the standard of review that this provision has. It determines the degree of deference the Federal court will give to the decisions of a State court.

I notice the standard of review on the habeas proposals by the Biden staff-prepared poster. It says that Specter-Hatch requires Federal courts to defer to State courts in almost all cases, even if the State is wrong about the U.S. Constitution. That is absolutely false. The fact of the matter is, currently, Federal courts have virtual de novo review of a State court's legal determination. Under our change, Federal courts would be required to defer to the determination of State courts, unless the State court's decision was ''contrary to or involved in an unreasonable application of clearly established Federal laws as determined by the Supreme Court.'' I will read that again.

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 adjudicated on the merits in a State court proceedings unless the adjudication of that claim (1) resulted in a decision that was contrary to or involved an unreasonable application of clearly established Federal laws as determined by the Supreme Court of the United States or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

This is a wholly appropriate standard. It enables the Federal court to overturn State court positions that clearly contravene Federal law. It further allows the Federal courts to review State court decisions that improperly apply clearly established Federal law. The standard also ends the improper review of the State court decisions.

After all, State courts are constrained to uphold the Constitution and faithfully apply Federal law as well. There is simply no reason that Federal courts should have the ability to virtually retry cases that have been properly adjudicated by our State courts. There is no reason to allow Federal courts to do that. If you talk to your State attorneys general, they will tell you that a review standard is the single most important provision of our bill. Meaningful reform will stop repeated assaults upon fair and valid State convictions through spurious petitions filed in the Federal courts. We cannot stop the spurious petitions without changing the standard under which these petitions are reviewed.

If the Biden amendment passes, we are back to business as usual, except for some time constraints. Even then it is business as usual, because there will be repetitive frivolous appeals allowed by the liberal judges in almost every case brought to them where they can make any kind of a claim, regardless of whether it is legitimate or not.

It happens all the time now. People are fed up to here with it and are sick of it. That is why this issue is so important. We have the balance of the procedural protections afforded to defendants against the need for maintaining the integrity of the finality of decisions of our State courts.

Mr. President, I think that part of the disagreement we have with respect to the appropriate standard of review in habeas petitions involves differing visions as to the proper role of habeas review. Federal habeas review takes place only after there has been a trial.

A direct review by the State appellate court, usually in intermediate court, another direct review by the State supreme court, then a third review or fourth review by the U.S. Supreme Court on a petition for certiorari. Thus we have a trial in at least three levels of appellate review, four different ways of protecting the rights of the defendant.

In a capital case, the petitioner often files a clemency petition, so the State executive branch also has an opportunity. That is five: The trial, the initial appeal to the intermediate court, the State supreme court, the petition to the Federal Supreme Court, and the petition for clemency to the Governor. Five different protections for the defendant. Those are the direct appeals.

Then we give them separate habeas appeals all the way up to the State courts again, all the way up to through the Federal court again.

I notice the distinguished Senator from Pennsylvania was at an Intelligence Committee hearing and needs to get back there. So I will interrupt my remarks to grant him 5 minutes for his remarks on this very important issue.

Mr. SPECTER. Mr. President, I thank my distinguished colleague, the chairman of the committee, for yielding to me at this time. I have worked with him intimately on this legislation.

As he has noted and I noted earlier, we are in the midst of an Intelligence Committee meeting, a committee which I chair, so I appreciate his yielding to me for a few moments.

I have sought recognition to support Senator HATCH and to oppose the amendment offered by the distinguished Senator from Delaware.

This legislation is the result of a great deal of work over many, many years. It has been going on since the 1980's. As I commented earlier, a habeas corpus reform bill was passed by the U.S. Senate in 1990, but it did not survive a conference with the House of Representatives.

Legislation to reform habeas corpus has been considered and reconsidered each year for many years. The provision which is being debated now, I think, is a reasonable compromise. It is not my absolute preference on the kind of language that I would have chosen had I written the bill alone, but I think it is a reasonable compromise.

Part of my concern is that when we change the standards it breeds a lot of new litigation to have interpretations of untested language. I think there is substantial latitude here for interpretation.

Current law gives significant deference on questions of law and on factual determination to State court determinations. Under the current bill, I think there is still a good bit of latitude which the Federal judge will have when he makes a determination under a habeas corpus petition. There will be deference to the determinations of the State court, but the Federal judge will still have latitude to alter the State court decision in any case in which the Federal judge determines that it was contrary to or involved an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States, or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

So there still is latitude for the Federal judge to disagree with the determination made by the State court judge. It is my sense, having litigated these cases as an assistant district attorney years ago, in the Federal and State courts, that where there is a miscarriage of justice, the Federal court can come to a different decision than was made in the State court proceedings.

The language in the habeas corpus reform bill passed earlier this year by the House is even more restrictive than the language in the Senate bill. The House bill contains a provision that precludes the granting of a writ of habeas corpus unless the State court's decision is arbitrary. This is an even more restrictive standard than that in the Senate bill.

Mr. President, in the legislation which is pending before us, there are provisions which I consider a step backward from the bill which passed the Senate in 1990, which would have eliminated the requirement of exhaustion of State court remedies.

Were I to craft a bill myself, I would not require an exhaustion of State court remedies before the filing of a Federal habeas corpus petition because if that exhaustion requirement were not present there would be a much more orderly and a prompt disposition of these contested issues.

Were exhaustion of State remedies not necessary, we would not have the interminable tennis match back and forth between the State and Federal courts as illustrated by the Pennsylvania case of Peoples versus Castille, which is illustrative of the complexity of bouncing back and forth between the courts.

In the Peoples case, the defendant was convicted in the State court of aggravated assault. The conviction was reviewed and upheld by the Pennsylvania superior court, an intermediate appellate court. Then the case went to the Supreme Court of Pennsylvania on what is called an allocatur application, a request for review. The Supreme Court of Pennsylvania denied the petition for allocatur but the court may do so either considering the case on the merits or refusing to hear it as a discretionary matter.

The defendant then sought a writ of habeas corpus from the U.S. District Court for the Eastern District of Pennsylvania, which sent the case back to the State court, holding that Peoples had failed to exhaust his available State remedies because it was unclear whether the Pennsylvania Supreme Court had considered the merits in denying allocatur.

The case then went from the district court to the court of appeals which reversed the district court, saying that there had been an adequate exhaustion of State court remedies.

The PRESIDING OFFICER. The time has expired.

Mr. HATCH. I yield an additional 3 minutes.

Mr. SPECTER. The State then went to the Supreme Court of the United States which hears few cases. Thousands apply and the year in which the court agreed to hear this appeal only about 150 cases were heard. They took this case. The Supreme Court of the United States then reversed the circuit court and sent the case back to the district court.

Now, had there been no requirement for an exhaustion of State court remedies, the case could have had one hearing in the Federal court, all of the issues would have been decided, and I think decided about the same way if we did not have State court proceedings, bearing in mind that there had already been a full decision by a State appellate court which had upheld the judgment of conviction in the first instance.

What we are really looking at with about 2,900 inmates on death row, there were only 38 cases in which the death penalty was carried out. It would be very much in the interests of the objective of swiftness and certainty to put an end to the long delays. Eliminating the requirement of exhaustion of State remedies would go a long way to achieving these goals.

The State prosecutors and the attorneys general, however, disagree with my view as to what is in the public interest on the issue of exhaustion. We have the same objective. That is, to make the punishment swift and certain, to eliminate the long delays which are a detriment to law enforcement and undermine the deterrent effect of the death penalty, not to have the matter come to closure for the families of the victims, and not to harm the interests of the defendants, as interpreted by some international tribunals, which say it is cruel and unusual punishment to have the cases last longer than 6 to 8 years, an issue also raised by two of the current Justices of the Supreme Court, as I mentioned earlier today. I will not go into that because of the limitation of time.

The issue of exhaustion of State remedies has been eliminated, however, because this bill does not abolish to exhaustion requirement. Unlie the resolution of this issue in the 1990 legislation, which passed the Senate, which eliminated the requirement of exhaustion of State remedies, that provision is not in this bill.

I refer to that to illustrate how uniformity and consensus cannot be achieved on these difficult issues, and different people will have different views. But what we come down to at bottom in this legislation that is currently crafted, I think, is a realistic compromise. I think defendants' rights are protected. There are increased protections in this legislation with the appointment of counsel. We have the requirement that there are timetables and limitations periods so the defendants' rights, the States rights, and the victims' rights are all protected.

I think it is a carefully crafted compromise which ought to be enacted to promote the interests of all parties involved. That is why I urge my colleagues to reject the amendment offered by the distinguished Senator from Delaware on this state of the record.

I thank my colleague for yielding to me at this time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague. I have enjoyed working with him on this Specter-Hatch habeas corpus reform. Without him I do not think we would be nearly as far along as we are, so I want to personally thank him for the efforts he has put forward.

Let me get back to what I was saying. Look at all the reviews these cases have: The trial, the direct review to the intermediate court, the direct review to the State supreme court, the direct review to the Supreme Court of the United States of America, petition to the Governor for clemency.

But that is not the end. In virtually every State a postconviction collateral proceeding exists. In other words, the petitioner can file a habeas corpus petition in State court. The petition is routinely subject to appellate review by an intermediate court and the State supreme court. The prisoner then may file a second petition in the U.S. Supreme Court and may also, of course, seek a second review of that by the Governor. So after conviction we have at least six levels of review by State courts, two rounds of review at least in capital cases by the State executive.

Contrary to the impression that may be left by some of my colleagues on the other side of this issue, Federal habeas review does not take place until well after conviction and numerous rounds of direct and collateral review.

The Supreme Court has clearly held in Goeke versus Branch that habeas review is not an essential prerequisite to conviction. Indeed, this very term the Supreme Court reaffirmed that principle that the Constitution does not even require direct review as a prerequisite for a valid conviction, and that is the Goeke case.

Now that we have the proper context for this debate, let us look at the proposed standard again. Under the standard contained in S. 735, Federal courts would be required to defer to the determinations of State courts unless the State court's decision was ''contrary to or involved an unreasonable application of clearly established Federal law as determined by the Supreme Court.''

That is a wholly appropriate standard. It enables the Federal court to overturn State court decisions that clearly contravene Federal law. Indeed, this standard essentially gives the Federal court the authority to review de novo whether the State court decided the claim in contravention of Federal law.

Moreover, the Federal standard, this review standard proposed in S. 735, allows the Federal court to review State court decisions that improperly apply clearly established Federal law. In other words, if the State court unreasonably applied Federal law its determination is subject to review by the Federal courts.

What does this mean? It means that if the State court reasonably applied Federal law, its decision must be upheld. Why is that a problematic standard? After all, Federal habeas review exists to correct fundamental defects in the law. If the State court has reasonably applied Federal law it is hard to say that a fundamental defect exists.

The Supreme Court in Harlow versus Fitzgerald has held that if the police officer's conduct was reasonable, no claim for damages under Bivens versus Six Unknown Agents can be maintained.

In Leon versus United States, the Supreme Court held if the police officer's conduct in conducting a search was reasonable, no fourth amendment violation ensues or would obtain, and the court could not order suppression of the evidence obtained as a result of the search.

The Supreme Court has repeatedly endorsed the principle that no remedy is available where the Government acts reasonably. Why, then, given this preference for reasonableness in the law, should we empower a Federal court to reverse a State court's reasonable application of Federal law to the facts? If we give that power that Senator BIDEN will give, we have hundreds of judges who do not like the death penalty, who are just going to give repeated habeas corpus reviews any time some clever defense lawyer demands it—which is exactly what we have today.

Our proposed standard simply ends the improper review of State court decisions. After all, State courts are required to uphold the Constitution and to faithfully apply Federal law so there is no reason for what the distinguished Senator from Delaware is arguing for.

He does not believe in the death penalty. I understand that. I respect him for that. But the arguments against meaningful habeas reform, like we have in this bill, are in reality arguments against the death penalty. If that is so, then let us debate the efficacy of the death penalty. Let us not continue frivolous appeal after frivolous appeal at a cost of billions of dollars in this society, just because we do not like the death penalty. Let us decide whether death is the appropriate sanction for people like those who murdered 168 individuals in Oklahoma City, for whom I am wearing this memorial set of ribbons pinned on me by the daughter of one of the victims, somebody, I have to say, by whom I was very moved.

I am prepared to debate the point on whether or not the death penalty is an appropriate penalty. But let us not disguise the argument under the guise of phony habeas corpus.

The second argument I think my friends are making is that they fundamentally distrust the decisions of the State courts. It is an insult to all of the wonderful, fine State court judges around this country. They cannot show cases that literally show that the State courts cannot do the job.

Let me just give an illustration. We have heard a lot about the Rubin Carter case, ''Hurricane'' Carter. The fact of the matter is we have heard all kinds of arguments relating to that case.

He is supposed to be an innocent individual, falsely held in prison despite his innocence. As a trial lawyer, I know that you should always be suspicious of alleged evidence offered at the last minute by your opponents. And this Carter case is no different.

Here, at the last minute, we hear about still one more apocryphal, highly disputed case on which there is absolutely no agreement whatsoever about the guilt or innocence of the defendant.

First we are told that Carter was falsely convicted in New York—well, he was convicted for murder—twice, but in New Jersey. Then we are told that he served 28 months, when, in fact, he served for nearly 20 years. And now, we are told, without any supporting proof, that he is innocent of the very murders that two juries have found—beyond a reasonable doubt—that he committed. And we are supposed to believe these unsupported allegations of innocence—allegations made by Senators who don't even know what State Rubin Carter was tried in?

These allegations are directly disputed by the prosecutors in New Jersey who know this case best. They are directly disputed by every jury and every court that has reviewed this case. And we should remember that it was Judge Lee Sarokin— a very liberal judge—who was the district judge that released Rubin Carter, after nearly 20 years in jail. And he released him not because he was innocent, but because of a procedural objection to the composition of the jury. An objection raised 20 years after the fact.

The Carter case does not show the value of Federal habeas corpus—the Carter case is a fresh indictment of the current system. It shows more clearly than ever, that if you can get your habeas petition before the right liberal Federal judge, you can get out of State prison, regardless of your innocence or guilt.

Here is what the New York Times—one of the most liberal papers in our Nation—said about Judge Sarokin's decision in the Carter case: it said that the judge's decision was ''flawed by excessive lecturing on the need for 'compassion' and the injustice of a possible third trial'' for Rubin Carter. Well, I submit that the Federal courts are not empaneled to provide compassion, they are there to provide justice. In the area of habeas, they are there to provide a constitutional back-up for constitutional issues. The Hatch/Dole bill preserves that function of the Federal courts.

The floor of the U.S. Senate is not the place to determine the guilt or innocence of persons involved in highly disputed cases. That is what hearings are for.

Where were these defenders of the alleged innocence of this three-time murderer when the Judiciary Committee held hearing after hearing on the specific question of whether habeas corpus was needed to protect innocent prisoners? They were nowhere.

I have asked witness after witness to show me a case—even one case—where Federal habeas corpus has been used to free an innocent man or woman, and not one case has been cited. Specifically, I asked Chief Judge Charles Clark of the fifth circuit if he could name even one case that he had ever seen in which Federal habeas corpus had resulted in the release or retrial of an innocent man. And he could not. Yet he was the chief judge of the largest circuit in the Nation—running from Texas to Florida in those days. Not one case.

So forgive me if I am a bit reluctant to accept today the unsupported allegations made on the Senate floor as to the alleged innocence of prisoners who have long been held to be guilty of serious crimes.'

It should also be pointed out that the Carter case rebuts entirely the point that the Senator from Delaware has made several times to the effect that habeas petitions only result in retrials—they do not result in release. So he says. But there was no retrial for Rubin Carter—nor could there be after 20 years. He was released outright—despite the jury verdict that he murdered three individuals.

(Ms. SNOWE assumed the chair.)

Mr. HATCH. We can go on and on. There are a number of others. Virtually every case brought up—I do not know the Garrett case, but every case brought up can be distinguished.

The Frank case, cited by Senator BIDEN, involved a lynching. There was nothing State or Federal corrective process could have done to help Mr. Frank. It was wrong that they lynched

him, but it happened. That case, decided in 1915, occurred at a very different time and under very different circumstances. That is not applicable to this debate. We can go on and on.

Madam President, this is the most important stage in criminal law in the last 30 years, and maybe in our lifetime. This is a change to stop the incessant frivolous appeals that are eating our country alive. We have the chance to really, really do something about this while at the same time protecting constitutional rights and civil liberties for everybody, and doing it in an appropriate, legally sound manner. This amendment will do that.

I hope we will vote down all of these amendments that we have heard debated here today.

I am prepared to yield back the remainder of my time.

I yield the remainder of my time.

I ask unanimous consent that the rollcall vote on the motion to table the Biden amendment No. 1253 be the standard 15-minute vote and that all remaining stacked votes be limited to 10 minutes each.

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

Mr. HATCH. Madam President, I ask unanimous consent—I have the approval of Senator Biden to do this—on behalf of myself and Senator BIDEN, that all action on amendment No. 1241 be vitiated, the Heflin amendment.

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

Mr. HATCH. Madam President, do we have rollcall votes ordered on every one of the amendments?

The PRESIDING OFFICER. We have rollcall votes ordered on the first three with the exception of 1224.

Mr. HATCH. I move to table the Biden amendment, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Madam President, a rollcall vote is ordered on one which is not a motion to table, and the rest are motions to table?

The PRESIDING OFFICER. The Senator is correct.

VOTE ON MOTION TO TABLE AMENDMENT NO. 1253

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Utah to lay on the table amendment No. 1253 offered by the Senator from Delaware [Mr. BIDEN]. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 65, nays 34, as follows:

[Rollcall Vote No. 238 Leg.]

YEAS—65

Abraham	Feinstein	McCain
Ashcroft	Ford	McConnell
Baucus	Frist	Murkowski
Bennett	Gorton	Nickles
Bond	Graham	Nunn
Brown	Gramm	Pressler
Bryan	Grams	Reid
Burns	Grassley	Robb
Byrd	Gregg	Rockefeller
Campbell	Hatch	Roth
Chafee	Hatfield	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Simpson
Cohen	Inhofe	Smith
Coverdell	Jeffords	Snowe
Craig	Johnston	Specter
D'Amato	Kassebaum	Stevens
DeWine	Kempthorne	Thomas
Dole	Kyl	Thompson
Domenici	Lott	Thurmond
Exon	Lugar	Warner
Faircloth	Mack	

NAYS—34

Akaka	Harkin	Mikulski
Biden	Heflin	Moseley-Braun
Bingaman	Hollings	Moynihan
Boxer	Inouye	Murray
Bradley	Kennedy	Packwood
Breaux	Kerrey	Pell
Bumpers	Kerry	Pryor
Daschle	Kohl	Sarbanes
Dodd	Lautenberg	Simon
Dorgan	Leahy	Wellstone
Feingold	Levin	
Glenn	Lieberman	

NOT VOTING—1

Conrad

So, the motion to lay on the table the amendment (No. 1253) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 1245, AS MODIFIED

The PRESIDING OFFICER. The question now occurs on agreeing to the motion to table amendment No. 1245, as modified, offered by the Senator from Michigan, Senator LEVIN. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 37, as follows:

[Rollcall Vote No. 239 Leg.]

YEAS—62

Abraham	Feinstein	McCain
Ashcroft	Ford	McConnell
Baucus	Frist	Murkowski
Bennett	Gorton	Nickles
Bond	Gramm	Nunn
Breaux	Grams	Pressler
Brown	Grassley	Reid
Burns	Gregg	Robb
Byrd	Hatch	Rockefeller
Campbell	Helms	Roth
Coats	Hutchison	Santorum
Cochran	Inhofe	Shelby
Cohen	Johnston	Simpson
Coverdell	Kassebaum	Smith
Craig	Kempthorne	Snowe
D'Amato	Kerrey	Stevens
DeWine	Kyl	Thomas
Dole	Lieberman	Thompson
Domenici	Lott	Thurmond
Exon	Lugar	Warner
Faircloth	Mack	

NAYS—37

Akaka	Bingaman	Bradley
Biden	Boxer	Bryan
Bumpers	Hollings	Moynihan
Chafee	Inouye	Murray
Daschle	Jeffords	Packwood
Dodd	Kennedy	Pell
Dorgan	Kerry	Pryor
Feingold	Kohl	Sarbanes
Glenn	Lautenberg	Simon
Graham	Leahy	Specter
Harkin	Levin	Wellstone
Hatfield	Mikulski	
Heflin	Moseley-Braun	

NOT VOTING—1

Conrad

So the motion to lay on the table the amendment (No. 1245), as modified, was agreed to.

VOTE ON AMENDMENT NO. 1211

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Arizona, Senator KYL.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 61, as follows:

[Rollcall Vote No. 240 Leg.]

YEAS—38

Ashcroft	Grams	McConnell
Brown	Grassley	Murkowski
Burns	Gregg	Nickles
Campbell	Helms	Pressler
Coats	Hutchison	Santorum
Cochran	Inhofe	Shelby
Coverdell	Kassebaum	Simpson
Craig	Kempthorne	Smith
D'Amato	Kyl	Stevens
Dole	Lott	Thomas
Domenici	Lugar	Thurmond
Faircloth	Mack	Warner
Gramm	McCain	

NAYS—61

Abraham	Feinstein	Lieberman
Akaka	Ford	Mikulski
Baucus	Frist	Moseley-Braun
Bennett	Glenn	Moynihan
Biden	Gorton	Murray
Bingaman	Graham	Nunn
Bond	Harkin	Packwood
Boxer	Hatch	Pell
Bradley	Hatfield	Pryor
Breaux	Heflin	Reid
Bryan	Hollings	Robb
Bumpers	Inouye	Rockefeller
Byrd	Jeffords	Roth
Chafee	Johnston	Sarbanes
Cohen	Kennedy	Simon
Daschle	Kerrey	Snowe
DeWine	Kerry	Specter
Dodd	Kohl	Thompson
Dorgan	Lautenberg	Wellstone
Exon	Leahy	
Feingold	Levin	

NOT VOTING—1

Conrad

So the amendment (No. 1211) was rejected.

VOTE ON MOTION TO TABLE AMENDMENT NO. 1224

The PRESIDING OFFICER. The question now occurs on the motion to table amendment No. 1224, offered by the Senator from Delaware [Mr. BIDEN]. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced, yeas 53, nays 46, as follows:

[Rollcall Vote No. 241 Leg.]

YEAS—53

Abraham	Feinstein	McConnell
Ashcroft	Frist	Murkowski
Baucus	Gorton	Nickles
Bennett	Gramm	Pressler
Bond	Grams	Reid
Brown	Grassley	Rockefeller
Burns	Gregg	Roth
Byrd	Hatch	Santorum
Campbell	Helms	Shelby
Coats	Hutchison	Simpson
Cochran	Inhofe	Smith
Coverdell	Kempthorne	Specter
Craig	Kyl	Stevens
D'Amato	Lieberman	Thomas
DeWine	Lott	Thompson
Dole	Lugar	Thurmond
Domenici	Mack	Warner
Faircloth	McCain	

NAYS—46

Akaka	Glenn	Levin
Biden	Graham	Mikulski
Bingaman	Harkin	Moseley-Braun
Boxer	Hatfield	Moynihan
Bradley	Heflin	Murray
Breaux	Hollings	Nunn
Bryan	Inouye	Packwood
Bumpers	Jeffords	Pell
Chafee	Johnston	Pryor
Cohen	Kassebaum	Robb
Daschle	Kennedy	Sarbanes
Dodd	Kerrey	Simon
Dorgan	Kerry	Snowe
Exon	Kohl	Wellstone
Feingold	Lautenberg	
Ford	Leahy	

NOT VOTING—1

Conrad

So the motion to lay on the table the amendment (No. 1224) was agreed to.

Mr. HATCH. Madam President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

The PRESIDING OFFICER. Without objection, the motion to lay on the table is agreed to.

Mr. HATCH. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Madam President, I ask unanimous consent that the quorum call be dispensed with.

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

AMENDMENT NO. 1254 TO AMENDMENT NO. 1199

Mr. HATCH. Madam President, on behalf of Senator BIDEN and myself, I send a managers' amendment to the desk, which is agreed to by us, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself and Mr. BIDEN, proposes an amendment No. 1254 to amendment No. 1199.

Mr. HATCH. I ask unanimous consent that further reading of the amendment dispensed with.

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

The amendment is as follows:

On page 5, lines 8 and 9, strike ''113 (a), (b), (c), or (f)'' and insert ''113(a) (1), (2), (3), (6), or (7)''.

On page 5, line 20, strike ''destructs'' and insert ''obstructs''.

On page 7, line 11, insert ''intent to commit murder or any other felony or with'' after ''assault with''.

On page 9, line 12, strike ''any manner in'' and insert ''interstate''.

On page 10, between lines 18 and 19, insert the following new subsection:

(f) EXPANSION OF PROVISION RELATING TO DESTRUCTION OR INJURY OF PROPERTY WITHIN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.—Section 1363 of title 18, United States Code, is amended by striking ''any building, structure or vessel, any machinery or building materials and supplies, military or naval stores, munitions of war or any structural aids or appliances for navigation or shipping'' and inserting ''any structure, conveyance, or other real or personal property''.

On page 13, strike lines 5 through 8 and insert the following:

(b) PENALTY FOR CARRYING WEAPONS OR EXPLOSIVES ON AN AIRCRAFT.—Section 46505 of title 49, United States Code, is amended—

(1) in subsection (b), by striking ''one'' and inserting ''10''; and

(2) in subsection (c), by striking ''5'' and inserting ''15''.

On page 23, line 23, strike ''2339A)'' and insert ''2339A of title 18, United States Code)''.

On page 29, line 25, strike ''determined'' and insert ''designated''.

On page 36, line 2, strike ''item of''.

On page 48, lines 21 and 22, strike ''Notwithstanding any other provision of law,''.

On page 60, strike lines 1 and 2, and insert ''Columbia not later than 30 days after receipt of actual notice under subsection (b)(6).''

On page 57, strike lines 18 and 20, and insert ''The designation shall take effect 30 days after the receipt of actual notice under subsection (b)(6), unless otherwise provided by law.''

On page 93, lines 22 through 24, strike ''to— '' and all that follows through ''(ii) expand'' and insert ''to expand''.

On page 95, line 15, strike ''shall provide'' and insert ''shall provide to appropriate State law enforcement officials, as designated by the chief executive officer of the State,''.

On page 95, strike line 23 and all that follows through page 96, line 2 and insert the following:

(D) ALLOCATION.—(i) Of the total amount appropriated pursuant to this section in a fiscal year—

(I) $500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(II) of the total funds remaining after the allocation under subclause (I), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this subparagraph as the population of such State bears to the population of all States.

(ii) DEFINITION.—For purposes of this subparagraph, 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 for purposes of the allocation under this subparagraph, American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one State and that for these purposes, 67 percent of the amounts allocated shall be allocated to American Samoa, and 33 percent to the Commonwealth of the Northern Mariana Islands.

On page 99, line 19, insert after ''Attorneys'' the following: ''and personnel for the Criminal Division of the Department of Justice''.

On page 99, between lines 21 and 22, insert the following:

''(c) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

On page 117, lines 3 and 4, strike ''right made retroactively applicable to cases on collateral review by the Supreme Court'' and insert ''right that is made retroactively applicable''.

On page 133, line 3, strike ''(a) IN GENERAL.—''.

On page 133, strike lines 8 through 10 and insert the following:

(B) in paragraph (2), by striking ''; or'' and inserting the following: ''and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce if such use had occurred;'';

(C) by redesignating paragraph (3) as paragraph (4);

(D) by inserting after paragraph (2) the following:

''(3) against a victim, or intended victim, that is the United States Government, a member of the uniformed services, or any official, officer, employee, or agent of the legislative, executive, or judicial branches, or any department or agency, of the United States; and''; and

(E) in paragraph (4), as redesignated, by inserting before the comma at the end the following: '', or is within the United States and is used in any activity affecting interstate or foreign commerce''.

On page 133, line 21, before the end quotation marks insert the following: ''The preceding sentence does not apply to a person performing an act that, as performed, is within the scope of the person's official duties as an officer or employee of the United States or as a member of the Armed Forces of the United States, or to a person employed by a contractor of the United States for performing an act that, as performed, is authorized under the contract.''.

On page 134, strike lines 1 through 8.

On page 140, line 20, insert after ''employee,'' the following: ''or any person assisting such an officer or employer in the performance of official duties,''.

On page 140, line 21, strike ''their official duties,'' and insert ''such duties or the provision of such assistance,''.

On page 141, line 1, insert ''or manslaughter as provided in section 1113'' after ''murder''.

On page 143, between lines 15 and 16, insert the following:

(i) CLARIFICATION OF MARITIME VIOLENCE JURISDICTION.—Section 2280(b)(1)(A) of title 18, United States Code, is amended—

(1) in clause (ii), by striking ''and the activity is not prohibited as a crime by the State in which the activity takes place''; and

(2) in clause (iii), by striking ''the activity takes place on a ship flying the flag of a foreign country or outside the United States,''.

On page 147, line 19, strike ''effective date of section 801'' and insert ''date of enactment of title VII''.

On page 148, line 13, insert ''of title VII'' after ''date of enactment''.

On page 148, line 18, insert ''of title VII'' after ''date of enactment''.

On page 149, lines 6 and 7, strike ''effective date of section 801'' and insert ''date of enactment of title VII''.

On page 152, strike lines 3 through 5 and insert the following: ''Except as otherwise provided in this title, this title and the amendments made by this title shall take effect 1 year after the date of enactment of this Act.''.

On page 160, between lines 11 and 12, insert the following:

SEC. 902. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE UNITED STATES PARK POLICE.

(a) IN GENERAL.—There are authorized to be appropriated from the General Fund of the Treasury for the activities of the United States Park Police, to help meet the increased needs of the United States Park Police, $1,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

SEC. 903. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.

(a) IN GENERAL.—There are authorized to be appropriated from the General Fund of the Treasury for the activities of the Administrative Office of the United States Courts, to help meet the increased needs of the Administrative Office of the United States Courts, $4,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

SEC. 904. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE UNITED STATES CUSTOMS SERVICE.

(a) IN GENERAL.—There are authorized to be appropriated from the General Fund of the Treasury for the activities of the United States Customs Service, to help meet the increased needs of the United States Customs Service, $10,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

On page 51, line 10, replace ''1252(a)'' with ''1252a''.

On page 51, line 14, insert ''of this title'' after ''section 101(a)(43)''.

Mr. HATCH. Madam President, I urge adoption of the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

So the amendment (No. 1254) was agreed to.

Mr. HATCH. I move to reconsider.

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

The motion to lay on the table was agreed to.

Mr. BRADLEY. Madam President, I rise in support of the Comprehensive Terrorism Prevention Act. The Oklahoma City bombing brought into sharp focus the reality and horror of domestic terrorism in America. The death toll of the bombing now stands at 167, making it the deadliest mass murder in the history of the United States. This legislation will enhance the ability of law enforcement to combat both foreign and domestic terrorism. It is a strong, adequate response to the serious problem of terrorism, and will provide the United States with the necessary tools to respond to the international and domestic terrorist threats and prosecute these despicable acts to the fullest extent of the law.

Madam President, I had wanted to offer an amendment to this bill that was designed to make a technical correction to the existing law banning handgun bullets capable of piercing body armor. Law enforcement represents the first line of defense against threats to our internal security. My amendment therefore was designed to give the maximum level of protection to our police officers by extending the current composition-based ban on cop-killing bullets to provide that any bullet capable of penetrating body armor will be banned, regardless of the bullet's physical composition. I decided not to pursue adoption of the amendment, however, because of my concern that it would slow action on this important bill. I intend to offer this amendment to the next appropriate vehicle.

Madam President, the provisions in this bill are vitally important to our efforts to respond to international and domestic threats of terrorism. I, therefore, fully support this bill, and I am confident that because of our actions today, America will be more fortified against the evils of terrorism.

Mr. PELL. Madam President. Today, as the Senate considers final passage of S. 735, legislation designed to combat domestic and international terrorism, I regret that I must oppose the final version of the bill. I regret it because I believe that appropriate steps can be taken by this Congress to add to the tools currently available to law enforcement to combat terrorism. Especially in light of the recent, horrific tragedy in Oklahoma City, enhancement of the ability to combat the growing menace of terrorism is timely and necessary.

However, as Congress rushes to respond, we can not let our fervor for action allow us to unwisely circumscribe basic protections long enshrined in our Constitution. Unfortunately, I believe that as the bill stands, the Senate has gone too far in changing and restricting the application and availability of the right to appeal court decisions under the writ of habeas corpus. This writ has been a fundamental part of our jurisprudence since our country's founding. It is a critical part of the means by which our system of justice guarantees that everyone has the opportunity for a fair trial and that the rights granted under the U.S. Constitution will be respected and enforced.

With this time-honored tradition of habeas corpus so much a part of the bedrock legal principles which underpin our society, why are we considering changing it all? The answer is clear and has been readily acknowledged by the proponents of this so-called reform: they want to expedite the execution of those who have received the death penalty. It is that simple. There is no other driving force behind these efforts; efforts which incidentally have been around for years now. Those who favor the death penalty are frustrated that appeals under habeas corpus are available for those who protest their innocence and claim they were denied a fair trial. They argue that with an appeals process that lasts for years, the deterrent effect of the death penalty is lost. Thus, they want to drastically limit the ability of those convicted of crimes and given the death penalty to appeal their convictions, despite the fact that the sentence, if carried out, is irreversible and final.

Let me be clear. I harbor no sympathy for those appropriately found guilty of murder and strongly believe that it is critical that they face certain and severe punishment, including life in prison without parole. The victims deserve no less, the criminal deserves no more. However, I do oppose the death penalty. I do so because I believe that the death penalty is not a conscionable punishment in a civilized society. The reason is obvious; the death penalty once carried out cannot be reversed if turns out that an individual really was innocent. Indeed, I note that the last time an individual was executed in my state of Rhode Island, it was later proved that he did not commit the crime. It strikes me as remarkable that in a legal system which has the death penalty, such as ours, that procedures would be sought which limit the opportunities otherwise available for an individual to prove his innocence. If anything, I believe that additional avenues should be available for the proof of innocence, not fewer. But the bill before us today does just that—it limits the rights of the accused to have their convictions reviewed for error. This is wrong and in my opinion, a sad day in the U.S. Senate.

Accordingly, I feel that the limited good done by the bill—by which I mean the commendable efforts to fight terrorism—is outweighed by the attack on habeas corpus which has been included. Interestingly enough, efforts to limit the changes in habeas corpus to apply only to Federal terrorism cases, the supposed reason for this bill, were rejected. The entire habeas corpus system, meaning for both those cases brought in State and Federal courts, has been changed. It brings into question the true motivations behind attaching this language to this bill—a bill that on its face has great public appeal and is being moved by a sense of urgency given the events in Oklahoma City in April. But despite my profound sympathy for the victims of the bombing in Oklahoma City—indeed as well as all terrorist acts—and my desire to do something about relieving the pain they suffer, I believe that in good conscience, I cannot support the bill as it stands given the changes it contains to habeas corpus.

JUDICIAL REVIEW OF CRIMINAL ALIEN CASES

Mr. KENNEDY. Madam President, section 303(e) broadens the class of criminal aliens subject to special expedited deportation procedures and eliminates all judicial review.

Every Member of this body is willing to take every reasonable step to punish criminal aliens and deport them from the United States.

But the Justice Department reports that this provision is a step backward

in our fight against crime. It disrupts strong provisions against criminal aliens enacted in last year's crime bill and only recently implemented through regulation. It ties the Attorney General's hands in obtaining convictions against criminal aliens. And it eliminates all judicial review in these cases—a major departure from fundamental principles of due process.

This provision harms our crime fighting efforts in at least three ways.

First, it eliminates the Attorney General's ability to target the removal of the most serious offenders within the resources she has available. It applies to all criminal aliens, regardless of the gravity of their offense. Under current law, only aggravated felons—those committing the most serious offenses—are placed in expedited proceedings. Under this section, however, all criminal aliens must be removed within 30 days, whether they are murderers or petty shoplifters.

An immigrant with an American citizen wife and children sentenced to 1-year probation for minor tax evasion and fraud would be subject to this procedure. And under this provision, he would be treated the same as ax murderers and drug lords. INS is required to detain him. He gets a quick deportation hearing from an immigration judge in the Justice Department and he is out within 30 days—no judicial review, no nothing.

Over the past 2 years, the President and Congress have increased substantially the number of immigration officers and immigration judges to handle these cases. As a result, over the next year, the administration will double the number of criminal aliens deported to more than 58,000.

But even with the additional funds, resources are still limited. The Justice Department would be required to divert resources from the Border Patrol, from naturalization, and from other important activities to accommodate this provision.

The Immigration Subcommittee is now considering legislation which will reform the criminal alien definitions. We should allow that process to proceed, rather than make premature and drastic changes in the current definition and due process.

The second way in which this provision harms law enforcement is that it requires the Attorney General to detain all those in this broadened category of criminal aliens, with no allowance for those whose home countries will not or cannot take them back. This is the case today with Cuba, Vietnam, and Bosnia. In these cases, the Attorney General would be required to keep the alien in indefinite detention, even if the offense is relatively light and the Attorney General believes the alien would pose no danger to the community.

This is a drastic and unnecessary expense to the taxpayer. It takes jail space and resources away from more pressing criminal enforcement.

Under this provision, a Cuban refugee convicted of shoplifting in certain States could face life imprisonment in an INS jail.

Finally, by providing that all criminal aliens be removed within 30 days of the issuance of a deportation order, the provision ignores real law enforcement needs. The 30-day requirement may be waived where criminal aliens are cooperating with law enforcement as witnesses. However, there is no allowance for other law enforcement purposes. For example, an alien convicted and ordered deported for one offense could not be held in the United States for trial under other offenses for which the alien may subsequently be charged.

In the World Trade Center bombing, for example, one of the suspected conspirators in the case was already in jail for another crime. Under this provision, he would be subjected to mandatory deportation within 30 days of the issuance of a deportation order for the first crime, and would not be available for prosecution under the second—and far more serious—crime.

In addition to undermining the war on crime, this amendment virtually eliminates the Attorney General's flexibility to grant discretionary relief from deportation for long-time permanent residents convicted of lesser crimes. This discretionary relief is available to permanent residents who have resided here for at least 7 years. It is granted if the immigration judge believes their equities in the United States—such as American citizen spouses or children or contributions to their communities—outweigh the gravity of their offense.

Under current law, permanent residents with aggravated felony convictions who serve at least 5 years in prison are ineligible for this discretionary relief from deportation. However, under this provision, this discretionary relief would be denied to permanent residents for carrying a concealed firearm, drug abuse, or addiction, in which no conviction would even be required, any drug offense involving more than 30 grams of marijuana, and other such crimes. They could live here productively for 30 years and have an American citizen wife and children. But for them, it is one strike and you are out.

Similarly, refugees could also be deported to the hands of their persecutors for relatively small offenses.

Under this provision, for example, a refugee from Rwanda could put a bill in the mailbox and realize he forgot to put a stamp on it. When he innocently tries to remove the letter from the mailbox and he is arrested for tampering with the mail—a felony. Due to poor representation, he accepts a plea bargained sentence of 1 year. To his surprise, he is suddenly subject to expedited deportation with no judicial review.

Under this provision, an older immigrant who came to the United States as a child but was never naturalized gets tired of a rash of robberies on her store and buys a firearm which she doesn't realize is illegal. She is convicted of a felony. Even though she is married to an American and has four U.S.-citizen children, she must be placed in expedited deportation proceedings with no recourse to the courts.

A long-time permanent resident could decide to go fishing. He hooks and kills what he does not realize is a rare fish, which is a strict liability felony with a mandatory minimum of 1 year. Even though he is married to an American and has U.S.-citizen children, he is convicted, serves his time, and is immediately deported with no prospect for judicial review.

These are the kinds of cases which can easily happen if this drastic provision is allowed to stand.

Even if we accept—as this provision proposes—that virtually any offense results in automatic deportation, the elimination of judicial review alone would be grounds for opposing this provision. This is a major departure from fair principles of due process.

The need for judicial review in this instance is obvious. Immigration judges in the Justice Department make mistakes.

For example, in a recent ninth circuit case, the panel reviewed an immigration judge's deportation order against someone convicted of drug trafficking who claimed to be a U.S. citizen but did not have a lawyer. The court found that the immigration judge's order was ''not based on substantial evidence.'' In this case, a possible U.S. citizen could have been erroneously deported if the court had not intervened.

It is because of cases such as these that the standing policy of the American Bar Association is that legislation should not:

> Limit the availability and scope of judicial review of administrative decisions under the Immigration and Nationality Act to less than what is provided . . . in the Administrative Procedures Act: in particular judicial review of . . . denials of stays of execution of exclusion or deportation orders . . . and constitutional and statutory writs of habeas corpus.

I had intended to offer an amendment to the counter-terrorism bill which would correct these problems. While I will not offer the amendment at this time, it is my hope that the grave problems of the current language will be addressed as the bill proceeds.

The provision in the pending bill would do nothing to enhance our ability to exclude suspected terrorists. It would impede current efforts to remove dangerous criminal aliens. And I hope it will be addressed at a later stage.

ALIEN TERRORIST REMOVAL ACT

Mr. SMITH. Madam President, I rise this afternoon to commend Senators DOLE and HATCH for incorporating my bill, S. 270, the Alien Terrorist Removal Act of 1995, into S. 735, the comprehensive antiterrorism legislation now before the Senate.

I also want to thank Senator SPECTER again for the opportunity to testify before his Terrorism Subcommittee last month regarding my alien terrorist removal bill.

My bill—now the alien terrorist removal title of S. 735—essentially embodies the Smith-Simpson amendment that the Senate passed unanimously as part of the crime bill in the last Congress. Unfortunately, certain House Members of the conference committee insisted on the removal of the Smith-Simpson amendment from the 1994 crime bill.

This year, however, Madam President, the Clinton administration proposed its own substantially identical version of my bill as a part of its omnibus antiterrorism legislation. Thus, I am confident that the alien terrorist removal title of S. 735 will enjoy broad bipartisan support here in the Senate, will be supported by the House as well, and will be signed into law by the President in the next few weeks.

Let me summarize briefly for the benefit of my colleagues what the alien terrorist removal title of S. 735 is all about. The alien terrorist removal provisions of the bill would establish a new, special, judicial procedure under which classified information can be used to establish the deportability of alien terrorists.

The new procedures provided under title III of S. 735 are carefully designed to safeguard national security interests, while at the same time according appropriate protection to the necessarily limited constitutional due process rights of aliens.

Under current law, Madam President, classified information cannot be used to establish the deportability of terrorist aliens. Thus, when there is insufficient unclassified information available to establish the deportability of a terrorist alien, the Government faces two equally unacceptable choices.

First, the Justice Department could declassify enough of its evidence against the alien in question to establish his deportability.

Sometimes, however, that simply cannot be done because the classified information in question is so sensitive that its disclosure would endanger the lives of human sources or compromise highly sensitive methods of intelligence gathering.

The Government's second, and equally untenable, choice would be simply to let the terrorist alien involved remain in the United States.

Unfortunately, that is not just a hypothetical situation. It happens in real cases. That is why the Department of Justice—under both Republican and Democratic Presidents and Attorneys General—has been asking for the authority granted by my bill—now title III of S. 735—since 1988.

Utilizing the existing definitions of terrorism in the Immigration Act of 1990 and of classified information in the Classified Information Procedures Act, title III of S. 735 would establish a special alien terrorist removal court made up of sitting U.S. District Judges that is modeled on the special court that was created by the Foreign Intelligence Surveillance Act.

Under title III of S. 735, the U.S. district judge sitting as the special court would personally review the classified information involved.

Without the compromising classified information, the alien in question would be provided an unclassified summary of the classified information involved.

Ultimately, the special court would determine whether, considering the record as a whole, the Justice Department has proven, by clear and convincing evidence, that the alien is a terrorist and should be removed from the United States.

Finally, any alien ordered removed under the provisions of title III of S. 735 would have the right to appeal to the full U.S. Court of Appeals for the District of Columbia Circuit.

In closing, let me say that the most serious threat that our Nation faces in the post-cold-war world is the scourge of terrorism.

Foreign terrorism came to our shores in 1993 with the World Trade Center bombing. Tragically, with the Oklahoma City bombing in April, we learned the bitter lesson that we face the threat of terrorism from domestic extremists as well.

Now, this historic 104th Congress is doing its job by moving quickly to respond to those twin threats. I urge the prompt passage of S. 735 and, once again, I commend the sponsors for incorporating my alien terrorist removal bill into their landmark legislation.

Mr. FEINGOLD. Madam President, after the despicable attack on the Murrah Federal building in Oklahoma City almost 2 months ago, I reacted with the same feelings of shock and outrage as millions of other Americans.

Those feelings run deeper than language can adequately describe. The pictures of the ravaged building, the stories of the victims and the families will never be forgotten.

Madam President, there should be absolutely no debate about our national resolve to fight terrorism and to keep it from our shores. No American wants to fear that the kind of thing that happened in Oklahoma or at the World Trade Center in New York will occur in their hometown or that one of their loved ones will be hurt by this kind of heinous act.

Fighting terrorism requires that we take strong and forceful steps to stop terrorists before they strike, and if they do strike, to prosecute, convict and punish them.

We need to make sure that law enforcement officers have the resources to investigate and prosecute terrorist acts; we need to give them tools to apprehend terrorists before they strike.

There are a number of provisions of this legislation that are aimed at achieving that goal, and I strongly support those proposals.

The bill would make available about $1.2 billion to increase law enforcement resources to carry out these tasks. There are provisions added during floor consideration to provide for tracer elements to be placed in explosives to help identify where these materials are likely to have originated. There are other provisions included in this bill that are also likely to help us fight terrorist threats.

Nevertheless, I intend to vote against this legislation. I believe that in the haste to respond to a national tragedy, we may be making mistakes that will be difficult to undo.

There are a number of provisions in this legislation that are problematic, and quite frankly, I am equally concerned about the process which brought this measure to the floor of the Senate, the hasty debate, and the pressure to clear the measure without understanding the implications of what is being proposed.

The Administration proposed legislation to deal with international terrorism earlier this year; that initial proposal was quickly reshaped as a result of the Oklahoma City tragedy into a bill to deal with domestic terrorism. Although hearings were held in the Judiciary Committee, the Committee never met to debate the bill, there is no committee report, and the measure which was called up by the leader was drafted in private and introduced shortly before many Members left town for the Memorial Day recess.

It has also become the vehicle for what is called ''habeas corpus reform.'' What is described as ''reform'' is in fact an attempt to rewrite and weaken what is known as the ''Great Writ''—the common law instrument that allowed citizens to challenge the lawfulness of their detention by the crown. Suddenly, habeas reform has become a tool for fighting terrorism. I find that a stretch of the imagination. What we have is a classic, political move to get another agenda wrapped into an emotionally charged, moving vehicle.

In the past year, many of our basic, fundamental protections against government intrusion contained in the Bill of Rights have been under assault. I think many Americans are unaware that these reform movements are in fact assaults upon fundamental rights—not just the rights of criminals, but the rights of all Americans to be free from government overreaching and harassment.

I spoke at some length earlier today on my very grave concerns about how the so-called habeas reforms engrafted into this bill aimed at speeding up executions threaten the rights of the innocent and raise the spectre of gross miscarriage of justice taking place.

There are also a number of other provisions of this bill that I believe are either not well thought out or misguided.

For example, last night the Senate adopted by a voice vote an amendment

authorizing a greater role for the military in domestic antiterrorism activities.

Provisions dealing with this issue were included in the administration's original proposal and they were of great concern to me and a number of Senators who do not believe that the military should be playing a role in domestic law enforcement efforts.

Madam President, one of the hallmarks of a democratic society is the separation of the military—whose primary function is to defend the Nation from outside threats—from internal law enforcement responsibilities. Military dictatorships use soldiers to enforce their laws; democracies do not.

This country has a very closely defined set of rules, arising out of the Bill of Rights itself and applied by our judicial system, which guarantee due process and fairness in the administration of justice. Law enforcement personnel are trained in carrying out these rules; soldiers are not.

I recognized, Madam President, that a very sincere effort was made by a number of the principal authors of these provisions to craft a very narrow exception to the posse comitatus law, the 1878 statute which limits the role of the military in domestic law enforcement activities.

However, I believe that both the process used to craft this amendment and the substance of this amendment are flawed. This broadening of the authority of the military, albeit in a narrow area, was not part of a bill reported by the committees of jurisdiction, but rather was introduced and voice voted within the span of a few hours last night. There were no hearings on this specific proposal, no committee report filed outlining the expectations of how it will operate, and no real public debate over its provisions. Rather, we had a voice vote on language most of us had first seen a few hours earlier.

That is not the way to deal with such a fundamental issue. There is no reason for this hasty disposition of this kind of important issue.

Beyond the process used, I have concerns about whether the amendment itself may operate to open the door to perhaps an even broader role for the military than even the administration had initially proposed. The administration's proposal did not explicitly give the military the authority to make an arrest, although it had language about disabling and disarming individuals that was troublesome. The amendment adopted last night gives the Department of Justice and the Department of Defense the authority to promulgate regulations governing the role of the military and provides that those regulations shall not authorize arrests by the military except under ''exigent circumstances'' or as otherwise authorized by law. In other words, the military is given the power to make arrests, but the regulations will limit that authority to certain circumstances.

Madam President, while I recognize the authority being created is limited to cases involving biological or chemical weapons, I am concerned that we have opened a door that may be hard to close in the future when the case is made that the military can play a greater role, for example, in the war on drugs or other areas which have been the subject of heightened public concern. I do not believe that it is necessary to give the military arrest powers within the U.S. If military needs to be involved in a domestic investigation, I believe that civilian law enforcement officials should be present and available to make any arrests needed. The notion that military personnel will be operating without accompanying civilian officials is very troubling. If authority is needed to detain an individual until a civilian law enforcement official arrives, arguments can be made for that authority, but that does not justify, in my mind, granting a direct power to make an arrest under any type of circumstances.

Madam President, in a similar vein, I am concerned about the amendment adopted yesterday which loosens the requirements in current law for issuance of a warrant for what is called a ''roaming'' or ''roving'' wiretap. The Fourth Amendment, in very explicit language, requires that no search warrant may issue unless ''particularly describing the place to be searched, and the persons or things to be seized.''

The Fourth Amendment was written in such precise terms because the drafters of the Constitution were aware of the practice of British authorities of obtaining sweeping search warrants that allowed them to search wherever and whenever they pleased. The rights of the people to be secure in their homes from government officials barging in was not a right recognized before the American revolution. It is perhaps a unique American right, but it is one that many of us regard as sacrosanct.

The requirement for specificity is especially important with respect to wire tap authority because a wire tap is particularly invasive—no one knows that a government agent is listening to your private conversations. The law has long required that a wire tap warrant be very narrowly and carefully drawn. Current law allows a roaming wire tap—that is one that moves from place to place—only where there is an allegation that the suspect is moving form place to place with the intent to avoid interception of the communication. The amendment adopted strikes the ''intent'' requirement and allows such a wiretap where the person's actions and conduct would have the effect of thwarting interception from a specified facility. Again, this provision opens the door to greater government powers. I am not convinced that an adequate case has been made that this broader and potentially abusive authority is needed.

There are other provisions of the bill that may also have problems that I will not take the time to outline here. In sum, I think the bill was hastily crafted and goes beyond what is needed to deal with a terrorist threat.

Madam President, less than a year ago, I confronted this same situation when the Clinton administration's crime bill came to a final vote on the floor of the Senate.

Just as with this bill, there were a number of provisions in that legislation that I supported. I supported the concept of putting more police officers on the streets. I supported prevention programs as sensible and cost-effective ways to head off criminal activity.

But I objected to other provisions.

I objected to the expansion of the death penalty, a form of state-sponsored violence that few civilized nations practice. I note in today's papers that the Supreme Court of South Africa, a nation that has executed people for 350 years has ruled that the death penalty violates that nation's constitution.

The pending legislation would also add new death penalties to federal law. I oppose those provisions as well.

I also opposed some of the provisions of last year's crime bill that I believed amounted to unnecessary and counterproductive Federal intrusion into the war on crime, which is best fought at the State and local level.

Because of these objections, I voted against that bill.

Because of my objections today, I am voting against this one.

I believe that we are acting in haste, making law from outrage and not from deliberation.

I believe that despite good intentions and provisions of the bill that would provide additional resources to law enforcement personnel fighting terrorists, that we are not passing a thoughtful, meaningful response to a real threat. Instead, we are rewriting habeas corpus law because some proponents of these changes saw an opportunity in this bill to move their agenda. We are opening the door to a greater role for Federal Government take actions that will invade the lives of our constituents without reasonable grounds.

When we act in haste, we multiply our chances of error and I see errors in this bill. I cannot support it.

Mrs. MURRAY. Madam President, I rise today to speak in support of S. 735, the antiterrorism bill.

This bill poses serious dilemmas for me, and for this Congress. It requires us to face some of the real dangers that exist in the modern world, and it motivates us to act in the interest of protecting the people. But it also makes us face the cost of freedoms we enjoy as Americans.

It is disturbing to me when the Congress is faced with a decision to increase protection for the people by chipping away at the edges of freedom.

But in this case, the imperative is clear. We have heard many compelling

stories on this floor about the horrors of Oklahoma City, the tragedy of the World Trade Center. These stories are real; they involved real Americans in today's world. I need not repeat these stories here. Let me simply acknowledge what we all feel: These events have shaken every American to the core of their being. To reduce the likelihood of such events occurring in the future, and to preserve a peaceful existence for Americans, we must act.

We must empower our law enforcement officials to zero in on terrorist organizations, at home and abroad. This bill does that.

We must make these crimes a high priority within the judicial system, and clearly subject terrorist activities to prosecution. This bill does that.

We must cripple the ability of terrorists to finance their activities in our own backyard. This bill does that.

We must draw on all the expertise of the Government, including the military where appropriate. This bill does that.

This bill contains many provisions that will improve our ability as a nation to prevent, combat, and prosecute against terrorist activities. As a result of the World Trade Center and Oklahoma City bombings, we owe it to the victims to act. As Senators in an increasingly dangerous world, we owe it to all citizens to protect the quality of life unique to the United States of America. Therefore, I will support S. 735.

Madam President, having said that, I must add a few concerns. I do not think it is ever a good idea to legislate in the heat of the moment. Cases like this are most susceptible to the laws of unintended consequences. As we broaden the reach of law enforcement, and as we broaden the application of penalties, we as elected officials have an equal obligation to keep from unnerving the people we are trying to protect. We have no idea what kind of mistakes will be made, or whose rights will be infringed, when this bill is implemented. It will be critically important for law enforcement officials of all types to keep in mind the responsibilities to protect the citizens that go along with the kind of broad new powers we are bestowing on them.

Likewise, we have to recognize the dangers of internal hatred and anger. If there is one thing we can conclude from recent tragedies, it is this: We must remain vigilant against extremism of all types. These are forces that may be motivated by legitimate feelings of frustration with the Government. But there are very clear lines that we must not cross. Our system of Government is geared toward discourse and debate; if we lose the ability to air out our differences through honest debate, and if we cannot agree to disagree when we have to, the entire country will suffer. We all have a responsibility to zealously defend our collective rights to democratic government.

To this end, I feel strongly that all of us—politicians, activists, citizens—have a contribution to make toward maintaining civil discourse. We can improve the environment dramatically by simply toning down the rhetoric. If we are going to protect constitutional democracy and our rights as citizens to express our opinions, we have to learn to respect each other as people.

Finally, Madam President, I would like to add a comment regarding the amendment offered by the ranking member of the Judiciary Committee, Senator BIDEN. He rightfully pointed out that this legislation takes on an issue that is far too complicated to resolve here: habeas corpus reform. This is the wrong time and the wrong bill on which to attempt to resolve a debate that has raged in this country for years. As I said before, I believe it is unwise to legislate in the heat of the moment. By including the limits on habeas corpus in this bill, the majority is doing just that. I believe the Senate should instead have a thorough, thoughtful debate about habeas corpus independent of this legislation. It is simply too important to run through the Senate on a bill narrowly targeting antiterrorism activities.

Therefore, I support the Biden amendment. While it is obvious the votes are not there to postpone the debate over habeas corpus to a later time, at least the point has been made on the Senate floor.

Madam President, I hope my remarks are persuasive in pointing out the dilemmas in passing this legislation. While we can take comfort knowing this bill strengthens the hand of law enforcement to aggressively pursue terrorists, none of us should take comfort in what it might mean for innocents caught in the middle as the antiterrorism effort intensifies. I support S. 735 with some reluctance, and sincerely hope that authorities will use their new powers as judiciously as the spirit of freedom implores.

Madam President, on Monday, June 5, the Senate adopted by a vote of 90–0 an amendment by the Senator from California, Senator FEINSTEIN, to require the use of taggants to mark materials used in the construction of explosives. I was unavoidably detained, and therefore not present for that vote. I apologize to the leaders for my absence; had I been present, I would have voted ''aye'' on the Feinstein amendment. If there is one straight-forward thing we can do to help law enforcement investigate bombings, it is requiring the use of taggants.

Mr. WARNER. Madam President, the horrific April 19 bombing of the Alfred P. Murrah Federal Building in Oklahoma City shocked and stunned Americans. Every single one of us has been forced to confront the risks and the vulnerability of our open society. The United States needs a systematic and comprehensive counterterrorism policy to detect, deter, prevent, and punish terrorist acts.

Congress must consider and pass an effective antiterrorism bill; we must do so on a bipartisan basis. The problem is too dangerous to be treated in a partisan manner. We must stand together to protect the citizens of the United States.

One of the greatest fears that we all have for the safety of our citizens is the use of weapons of mass destruction by terrorist elements. As demonstrated by the recent Tokyo subway tragedy, even very limited use of chemical agents can cause widespread death and disaster. We must ensure that our Nation has the ability to marshall all available assets and expertise to deal with the potential use of mass destruction by terrorists.

For that reason, I am pleased to join in cosponsoring an amendment to authorize Department of Defense assistance to law enforcement authorities in emergency situations involving biological and chemical weapons. This amendment is patterned on authority which currently exists for the Department of Defense to provide technical assistance to incidents involving nuclear weapons and materiel. The amendment has been carefully drawn to limit the involvement of the military in law enforcement activities. Indeed, we have focused on the critical need to marshall the unique expertise of the military for use in these catastrophic situations.

The legislation pending before the Senate today will lay the foundation for an antiterrorism plan for America.

As the Senate considers legislation directed at antiterrorism, I am aware that we will also consider subsequently during this session modified anticrime legislation. I will continue to support measures that will provide local and State officials, and law enforcement personnel, the appropriate resources needed to combat the rising crime rate. This week, the Federal Bureau of Investigation released preliminary crime reports for 1994. The reports showed crime rates dropping from the year before. The crime rate may appear to decrease slightly, but not enough to calm the fears of many citizens. Crime will continue to terrorize Americans until the Congress can assist the States with adequate funds and legal tools necessary to make a drastic reduction in the crime rate.

I have no doubt that the General Services Administration has stepped up security at our Federal buildings as a result of the tragic events which occurred in Oklahoma City. The House held hearings on Federal building security shortly after the event.

As the chairman of the Subcommittee on Transportation and Infrastructure, it is my intention to hold a hearing soon regarding building security under the auspices of the Federal Protective Service of the GSA.

I am increasingly concerned by recent reports which have indicated that memos produced within GSA have indicated internal skepticism about how reductions in the Federal Protective

Service of the GSA could adversely affect the agency's ability to assess and analyze Federal building security in the District of Columbia, Maryland, and Virginia.

It is my intention to review this matter for the Senate.

Madam President, while the Senate debates the legislation before us today, we must all realize that no legislation can make America totally safe. An open, democratic society simply will not allow for total and absolute security for our Nation.

Because of the freedom our society demands, we must be evervigilant concerning possible threats to our citizens. I have always been totally committed to maintaining the readiness of our Armed Forces whenever a threat to our national security becomes imminent. I am also totally committed to maintaining the readiness of our Federal, State, and local law enforcement personnel to confront any domestic threat which may arise anywhere in the United States.

I do have a major concern with this legislation: we must ensure that its provisions do not violate the Constitution or place inappropriate restrictions on the personal freedoms protected by the first amendment. I will not support provisions which will prohibit free exercise of religion or speech, or which impinge on the freedom of association.

Mr. CRAIG. Madam President, I abhor and condemn terrorism in any form. Our Nation cannot tolerate terrorism—be it foreign or domestic—and our Nation's law enforcement must have the tools it needs to fight this menace.

There are some very important reforms in this bill that would be helpful. They include habeas corpus reform, which is the only change that will really have an impact in the Oklahoma City case.

I will vote for this bill in order to send a strong message of support for those reforms to the House and any future House-Senate conference working on this legislation.

However, for the record, my vote is not an endorsement of each and every provision of this bill. I am not convinced that the bill before us today is the best we can do to assist law enforcement in fighting against terrorism, and I would like to discuss some of the specific reservations I have.

First and foremost are potential constitutional problems such as those relating to the sections on restricting fundraising, excluding and deporting aliens, the new wiretapping authority we adopted last night, and acquisition of information including consumer records.

In all fairness, there are conflicting opinions even among my colleagues who are lawyers about whether some of these provisions will survive court review. I have been assured that the safeguards contained in the bill are sufficient to overcome potential constitutional problems. For that reason, I have decided not to oppose the entire bill on this basis. However, I remain concerned about these provisions and would hope they can be further improved before the Senate takes action on a final bill.

Another section of the bill that I think could be improved is the new language relating to taggants in explosives. Although I joined a unanimous Senate in voting for changes made on the floor during debate, I am not by any means convinced this is the best way to approach that issue. After the Senate acted, I was contacted by several resource-based industries in my State suggesting concerns that had not been raised or reviewed previously. I hope the House and any future conference will take a close look at that section and make improvements that will balance the interests of law enforcement with those of the affected industries.

There are other items in this bill that I question, but those are some of the most important, I do not think we would be sacrificing any tools needed by law enforcement if we were to make improvements in these sections.

I commend the majority leader and Senator HATCH for their hard work to deliver a bill that will strengthen the hand of law enforcement in fighting terrorism. I hope the bill will be improved as it moves through the remaining steps of the legislative process, so that I can vote for a truly effective package.

Mr. BIDEN. Madam President, the Oklahoma City bombing and the earlier bombing of the World Trade Center demonstrate clearly that the United States must respond seriously to those—whether foreign or domestic—who seek to make their point through the mass killing of Americans.

These events demand that we examine our current laws and practices to ensure that we are doing everything that is necessary and appropriate to guard against the threat. We must take strong action to counteract terrorism, both foreign and domestic.

There are steps we can take and should take.

Let me outline the key terrorism proposals from the President's bill that are contained in the substitute we will vote on shortly. These provisions include:

A new offense to assure Federal jurisdiction over all violent acts which are motivated by international terrorism.

This provision will cover gaps in current Federal law—for example, a terrorist who commits mass murder on private or State-owned property may now be subject only to State court jurisdiction.

This offense carries a new death penalty, complementing the terrorism death penalty in last year's crime bill.

The bill will implement an international treaty to require a detection agent to be added to plastic explosives.

It will enhance the Government's ability to obtain consumer credit reports and hotel/motel and vehicle rental records in foreign intelligence investigations. It does not change the law governing such information for domestic investigations.

It gives the Government greater ability to exclude from entering the United States those aliens who are involved in terrorist activities.

Let me also mention the amendments offered by Democrats to add tough law enforcement provisions to the Republican bill.

The Lieberman amendment, which was adopted, expands wiretap authority. It gives new authority for multiple-point wiretaps provided to Federal law enforcement.

Another Lieberman amendment, which was defeated, with no Republicans voting for it, gives authority for emergency wiretaps—identical to authority currently available for organized crime investigations—in terrorist investigations.

The Feinstein amendment, which was adopted, requires taggants. It gives authority to Secretary of the Treasury to require taggants in explosives. Taggants assist law enforcement by providing a means to trace the source of an explosive.

The Nunn-Thurmond-Biden-Warner amendment, also adopted, gives new assistance against chemical and biological weapons. The posse comitatus exception to allow the use of military to assist in the investigations of chemical and biological weapons.

The Kerrey amendment, also adopted, increases funding for Federal antiterrorist enforcement. It adds $262 million for ATF new explosives investigators and for Secret Service security initiatives.

The Boxer amendment, again, adopted, increases penalties for gun and explosives crimes. It extends statute of limitations for National Firearms Act offenses.

A Levin amendment, adopted by the Senate, increases penalties for the use of explosives.

A Feinstein amendment, again, adopted, prohibits the distribution of bombmaking material intended to be used for a crime.

A Leahy amendment, first as adopted, assists victims of terrorist attacks. It provides assistance and compensation for victims of terrorist attacks.

The Leahy-McCain amendment, as adopted, raises special assessment on criminal penalties.

The Specter-Simon-Kennedy amendment, as adopted, deports criminal aliens. It enhances protection of classified information when deporting alien terrorists.

Another Feinstein amendment, also adopted, increases international efforts against terrorism. It prohibits arms sales to countries who are not cooperating fully with U.S. antiterrorist efforts.

Particularly with these tough amendments now added to the bill, this counterterrorism is a big step forward

in giving law enforcement new tools to fight and prevent terrorism. I urge my colleagues to support the bill.

The PRESIDING OFFICER. The Senator majority leader.

Mr. DOLE. Let me announce for my colleagues, we are going to move to the telecommunications bill after this vote, and I understand Senator HOLLINGS and Senator PRESSLER are ready to do that. We will have opening statements. I have an amendment that I will offer. I think the distinguished Democratic leader has an amendment he may offer. These amendments may be accepted. But we are trying to find a couple of bona fide amendments that can be offered tonight and voted on in the morning.

If that is the case, if we have a couple, we can debate those amendments tonight and not have any more votes tonight and have those votes in the morning.

I will assume we can find one additional amendment so this will be the last vote tonight. Any votes that are ordered tonight will occur probably fairly early in the morning, around 9 o'clock.

Mr. HATCH. Madam President, are the yeas and nays ordered?

The PRESIDING OFFICER. No, they have not been ordered.

Mr. HATCH. I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question now occurs on agreeing to amendment No. 1199, as amended.

So the amendment (No. 1199), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 91, nays 8, as follows:

[Rollcall Vote No. 242 Leg.]

YEAS—91

Abraham	Bryan	Daschle
Akaka	Bumpers	DeWine
Ashcroft	Burns	Dodd
Baucus	Byrd	Dole
Bennett	Campbell	Domenici
Biden	Chafee	Dorgan
Bingaman	Coats	Exon
Bond	Cochran	Faircloth
Boxer	Cohen	Feinstein
Bradley	Coverdell	Ford
Breaux	Craig	Frist
Brown	D'Amato	Glenn
Gorton	Kerrey	Pryor
Graham	Kerry	Reid
Gramm	Kohl	Robb
Grams	Kyl	Rockefeller
Grassley	Lautenberg	Roth
Gregg	Leahy	Santorum
Harkin	Levin	Sarbanes
Hatch	Lieberman	Shelby
Heflin	Lott	Simpson
Helms	Lugar	Smith
Hollings	Mack	Snowe
Hutchison	McCain	Specter
Inhofe	McConnell	Stevens
Inouye	Mikulski	Thomas
Jeffords	Murkowski	Thompson
Johnston	Murray	Thurmond
Kassebaum	Nickles	Warner
Kempthorne	Nunn	
Kennedy	Pressler	

NAYS—8

Feingold	Moynihan	Simon
Hatfield	Packwood	Wellstone
Moseley-Braun	Pell	

NOT VOTING—1

Conrad

So the bill (S. 735), as amended, was passed as follows:

S. 735

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Comprehensive Terrorism Prevention Act of 1995''.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—SUBSTANTIVE CRIMINAL LAW ENHANCEMENTS

Sec. 101. Increased penalty for conspiracies involving explosives.
Sec. 102. Acts of terrorism transcending national boundaries.
Sec. 103. Conspiracy to harm people and property overseas.
Sec. 104. Increased penalties for certain terrorism crimes.
Sec. 105. Mandatory penalty for transferring an explosive material knowing that it will be used to commit a crime of violence.
Sec. 106. Penalty for possession of stolen explosives.
Sec. 107. Enhanced penalties for use of explosives or arson crimes.
Sec. 108. Increased periods of limitation for National Firearms Act violations.

TITLE II—COMBATING INTERNATIONAL TERRORISM

Sec. 201. Findings.
Sec. 202. Prohibition on assistance to countries that aid terrorist states.
Sec. 203. Prohibition on assistance to countries that provide military equipment to terrorist states.
Sec. 204. Opposition to assistance by international financial institutions to terrorist states.
Sec. 205. Antiterrorism assistance.
Sec. 206. Jurisdiction for lawsuits against terrorist states.
Sec. 207. Report on support for international terrorists.
Sec. 208. Definition of assistance.
Sec. 209. Waiver authority concerning notice of denial of application for visas.
Sec. 210. Membership in a terrorist organization as a basis for exclusion from the United States under the Immigration and Nationality Act.

TITLE III—ALIEN REMOVAL

Sec. 301. Alien terrorist removal.
Sec. 302. Extradition of aliens.
Sec. 303. Changes to the Immigration and Nationality Act to facilitate removal of alien terrorists.
Sec. 304. Access to certain confidential immigration and naturalization files through court order.

TITLE IV—CONTROL OF FUNDRAISING FOR TERRORISM ACTIVITIES

Sec. 401. Prohibition on terrorist fundraising.
Sec. 402. Correction to material support provision.

TITLE V—ASSISTANCE TO FEDERAL LAW ENFORCEMENT AGENCIES

Subtitle A—Antiterrorism Assistance

Sec. 501. Disclosure of certain consumer reports to the Federal Bureau of Investigation for foreign counterintelligence investigations.
Sec. 502. Access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in foreign counterintelligence and counterterrorism cases.
Sec. 503. Increase in maximum rewards for information concerning international terrorism.

Subtitle B—Intelligence and Investigation Enhancements

Sec. 511. Study and report on electronic surveillance.
Sec. 512. Authorization for interceptions of communications in certain terrorism related offenses.
Sec. 513. Requirement to preserve evidence.

Subtitle C—Additional Funding for Law Enforcement

Sec. 521. Federal Bureau of Investigation assistance to combat terrorism.
Sec. 522. Authorization of additional appropriations for the United States Customs Service.
Sec. 523. Authorization of additional appropriations for the Immigration and Naturalization Service.
Sec. 524. Drug Enforcement Administration.
Sec. 525. Department of Justice.
Sec. 526. Authorization of additional appropriations for the Department of the Treasury.
Sec. 527. Funding source.
Sec. 528. Deterrent against Terrorist Activity Damaging a Federal Interest Computer.

TITLE VI—CRIMINAL PROCEDURAL IMPROVEMENTS

Subtitle A—Habeas Corpus Reform

Sec. 601. Filing deadlines.
Sec. 602. Appeal.
Sec. 603. Amendment of Federal Rules of Appellate Procedure.
Sec. 604. Section 2254 amendments.
Sec. 605. Section 2255 amendments.
Sec. 606. Limits on second or successive applications.
Sec. 607. Death penalty litigation procedures.
Sec. 608. Technical amendment.

Subtitle B—Criminal Procedural Improvements

Sec. 621. Clarification and extension of criminal jurisdiction over certain terrorism offenses overseas.
Sec. 622. Expansion of territorial sea.
Sec. 623. Expansion of weapons of mass destruction statute.
Sec. 624. Addition of terrorism offenses to the RICO statute.
Sec. 625. Addition of terrorism offenses to the money laundering statute.

Sec. 626. Protection of current or former officials, officers, or employees of the United States.
Sec. 627. Addition of conspiracy to terrorism offenses.
Sec. 628. Clarification of Federal jurisdiction over bomb threats.

TITLE VII—MARKING OF PLASTIC EXPLOSIVES

Sec. 701. Findings and purposes.
Sec. 702. Definitions.
Sec. 703. Requirement of detection agents for plastic explosives.
Sec. 704. Criminal sanctions.
Sec. 705. Exceptions.
Sec. 706. Investigative authority.
Sec. 707. Effective date.
Sec. 708. Study and requirements for tagging of explosive materials, and study and recommendations for rendering explosive components inert and imposing controls on precursors of explosives.

TITLE VIII—NUCLEAR MATERIALS

Sec. 801. Findings and purpose.
Sec. 802. Expansion of scope and jurisdictional bases of nuclear materials prohibitions.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. Prohibition on distribution of information relating to explosive materials for a criminal purpose.
Sec. 902. Designation of Cartney Koch McRaven Child Development Center.
Sec. 903. Foreign air travel safety.
Sec. 904. Proof of citizenship.
Sec. 905. Cooperation of fertilizer research centers.
Sec. 906. Special assessments on convicted persons.
Sec. 907. Prohibition on assistance under Arms Export Control Act for countries not cooperating fully with United States antiterrorism efforts.
Sec. 908. Authority to request military assistance with respect to offenses involving biological and chemical weapons.
Sec. 909. Revision to existing authority for multipoint wiretaps.
Sec. 910. Authorization of additional appropriations for the United States Park Police.
Sec. 911. Authorization of additional appropriations for the Administrative Office of the United States Courts.
Sec. 912. Authorization of additional appropriations for the United States Customs Service.
Sec. 913. Severability.

TITLE X—VICTIMS OF TERRORISM ACT

Sec. 1001. Title.
Sec. 1002. Authority to provide assistance and compensation to victims of terrorism.
Sec. 1003. Funding of compensation and assistance to victims of terrorism, mass violence, and crime.
Sec. 1004. Crime victims fund amendments.

TITLE I—SUBSTANTIVE CRIMINAL LAW ENHANCEMENTS

SEC. 101. INCREASED PENALTY FOR CONSPIRACIES INVOLVING EXPLOSIVES.

Section 844 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as those prescribed for the offense the commission of which was the object of the conspiracy.''.

SEC. 102. ACTS OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.

(a) REDESIGNATION.—(1) Chapter 113B of title 18, United States Code (relating to torture) is redesignated as chapter 113C.

(2) The chapter analysis of title 18, United States Code, is amended by striking ''113B'' the second place it appears and inserting ''113C''.

(b) OFFENSE.—Chapter 113B of title 18, United States Code, is amended by inserting after section 2332a the following new section:

''§ 2332b. Acts of terrorism transcending national boundaries

''(a) PROHIBITED ACTS.—

''(1) Whoever, in a circumstance described in subsection (b), commits an act within the United States that if committed within the special maritime and territorial jurisdiction of the United States would be in violation of section 113(a), (1), (2), (3), (6), or (7), 114, 1111, 1112, 1201, or 1363 shall be punished as prescribed in subsection (c).

''(2) Whoever threatens, attempts, or conspires to commit an offense under paragraph (1) shall be punished under subsection (c).

''(b) JURISDICTIONAL BASES.—

''(1) This section applies to conduct described in subsection (a) if—

''(A) the mail, or any facility utilized in interstate commerce, is used in furtherance of the commission of the offense;

''(B) the offense obstructs, delays, or affects interstate or foreign commerce in any way or degree, or would have obstructed, delayed, or affected interstate or foreign commerce if the offense had been consummated;

''(C) the victim or intended victim is the United States Government or any official, officer, employee, or agent of the legislative, executive, or judicial branches, or of any department or agency, of the United States;

''(D) the structure, conveyance, or other real or personal property was in whole or in part owned, possessed, or used by, or leased to the United States, or any department or agency thereof;

''(E) the offense is committed in the territorial sea (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) of the United States; or

''(F) the offense is committed in places within the United States that are in the special maritime and territorial jurisdiction of the United States.

''(2) Jurisdiction shall exist over all principals, coconspirators, and accessories after the fact, of an offense under subsection (a) if at least one of the circumstances described in paragraph (1) is applicable to at least one offender.

''(c) PENALTIES.—

''(1) Whoever violates this section shall, in addition to the punishment provided for any other crime charged in the indictment, be punished—

''(A) if death results to any person, by death, or by imprisonment for any term of years or for life;

''(B) for kidnapping, by imprisonment for any term of years or for life;

''(C) for maiming, by imprisonment for not more than 35 years;

''(D) for assault with intent to commit murder or any other felony or with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years;

''(E) for destroying or damaging any structure, conveyance, or other real or personal property, by imprisonment for not more than 25 years;

''(F) for attempting or conspiring to commit the offense, for any term of years up to the maximum punishment that would have applied had the offense been completed; and

''(G) for threatening to commit the offense, by imprisonment for not more than 10 years.

''(2) Notwithstanding any other provision of law, the court shall not place on probation any person convicted of a violation of this section.

''(d) LIMITATION ON PROSECUTION.—No indictment for any offense described in this section shall be sought by the United States except after the Attorney General, or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions, has made a written certification that, in the judgment of the certifying official—

''(1) such offense, or any activity preparatory to its commission, transcended national boundaries; and

''(2) the offense appears to have been intended to coerce, intimidate, or retaliate against a government or a civilian population, including any segment thereof.

''(e) INVESTIGATIVE RESPONSIBILITY.—Violations of this section shall be investigated by the Federal Bureau of Investigation. Nothing in this section shall be construed to interfere with the authority of the United States Secret Service under section 3056, or with its investigative authority with respect to sections 871 and 879.

''(f) EVIDENCE.—In a prosecution under this section, the United States shall not be required to prove knowledge by any defendant of a jurisdictional base alleged in the indictment.

''(g) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over—

''(1) any offense under subsection (a); and

''(2) conduct that, under section 3, renders any person an accessory after the fact to an offense under subsection (a).

''(h) DEFINITIONS.—As used in this section—

''(1) the term 'commerce' has the meaning given such term in section 1951(b)(3);

''(2) the term 'facility utilized in interstate commerce' includes means of transportation, communication, and transmission;

''(3) the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

''(4) the term 'serious bodily injury' has the meaning given such term in section 1365(g)(3); and

''(5) the term 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.''.

(c) TECHNICAL AMENDMENT.—The chapter analysis for Chapter 113B of title 18, United States Code, is amended by inserting after the item relating to section 2332a, the following new item:

''2332b. Acts of terrorism transcending national boundaries.''.

(d) STATUTE OF LIMITATIONS AMENDMENT.—Section 3286 of title 18, United States Code, is amended—

(1) by striking ''any offense'' and inserting ''any noncapital offense'';

(2) by striking ''36'' and inserting ''37'';

(3) by striking ''2331'' and inserting ''2332'';

(4) by striking ''2339'' and inserting ''2332a''; and

(5) by inserting ''2332b (acts of terrorism transcending national boundaries),'' after ''(use of weapons of mass destruction),''.

(e) PRESUMPTIVE DETENTION.—Section 3142(e) of title 18, United States Code, is amended by inserting ''or section 2332b'' after ''section 924(c)''.

(f) EXPANSION OF PROVISION RELATING TO DESTRUCTION OR INJURY OF PROPERTY WITHIN

SPECIAL MARITIME AND TERRITORIAL JURISDICTION.—Section 1363 of title 18, United States Code, is amended by striking ''any building, structure or vessel, any machinery or building materials and supplies, military or naval stores, munitions of war or any structural aids or appliances for navigation or shipping'' and inserting ''any structure, conveyance, or other real or personal property''.

SEC. 103. CONSPIRACY TO HARM PEOPLE AND PROPERTY OVERSEAS.

(a) IN GENERAL.—Section 956 of title 18, United States Code, is amended to read as follows:

''§ 956. Conspiracy to kill, kidnap, maim, or injure certain property in a foreign country

''(a)(1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons is located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States, shall, if he or any such other person commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in paragraph (2).

''(2) The punishment for an offense under paragraph (1) is—

''(A) imprisonment for any term of years or for life if the offense is conspiracy to murder or kidnap; and

''(B) imprisonment for not more than 35 years if the offense is conspiracy to maim.

''(b) Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons is located, to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield, or other public utility, public conveyance, or public structure, or any religious, educational, or cultural property so situated, shall, if he or any such other person commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than 25 years.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 45 of title 18, United States Code, is amended by striking the item relating to section 956 and inserting the following:

''956. Conspiracy to kill, kidnap, maim, or injure certain property in a foreign country.''.

SEC. 104. INCREASED PENALTIES FOR CERTAIN TERRORISM CRIMES.

(a) IN GENERAL.—Title 18, United States Code, is amended—

(1) in section 114, by striking ''maim or disfigure'' and inserting ''torture (as defined in section 2340), maim, or disfigure'';

(2) in section 755, by striking ''two years'' and inserting ''five years'';

(3) in section 756, by striking ''one year'' and inserting ''five years'';

(4) in section 878(a), by striking ''by killing, kidnapping, or assaulting a foreign official, official guest, or internationally protected person'';

(5) in section 1113, by striking ''three years or fined'' and inserting ''seven years''; and

(6) in section 2332(c), by striking ''five'' and inserting ''ten''.

(b) PENALTY FOR CARRYING WEAPONS OR EXPLOSIVES ON AN AIRCRAFT.—Section 46505 of title 49, United States Code, is amended—

(1) in subsection (b), by striking ''one'' and inserting ''10''; and

(2) in subsection (c), by striking ''5'' and inserting ''15''.

SEC. 105. MANDATORY PENALTY FOR TRANSFERRING AN EXPLOSIVE MATERIAL KNOWING THAT IT WILL BE USED TO COMMIT A CRIME OF VIOLENCE.

Section 844 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(n) Whoever knowingly transfers an explosive material, knowing or having reasonable cause to believe that such explosive material will be used to commit a crime of violence (as defined in section 924(c)(3)) or drug trafficking crime (as defined in section 924(c)(2)) shall be imprisoned for not less than 10 years, fined under this title, or both.''.

SEC. 106. PENALTY FOR POSSESSION OF STOLEN EXPLOSIVES.

Section 842(h) of title 18, United States Code, is amended to read as follows:

''(h) It shall be unlawful for any person to receive, possess, transport, ship, conceal, store, barter, sell, dispose of, pledge, or accept as security for a loan, any stolen explosive material that is moving in, part of, constitutes, or has been shipped or transported in, interstate or foreign commerce, either before or after such material was stolen, knowing or having reasonable cause to believe that the explosive material was stolen.''.

SEC. 107. ENHANCED PENALTIES FOR USE OF EXPLOSIVES OR ARSON CRIMES.

Section 844 of title 18, United States Code, is amended—

(1) in subsection (e), by striking ''five'' and inserting ''10'';

(2) by amending subsection (f) to read as follows:

''(f)(1) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, shall be imprisoned for not less than 5 years and not more than 20 years. The court may order a fine of not more than the greater of $100,000 or the cost of repairing or replacing any property that is damaged or destroyed.

''(2) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes personal injury to any person, including any public safety officer performing duties, shall be imprisoned not less than 7 years and not more than 40 years. The court may order a fine of not more than the greater of $200,000 or the cost of repairing or replacing any property that is damaged or destroyed.

''(3) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be imprisoned for a term of years or for life, or sentenced to death. The court may order a fine of not more than the greater of $200,000 or the cost of repairing or replacing any property that is damaged or destroyed.''.

(4) in subsection (h)—

(A) in the first sentence by striking ''5 years but not more than 15 years'' and inserting ''10 years''; and

(B) in the second sentence by striking ''10 years but not more than 25 years'' and inserting ''20 years''; and

(5) in subsection (i)—

(A) by striking ''not more than 20 years, fined the greater of a fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,'' and inserting ''not less than 5 years and not more than 20 years, fined the greater of $100,000 or the cost of repairing or replacing any property that is damaged or destroyed'';

(B) by striking ''not more than 40 years, fined the greater of a fine under this title or the cost of repairing or replacing any property that is damaged or destroyed,'' and inserting ''not less than 7 years and not more than 40 years, fined the greater of $200,000 or the cost of repairing or replacing any property that is damaged or destroyed''; and

(C) by striking ''7 years'' and inserting ''10 years''.

SEC. 108. INCREASED PERIODS OF LIMITATION FOR NATIONAL FIREARMS ACT VIOLATIONS.

Section 6531 of the Internal Revenue Code of 1986 is amended—

(1) by redesignating paragraphs (1) through (8) as subparagraphs (A) through (H), respectively; and

(2) by amending the matter immediately preceding subparagraph (A), as redesignated, to read as follows: ''No person shall be prosecuted, tried, or punished for any criminal offense under the internal revenue laws unless the indictment is found or the information instituted not later than 3 years after the commission of the offense, except that the period of limitation shall be—

''(1) 5 years for offenses described in section 5861 (relating to firearms and other devices); and

''(2) 6 years—.''.

TITLE II—COMBATING INTERNATIONAL TERRORISM

SEC. 201. FINDINGS.

The Congress finds that—

(1) international terrorism is among the most serious transnational threats faced by the United States and its allies, far eclipsing the dangers posed by population growth or pollution;

(2) the President should continue to make efforts to counter international terrorism a national security priority;

(3) because the United Nations has been an inadequate forum for the discussion of cooperative, multilateral responses to the threat of international terrorism, the President should undertake immediate efforts to develop effective multilateral responses to international terrorism as a complement to national counterterrorist efforts;

(4) the President should use all necessary means, including covert action and military force, to disrupt, dismantle, and destroy international infrastructure used by international terrorists, including overseas terrorist training facilities and safe havens;

(5) the Congress deplores decisions to ease, evade, or end international sanctions on state sponsors of terrorism, including the recent decision by the United Nations Sanctions Committee to allow airline flights to and from Libya despite Libya's noncompliance with United Nations resolutions; and

(6) the President should continue to undertake efforts to increase the international isolation of state sponsors of international terrorism, including efforts to strengthen international sanctions, and should oppose any future initiatives to ease sanctions on Libya or other state sponsors of terrorism.

SEC. 202. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT AID TERRORIST STATES.

The Foreign Assistance Act of 1961 (22 U.S.C. 151 et seq.) is amended by adding immediately after section 620F the following new section:

''SEC. 620G. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT AID TERRORIST STATES.

''(a) PROHIBITION.—No assistance under this Act shall be provided to the government of any country that provides assistance to the government of any other country for which the Secretary of State has made a determination under section 620A''.

''(b) WAIVER.—Assistance prohibited by this section may be furnished to a foreign government described in subsection (a) if the President determines that furnishing such assistance is important to the national interests of the United States and, not later than 15 days before obligating such assistance, furnishes a report to the appropriate committees of Congress including—

''(1) a statement of the determination;

''(2) a detailed explanation of the assistance to be provided;

''(3) the estimated dollar amount of the assistance; and

''(4) an explanation of how the assistance furthers United States national interests.''.

SEC. 203. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT PROVIDE MILITARY EQUIPMENT TO TERRORIST STATES.

The Foreign Assistance Act of 1961 (22 U.S.C. 151 et seq.) is amended by adding immediately after section 620G the following new section:

''SEC. 620H. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT PROVIDE MILITARY EQUIPMENT TO TERRORIST STATES.

''(a) PROHIBITION.—

''(1) IN GENERAL.—No assistance under this Act shall be provided to the government of any country that provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for the purposes of 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), or 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

''(2) APPLICABILITY.—The prohibition under this section with respect to a foreign government shall terminate 1 year after that government ceases to provide lethal military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after the date of enactment of this Act.

''(b) WAIVER.—Notwithstanding any other provision of law, assistance may be furnished to a foreign government described in subsection (a) if the President determines that furnishing such assistance is important to the national interests of the United States and, not later than 15 days before obligating such assistance, furnishes a report to the appropriate committees of Congress including—

''(1) a statement of the determination;

''(2) a detailed explanation of the assistance to be provided;

''(3) the estimated dollar amount of the assistance; and

''(4) an explanation of how the assistance furthers United States national interests.''.

SEC. 204. OPPOSITION TO ASSISTANCE BY INTERNATIONAL FINANCIAL INSTITUTIONS TO TERRORIST STATES.

The International Financial Institutions Act (22 U.S.C. 262c et seq.) is amended by inserting after section 1620 the following new section:

''SEC. 1621. OPPOSITION TO ASSISTANCE BY INTERNATIONAL FINANCIAL INSTITUTIONS TO TERRORIST STATES.

''(a) IN GENERAL.—The Secretary of the Treasury shall instruct the United States executive director of each international financial institution to vote against any loan or other use of the funds of the respective institution to or for a country for which the Secretary of State has made a determination under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

''(b) DEFINITION.—For purposes of this section, the term 'international financial institution' includes—

''(1) the International Bank for Reconstruction and Development, the International Development Association, and the International Monetary Fund;

''(2) wherever applicable, the Inter-American Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund; and

''(3) any similar institution established after the date of enactment of this section.''.

SEC. 205. ANTITERRORISM ASSISTANCE.

(a) FOREIGN ASSISTANCE ACT.—Section 573 of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa–2) is amended—

(1) in subsection (c), by striking ''development and implementation of the antiterrorism assistance program under this chapter, including'';

(2) by amending subsection (d) to read as follows:

''(d)(1) Arms and ammunition may be provided under this chapter only if they are directly related to antiterrorism assistance.

''(2) The value (in terms of original acquisition cost) of all equipment and commodities provided under this chapter in any fiscal year shall not exceed 30 percent of the funds made available to carry out this chapter for that fiscal year.''; and

(3) by striking subsection (f).

(b) ASSISTANCE TO FOREIGN COUNTRIES TO PROCURE EXPLOSIVES DETECTION DEVICES AND OTHER COUNTERTERRORISM TECHNOLOGY.—(1) Subject to section 575(b), up to $3,000,000 in any fiscal year may be made available—

(A) to procure explosives detection devices and other counterterrorism technology; and

(B) for joint counterterrorism research and development projects on such technology conducted with NATO and major non-NATO allies under the auspices of the Technical Support Working Group of the Department of State.

(2) As used in this subsection, the term ''major non-NATO allies'' means those countries designated as major non-NATO allies for purposes of section 2350a(i)(3) of title 10, United States Code.

(c) ASSISTANCE TO FOREIGN COUNTRIES.—Notwithstanding any other provision of law (except section 620A of the Foreign Assistance Act of 1961) up to $1,000,000 in assistance may be provided to a foreign country for counterterrorism efforts in any fiscal year if—

(1) such assistance is provided for the purpose of protecting the property of the United States Government or the life and property of any United States citizen, or furthering the apprehension of any individual involved in any act of terrorism against such property or persons; and

(2) the appropriate committees of Congress are notified not later than 15 days prior to the provision of such assistance.

SEC. 206. JURISDICTION FOR LAWSUITS AGAINST TERRORIST STATES.

(a) EXCEPTION TO FOREIGN SOVEREIGN IMMUNITY FOR CERTAIN CASES.—Section 1605 of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) by striking the period at the end of paragraph (6) and inserting ''; or'' and

(B) by adding at the end the following new paragraph:

''(7) not otherwise covered by paragraph (2) in which money damages are sought against a foreign government for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18, United States Code) for a person carrying out such an act, by a foreign state or by any official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that—

''(A) the claimant must first afford the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration; and

''(B) an action under this paragraph shall not be maintained unless the act upon which the claim is based—

''(i) occurred while the individual bringing the claim was a national of the United States (as that term is defined in section 101(a)(2) of the Immigration and Nationality Act); and

''(ii) occurred while the foreign state was designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 App. U.S.C. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).''; and

(2) by adding at the end the following new subsection:

''(e) For purposes of paragraph (7)—

''(1) the terms 'torture' and 'extrajudicial killing' have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 350 note);

''(2) the term 'hostage taking' has the meaning given such term in Article 1 of the International Convention Against the Taking of Hostages; and

''(3) the term 'aircraft sabotage' has the meaning given such term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.''.

(b) EXCEPTION TO IMMUNITY FROM ATTACHMENT.—

(1) FOREIGN STATE.—Section 1610(a) of title 28, United States Code, is amended—

(A) by striking the period at the end of paragraph (6) and inserting ''; or''; and

(B) by adding at the end the following new paragraph:

''(7) the judgment relates to a claim for which the foreign state is not immune under section 1605(a)(7), regardless of whether the property is or was involved with the act upon which the claim is based.''.

(2) AGENCY OR INSTRUMENTALITY.—Section 1610(b)(2) of such title is amended—

(A) by striking ''or (5)'' and inserting ''(5), or (7)''; and

(B) by striking ''used for the activity'' and inserting ''involved in the act''.

(c) APPLICABILITY.—The amendments made by this title shall apply to any cause of action arising before, on, or after the date of the enactment of this Act.

SEC. 207. REPORT ON SUPPORT FOR INTERNATIONAL TERRORISTS.

Not later than 60 days after the date of enactment of this Act, and annually thereafter in the report required by section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f), the Secretary of State shall submit a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that includes—

(1) a detailed assessment of international terrorist groups including their—

(A) size, leadership, and sources of financial and logistical support;

(B) goals, doctrine, and strategy;

(C) nature, scope, and location of human and technical infrastructure;

(D) level of education and training;

(E) bases of operation and recruitment;

(F) operational capabilities; and

(G) linkages with state and non-state actors such as ethnic groups, religious communities, or criminal organizations;

(2) a detailed assessment of any country that provided support of any type for international terrorism, terrorist groups, or individual terrorists, including countries that knowingly allowed terrorist groups or individuals to transit or reside in their territory, regardless of whether terrorist acts were

committed on their territory by such individuals;

(3) a detailed assessment of individual country efforts to take effective action against countries named in section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), including the status of compliance with international sanctions and the status of bilateral economic relations; and

(4) United States Government efforts to implement this title.

SEC. 208. DEFINITION OF ASSISTANCE.

For purposes of this title—

(1) the term ''assistance'' means assistance to or for the benefit of a government of any country that is provided by grant, concessional sale, guaranty, insurance, or by any other means on terms more favorable than generally available in the applicable market, whether in the form of a loan, lease, credit, debt relief, or otherwise, including subsidies for exports to such country and favorable tariff treatment of articles that are the growth, product, or manufacture of such country; and

(2) the term ''assistance'' does not include assistance of the type authorized under chapter 9 of part 1 of the Foreign Assistance Act of 1961 (relating to international disaster assistance).

SEC. 209. WAIVER AUTHORITY CONCERNING NOTICE OF DENIAL OF APPLICATION FOR VISAS.

Section 212(b) of the Immigration and Nationality Act (8 U.S.C. 1182(b)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by striking ''If'' and inserting ''(1) Subject to paragraph (2), if''; and

(3) by inserting at the end the following paragraph:

''(2) With respect to applications for visas, the Secretary of State may waive the application of paragraph (1) in the case of a particular alien or any class or classes of excludable aliens, except in cases of intent to immigrate.''.

SEC. 210. MEMBERSHIP IN A TERRORIST ORGANIZATION AS A BASIS FOR EXCLUSION FROM THE UNITED STATES UNDER THE IMMIGRATION AND NATIONALITY ACT.

Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)—

(A) by striking ''or'' at the end of subclause (I);

(B) by inserting ''or'' at the end of subclause (II); and

(C) by inserting after subclause (II) the following new subclause:

''(III) is a member of a terrorist organization or who actively supports or advocates terrorist activity,''; and

(2) by adding at the end the following new clause:

''(iv) TERRORIST ORGANIZATION DEFINED.—As used in this subparagraph, the term 'terrorist organization' means an organization that engages in, or has engaged in, terrorist activity as designated by the Secretary of State, after consultation with the Secretary of the Treasury.''.

TITLE III—ALIEN REMOVAL

SEC. 301. ALIEN TERRORIST REMOVAL.

(a) TABLE OF CONTENTS.—The Immigration and Nationality Act is amended by adding at the end of the table of contents the following:

''TITLE V—ALIEN TERRORIST REMOVAL PROCEDURES

''501. Definitions.

''502. Applicability.

''503. Removal of alien terrorists.''.

(b) ALIEN TERRORIST REMOVAL.—The Immigration and Nationality Act is amended by adding at the end the following new title:

''TITLE V—ALIEN TERRORIST REMOVAL PROCEDURES

''SEC. 501. DEFINITIONS.

''As used in this title—

''(1) the term 'alien terrorist' means any alien described in section 241(a)(4)(B);

''(2) the term 'classified information' has the same meaning as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App. IV);

''(3) the term 'national security' has the same meaning as defined in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App. IV);

''(4) the term 'special court' means the court described in section 503(c); and

''(5) the term 'special removal hearing' means the hearing described in section 503(e).

''SEC. 502. APPLICABILITY.

''(a) IN GENERAL.—The provisions of this title may be followed in the discretion of the Attorney General whenever the Department of Justice has classified information that an alien described in section 241(a)(4)(B) is subject to deportation because of such section.

''(b) PROCEDURES.—Whenever an official of the Department of Justice files, under section 503(a), an application with the court established under section 503(c) for authorization to seek removal pursuant to this title, the alien's rights regarding removal and expulsion shall be governed solely by the provisions of this title, except as specifically provided.

''SEC. 503. REMOVAL OF ALIEN TERRORISTS.

''(a) APPLICATION FOR USE OF PROCEDURES.—This section shall apply whenever the Attorney General certifies under seal to the special court that—

''(1) the Attorney General or Deputy Attorney General has approved of the proceeding under this section;

''(2) an alien terrorist is physically present in the United States; and

''(3) removal of such alien terrorist by deportation proceedings described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information.

''(b) CUSTODY AND RELEASE PENDING HEARING.—(1) The Attorney General may take into custody any alien with respect to whom a certification has been made under subsection (a), and notwithstanding any other provision of law, may retain such alien in custody in accordance with this subsection.

''(2)(A) An alien with respect to whom a certification has been made under subsection (a) shall be given a release hearing before the special court designated pursuant to subsection (c).

''(B) The judge shall grant the alien release, subject to such terms and conditions prescribed by the court (including the posting of any monetary amount), pending the special removal hearing if—

''(i) the alien is lawfully present in the United States;

''(ii) the alien demonstrates that the alien, if released, is not likely to flee; and

''(iii) the alien demonstrates that release of the alien will not endanger national security or the safety of any person or the community.

''(C) The judge may consider classified information submitted in camera and ex parte in making a determination whether to release an alien pending the special hearing.

''(c) SPECIAL COURT.—(1) The Chief Justice of the United States shall publicly designate not more than 5 judges from up to 5 United States judicial districts to hear and decide cases arising under this section, in a manner consistent with the designation of judges described in section 103(a) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1803(a)).

''(2) The Chief Justice may, in the Chief Justice's discretion, designate the same judges under this section as are designated pursuant to section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

''(d) INVOCATION OF SPECIAL COURT PROCEDURE.—(1) When the Attorney General makes the application described in subsection (a), a single judge of the special court shall consider the application in camera and ex parte.

''(2) The judge shall invoke the procedures of subsection (e) if the judge determines that there is probable cause to believe that—

''(A) the alien who is the subject of the application has been correctly identified and is an alien as described in section 241(a)(4)(B); and

''(B) a deportation proceeding described in section 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information.

''(e) SPECIAL REMOVAL HEARING.—(1) Except as provided in paragraph (5), the special removal hearing authorized by a showing of probable cause described in subsection (d)(2) shall be open to the public.

''(2) The alien shall have a reasonable opportunity to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent such alien. Counsel may be appointed as described in section 3006A of title 18, United States Code.

''(3) The alien shall have a reasonable opportunity to introduce evidence on his own behalf, and except as provided in paragraph (5), shall have a reasonable opportunity to cross-examine any witness or request that the judge issue a subpoena for the presence of a named witness.

''(4)(A) An alien subject to removal under this section shall have no right—

''(i) of discovery of information derived from electronic surveillance authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 801 et seq.) or otherwise for national security purposes if disclosure would present a risk to the national security; or

''(ii) to seek the suppression of evidence that the alien alleges was unlawfully obtained, except on grounds of credibility or relevance.

''(B) The Government is authorized to use, in the removal proceedings, the fruits of electronic surveillance and unconsented physical searches authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 801 et seq.) without regard to subsections 106 (c), (e), (f), (g), and (h) of such Act.

''(C) Section 3504 of title 18, United States Code, shall not apply to procedures under this section if the Attorney General determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information.

''(5) The judge shall authorize the introduction in camera and ex parte of any evidence for which the Attorney General determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information. With respect to such evidence, the Attorney General shall submit to the court an unclassified summary of the specific evidence prepared in accordance with paragraph (6).

''(6)(A) The information submitted under paragraph (5)(B) shall contain an unclassified summary of the classified information

that does not pose a risk to national security.

''(B) The judge shall approve the summary within 15 days of submission if the judge finds that it is sufficient to inform the alien of the nature of the evidence that such person is an alien as described in section 241(a), and to provide the alien with substantially the same ability to make his defense as would disclosure of the classified information.

''(C) The Attorney General shall cause to be delivered to the alien a copy of the unclassified summary approved under subparagraph (B).

''(D) If the written unclassified summary is not approved by the court pursuant to subparagraph (B), the Department of Justice shall be afforded 15 days to correct the deficiencies identified by the court and submit a revised unclassified summary.

''(E) If the revised unclassified summary is not approved by the court within 15 days of its submission pursuant to subparagraph (B), the special removal hearing shall be terminated unless the court, within that time, after reviewing the classified information in camera and ex parte, issues written findings that—

''(i) the alien's continued presence in the United States would likely cause—

''(I) serious and irreparable harm to the national security; or

''(II) death or serious bodily injury to any person; and

''(ii) provision of either the classified information or an unclassified summary that meets the standard set forth in subparagraph (B) would likely cause—

''(I) serious and irreparable harm to the national security; or

''(II) death or serious bodily injury to any person; and

''(iii) the unclassified summary prepared by the Justice Department is adequate to allow the alien to prepare a defense.

''(F) If the court issues such findings, the special removal proceeding shall continue, and the Attorney General shall cause to be delivered to the alien within 15 days of the issuance of such findings a copy of the unclassified summary together with a statement that it meets the standard set forth in subparagraph (E)(iii).

''(G)(i) Within 10 days of filing of the appealable order the Department of Justice may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—

''(I) any determination made by the judge concerning the requirements set forth in subparagraph (B).

''(II) any determination made by the judge concerning the requirements set forth in subparagraph (E).

''(ii) In an interlocutory appeal taken under this paragraph, the entire record, including any proposed order of the judge or summary of evidence, shall be transmitted to the Court of Appeals under seal, and the matter shall be heard ex parte. The Court of Appeals shall consider the appeal as expeditiously as possible, but no later than 30 days after filing of the appeal.

''(f) DETERMINATION OF DEPORTATION.—The judge shall, considering the evidence on the record as a whole (in camera and otherwise), require that the alien be deported if the Attorney General proves, by clear and convincing evidence, that the alien is subject to deportation because such alien is an alien as described in section 241(a)(4)(B). If the judge finds that the Department of Justice has met this burden, the judge shall order the alien removed and, if the alien was released pending the special removal proceeding, order the Attorney General to take the alien into custody.

''(g) APPEALS.—(1) The alien may appeal a final determination under subsection (f) to the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal with such court not later than 30 days after the determination is made. An appeal under this section shall be heard by the Court of Appeals sitting en banc.

''(2) The Attorney General may appeal a determination under subsection (d), (e), or (f) to the Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal with such court not later than 20 days after the determination is made under any one of such subsections.

''(3) If the Department of Justice does not seek review, the alien shall be released from custody, unless such alien may be arrested and taken into custody pursuant to title II as an alien subject to deportation, in which case such alien shall be treated in accordance with the provisions of this Act concerning the deportation of aliens.

''(4) If the application for the order is denied because the judge has not found probable cause to believe that the alien who is the subject of the application has been correctly identified or is an alien as described in paragraph 4(B) of section 241(a), and the Department of Justice seeks review, the alien shall be released from custody unless such alien may be arrested and taken into custody pursuant to title II as an alien subject to deportation, in which case such alien shall be treated in accordance with the provisions of this Act concerning the deportation of aliens simultaneously with the application of this title.

''(5)(A) If the application for the order is denied based on a finding that no probable cause exists to find that adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk of irreparable harm to the national security of the United States, or death or serious bodily injury to any person, the judge shall release the alien from custody subject to the least restrictive condition or combination of conditions of release described in section 3142(b) and (c)(1)(B) (i) through (xiv) of title 18, United States Code, that will reasonably ensure the appearance of the alien at any future proceeding pursuant to this title and will not endanger the safety of any other person or the Community.

''(B) The alien shall remain in custody if the court fails to make a finding under subparagraph (A), until the completion of any appeal authorized by this title. Sections 3145 through 3148 of title 18, United States Code, pertaining to review and appeal of a release or detention order, penalties for failure to appear, penalties for an offense committed while on release, and sanctions for violation of a release condition, shall apply to an alien to whom the previous sentence applies and—

''(i) for purposes of section 3145 of such title, an appeal shall be taken to the United States Court of Appeals for the District of Columbia Circuit; and

''(ii) for purposes of section 3146 of such title the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

''(6) When requested by the Attorney General, the entire record of the proceeding under this section shall be transmitted to the court of appeals or the Supreme Court under seal. The court of appeals or Supreme Court may consider such appeal in camera.''.

SEC. 302. EXTRADITION OF ALIENS.

(a) SCOPE.—Section 3181 of title 18, United States Code, is amended—

(1) by inserting ''(a)'' before ''The provisions of this chapter''; and

(2) by adding at the end the following new subsections:

''(b) The provisions of this chapter shall be construed to permit, in the exercise of comity, the surrender of persons, other than citizens, nationals, or permanent residents of the United States, who have committed crimes of violence against nationals of the United States in foreign countries without regard to the existence of any treaty of extradition with such foreign government if the Attorney General certifies, in writing, that—

''(1) evidence has been presented by the foreign government that indicates that had the offenses been committed in the United States, they would constitute crimes of violence as defined under section 16 of this title; and

''(2) the offenses charged are not of a political nature.

''(c) As used in this section, the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''.

(b) FUGITIVES.—Section 3184 of title 18, United States Code, is amended—

(1) in the first sentence by inserting after ''United States and any foreign government,'' the following: ''or in cases arising under section 3181(b),'';

(2) in the first sentence by inserting after ''treaty or convention,'' the following: ''or provided for under section 3181(b),''; and

(3) in the third sentence by inserting after ''treaty or convention,'' the following: ''or under section 3181(b),''.

SEC. 303. CHANGES TO THE IMMIGRATION AND NATIONALITY ACT TO FACILITATE REMOVAL OF ALIEN TERRORISTS.

(a) TERRORISM ACTIVITIES.—Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended to read as follows:

''(B) TERRORISM ACTIVITIES.—

''(i) IN GENERAL.—Any alien who—

''(I) has engaged in a terrorism activity, or

''(II) a consular officer or the Attorney General knows, or has reason to believe, is likely to engage after entry in any terrorism activity (as defined in clause (iii)),

is excludable. An alien who is an officer, official, representative, or spokesman of any terrorist organization designated as a terrorist organization by proclamation by the President after finding such organization to be detrimental to the interest of the United States, or any person who directs, counsels, commands, or induces such organization or its members to engage in terrorism activity, shall be considered, for purposes of this Act, to be engaged in terrorism activity.

''(ii) TERRORISM ACTIVITY DEFINED.—As used in this Act, the term 'terrorism activity' means any activity that is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State), and that involves any of the following:

''(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

''(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

''(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

''(IV) An assassination.

''(V) The use of any—

''(aa) biological agent, chemical agent, or nuclear weapon or device, or

''(bb) explosive, firearm, or other weapon (other than for mere personal monetary gain),

with intent to endanger, directly, or indirectly, the safety of one or more individuals or to cause substantial damage to property.

''(VI) A threat, attempt, or conspiracy to do any of the foregoing.

''(iii) ENGAGE IN TERRORISM ACTIVITY DEFINED.—As used in this Act, the term 'engage in terrorism activity' means to commit, in an individual capacity or as a member of an organization, an act of terrorism activity, or an act that the actor knows affords material support to any individual, organization, or government that the actor knows plans to commit terrorism activity, including any of the following acts:

''(I) The preparation or planning of terrorism activity.

''(II) The gathering of information on potential targets for terrorism activity.

''(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false documentation or identification, weapons, explosives, or training.

''(IV) The soliciting of funds or other things of value for terrorism activity or for any terrorist organization.

''(V) The solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorism activity.

''(iv) TERRORIST ORGANIZATION DEFINED.—As used in this Act, the term 'terrorist organization' means—

''(I) an organization engaged in, or that has a significant subgroup that engages in, terrorism activity, regardless of any legitimate activities conducted by the organization or its subgroups; and

''(II) an organization designated by the Secretary of State under section 2339B of title 18.''.

(b) DEPORTABLE ALIENS.—Section 241(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(4)(B)) is amended to read as follows:

''(B) TERRORISM ACTIVITIES.—Any alien who is engaged, or at any time after entry engages in, any terrorism activity (as defined in section 212(a)(3)(B)) is deportable.''.

(c) BURDEN OF PROOF.—Section 291 of the Immigration and Nationality Act (8 U.S.C. 1361) is amended by inserting after ''custody of the Service.'' the following new sentence: ''The limited production authorized by this provision shall not extend to the records of any other agency or department of the Government or to any documents that do not pertain to the respondent's entry.''.

(d) APPREHENSION AND DEPORTATION OF ALIENS.—Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)) is amended by inserting immediately after paragraph (4) the following: ''For purposes of paragraph (3), in the case of an alien who is not lawfully admitted for permanent residence and notwithstanding the provisions of any other law, reasonable opportunity shall not include access to classified information, whether or not introduced in evidence against the alien, except that any proceeding conducted under this section which involves the use of classified evidence shall be conducted in accordance with the procedures of section 501. Section 3504 of title 18, United States Code, and 18 U.S.C. 3504 and the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall not apply in such cases.''.

(e) CRIMINAL ALIEN REMOVAL.—

(1) JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a(a)(10)) is amended to read as follows:

''(10) Any final order of deportation against an alien who is deportable by reason of having committed a criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i), shall not be subject to review by any court.''.

(2) FINAL ORDER OF DEPORTATION DEFINED.—Section 101(a) of such Act (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

''(47)(A) The term 'order of deportation' means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

''(B) The order described under subparagraph (A) shall become final upon the earlier of—

''(i) a determination by the Board of Immigration Appeals affirming such order; or

''(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.''.

(3) ARREST AND CUSTODY.—Section 242(a)(2) of such Act is amended—

(A) in subparagraph (A)—

(i) by striking ''(2)(A) The Attorney'' and inserting ''(2) The Attorney'';

(ii) by striking ''an aggravated felony upon'' and all that follows through ''of the same offense)'' and inserting ''any criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i), upon release of the alien from incarceration, shall deport the alien as expeditiously as possible''; and

(iii) by striking ''but subject to subparagraph (B)''; and

(B) by striking subparagraph (B).

(4) CLASSES OF EXCLUDABLE ALIENS.—Section 212(c) of such Act (8 U.S.C. 1182(c)) is amended—

(A) by striking ''The first sentence of this'' and inserting ''This''; and

(B) by striking ''has been convicted of one or more aggravated felonies'' and all that follows through the end and inserting ''is deportable by reason of having committed any criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i).''.

(5) AGGRAVATED FELONY DEFINED.—Section 101(a)(43) of such Act is amended—

(A) in subparagraph (F)—

(i) by inserting '', including forcible rape,'' after ''offense)''; and

(ii) by striking ''5 years'' and inserting ''1 year''; and

(B) in subparagraph (G) by striking ''5 years'' and inserting ''1 year''.

(6) DEPORTATION OF CRIMINAL ALIENS.—Section 242A(a) of such Act (8 U.S.C. 1252a) is amended—

(A) in paragraph (1)—

(i) by striking ''aggravated felonies (as defined in section 101(a)(43) of this title)'' and inserting ''any criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i).''; and

(ii) by striking '', where warranted,'';

(B) in paragraph (2), by striking ''aggravated felony'' and all that follows through ''before any scheduled hearings.'' and inserting ''any criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i).''.

(7) DEADLINES FOR DEPORTING ALIEN.—Section 242(c) of such Act (8 U.S.C. 1252(c)) is amended—

(A) by striking ''(c) When a final order'' and inserting ''(c)(1) Subject to paragraph (2), when a final order''; and

(B) by inserting at the end the following new paragraph:

''(2) When a final order of deportation under administrative process is made against any alien who is deportable by reason of having committed a criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D) or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i), the Attorney General shall have 30 days from the date of the order within which to effect the alien's departure from the United States. The Attorney General shall have sole and unreviewable discretion to waive the foregoing provision for aliens who are cooperating with law enforcement authorities or for purposes of national security.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to cases pending before, on, or after such date of enactment.

SEC. 304. ACCESS TO CERTAIN CONFIDENTIAL IMMIGRATION AND NATURALIZATION FILES THROUGH COURT ORDER.

(a) CONFIDENTIALITY OF INFORMATION.—Section 245A(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(5)) is amended—

(1) by inserting ''(i)'' after ''except the Attorney General''; and

(2) by inserting after ''Title 13'' the following: ''and (ii) may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used—

''(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

''(II) for criminal law enforcement purposes against the alien whose application is to be disclosed.''.

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section 210(b) of the Immigration and Nationality Act (8 U.S.C. 1160(b)) is amended—

(1) in paragraph (5), by inserting '', except as allowed by a court order issued pursuant to paragraph (6) of this subsection'' after ''consent of the alien''; and

(2) in paragraph (6), by inserting the following sentence before ''Anyone who uses'': ''Notwithstanding the preceding sentence, the Attorney General may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant an order authorizing, disclosure of information contained in the application of the alien to be used for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated, or for criminal law enforcement purposes against the alien whose application is to be disclosed or to discover information leading to the location or identity of the alien.''.

TITLE IV—CONTROL OF FUNDRAISING FOR TERRORISM ACTIVITIES

SEC. 401. PROHIBITION ON TERRORIST FUNDRAISING.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following new section:

''§ 2339B. Fundraising for terrorist organizations

''(a) FINDINGS AND PURPOSE.—

''(1) The Congress finds that—

''(A) terrorism is a serious and deadly problem which threatens the interests of the

United States overseas and within our territory;

''(B) the Nation's security interests are gravely affected by the terrorist attacks carried out overseas against United States Government facilities and officials, and against American citizens present in foreign countries;

''(C) United States foreign policy and economic interests are profoundly affected by terrorist acts overseas directed against foreign governments and their people;

''(D) international cooperation is required for an effective response to terrorism, as demonstrated by the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, including hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

''(E) some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds within the United States or use the United States as a conduit for the receipt of funds raised in other nations; and

''(F) the provision of funds to organizations that engage in terrorism serves to facilitate their terrorist endeavors, regardless of whether the funds, in whole or in part, are intended or claimed to be used for nonviolent purposes.

''(2) The purpose of this section is to provide the Federal Government the fullest possible basis, consistent with the Constitution, to prevent persons within the United States or subject to the jurisdiction of the United States from providing funds, directly or indirectly, to foreign organizations, including subordinate or affiliated persons, that engage in terrorism activities.

''(b) DESIGNATION.—

''(1) The Secretary of State, after consultation with the Secretary of the Treasury, is authorized to designate under this section any foreign organization based on finding that—

''(A) the organization engages in terrorism activity as defined in section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)); and

''(B) the organization's terrorism activities threaten the security of United States citizens, national security, foreign policy, or the economy of the United States.

''(2) Not later than 7 days after making a designation under paragraph (1), the Secretary of State shall prepare and transmit to Congress a report containing a list of the designated organizations and a summary of the facts underlying the designation. The designation shall take effect 30 days after the receipt of actual notice under subsection (b)(6), unless otherwise provided by law.

''(3) A designation or redesignation under this subsection shall be in effect for 1 year following its effective date, unless revoked under paragraph (4).

''(4)(A) If the Secretary of State, after consultation with the Secretary of the Treasury, finds that the conditions that were the basis for any designation issued under this subsection have changed in such a manner as to warrant revocation of such designation, or that the national security, foreign relations, or economic interests of the United States so warrant, the Secretary of State may revoke such designation in whole or in part.

''(B) Not later than 7 calendar days after the Secretary of State finds that an organization no longer engages in, or supports, terrorism activity, the Secretary of State shall prepare and transmit to Congress a supplemental report stating the reasons for the finding.

''(5) Any designation, or revocation of a designation, issued under this subsection shall be published in the Federal Register not later than 7 calendar days after the Secretary of State makes the designation.

''(6) Not later than 7 calendar days after making a designation under this subsection, the Secretary of State shall give the organization actual notice of—

''(A) the designation;

''(B) the consequences of the designation for the organization's ability to raise funds in the United States; and

''(C) the availability of judicial review.

''(7) Any revocation or lapsing of a designation shall not affect any action or proceeding based on any conduct committed prior to the effective date of such revocation or lapsing.

''(8) Classified information may be used in making a designation under this subsection. Such information shall not be disclosed to the public or to any party, but may be disclosed to a court ex parte and in camera.

''(9) No question concerning the validity of the issuance of a designation issued under this subsection may be raised by a defendant in a criminal prosecution as a defense in or as an objection to any trial or hearing if such designation was issued and published in the Federal Register.

''(c) JUDICIAL REVIEW.—

''(1) Organizations designated by the Secretary of State as engaging in, or supporting, terrorism activities under this section may seek review of the designation in the District Court for the District of Columbia not later than 30 days after receipt of actual notice under subsection (b)(6).

''(2) In reviewing a designation under this subsection, the court shall receive relevant oral or documentary evidence, unless the court finds that the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or considerations of undue delay, waste of time, or needless presentation of cumulative evidence, or unless its introduction or consideration is prohibited by a common law privilege or by the Constitution or laws of the United States. A party shall be entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

''(3) The judge shall authorize the introduction in camera and ex parte of any item of evidence containing classified information for which the Attorney General determines that public disclosure would pose a risk to the national security of the United States. With respect to such evidence, the Attorney General shall submit to the court either—

''(A) a statement identifying relevant facts that the specific evidence would tend to prove; or

''(B) an unclassified summary of the specific evidence prepared in accordance with paragraph (5).

''(4)(A)(i) The Secretary of State shall have the burden of demonstrating that there are specific and articulable facts giving reason to believe that the organization engages in or supports terrorism activity (as that term is defined in section 212(a)(3)(B)).

''(ii) The organization shall have the burden of proving that its purpose is to engage in religious, charitable, literary, educational, or nonterrorism activities and that it engages in such activities.

''(iii) The Secretary shall have the burden of proving that the control group of the organization has actual knowledge that the organization or its resources are being used for terrorism activities.

''(iv) If any portion of the Secretary's evidence consists of classified information that cannot be revealed to the organization for national security reasons, the Secretary must prove these elements by clear and convincing evidence.

''(B) If the court finds, under the standards stated in subparagraph (A) that the control group of the organization has actual knowledge that the organization or its resources are being used for terrorism activities, the court shall affirm the designation of the Secretary.

''(C)(i) If the court finds by a preponderance of the evidence that the organization or its resources have been used for terrorism activities without the knowledge of the control group, but that the control group is now aware of these facts, the court may condition revocation of the designation on the control group's undertaking or completing all steps within its power to prevent the organization or its resources from being used for terrorism activities. Such steps may include—

''(I) maintaining financial records adequate to document the use of the organization's resources; and

''(II) making records available to the Secretary for inspection.

''(ii) If a designation is revoked under subsection (B)(4) and the organization fails to comply with any condition imposed, the designation may be reinstated by the Secretary of State upon a showing that the organization failed to comply with the condition.

''(5)(A) The information submitted under paragraph (3)(B) shall contain an unclassified summary of the classified information that does not pose a risk to national security.

''(B) The judge shall approve the unclassified summary if the judge finds that the summary is sufficient to inform the organization of the activities described in section 212(a)(3)(B) in which the organization is alleged to engage, and to permit the organization to defend against the designation.

''(C) The Attorney General shall cause to be delivered to the organization a copy of the unclassified summary approved under subparagraph (B).

''(6) The court shall decide the case on the basis of the evidence on the record as a whole, in camera or otherwise.

''(d) PROHIBITED ACTIVITIES.—It shall be unlawful for any person within the United States, or any person subject to the jurisdiction of the United States anywhere, to directly or indirectly, raise, receive, or collect on behalf of, or furnish, give, transmit, transfer, or provide funds to or for an organization or person designated by the Secretary of State under subsection (b), or to attempt to do any of the foregoing.

''(e) SPECIAL REQUIREMENTS FOR FINANCIAL INSTITUTIONS.—

''(1) Except as authorized by the Secretary of State, after consultation with the Secretary of the Treasury, by means of directives, regulations, or licenses, any financial institution that becomes aware that it has possession of or control over any funds in which an organization or person designated under subsection (b) has an interest, shall—

''(A) retain possession of or maintain control over such funds; and

''(B) report to the Secretary the existence of such funds in accordance with the regulations prescribed by the Secretary.

''(2) Any financial institution that knowingly fails to report to the Secretary the existence of such funds shall be subject to a civil penalty of $250 per day for each day that it fails to report to the Secretary—

''(A) in the case of funds being possessed or controlled at the time of the designation of the organization or person, within 10 days after the designation; and

''(B) in the case of funds whose possession of or control over arose after the designation of the organization or person, within 10 days

after the financial institution obtained possession of or control over the funds.

''(f) INVESTIGATIONS.—Any investigation emanating from a possible violation of this section shall be conducted by the Attorney General, except that investigations relating to—

''(1) a financial institution's compliance with the requirements of subsection (e); and

''(2) civil penalty proceedings authorized pursuant to subsection (g)(2),

shall be conducted in coordination with the Attorney General by the office within the Department of the Treasury responsible for civil penalty proceedings authorized by this section. Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

''(g) PENALTIES.—

''(1) Any person who, with knowledge that the donee is a designated entity, violates subsection (d) shall be fined under this title, or imprisoned for up to ten years, or both.

''(2) Any financial institution that knowingly fails to comply with subsection (e), or by regulations promulgated thereunder, shall be subject to a civil penalty of $50,000 per violation, or twice the amount of money of which the financial institution was required to retain possession or control, whichever is greater.

''(h) INJUNCTION.—

''(1) Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act which constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

''(2) A proceeding under this subsection is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

''(i) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

''(j) CLASSIFIED INFORMATION IN CIVIL PROCEEDINGS BROUGHT BY THE UNITED STATES.—

''(1) DISCOVERY OF CLASSIFIED INFORMATION BY DEFENDANTS.—A court, upon a sufficient showing, may authorize the United States to delete specified items of classified information from documents to be introduced into evidence or made available to the defendant through discovery under the Federal Rules of Civil Procedure, to substitute an unclassified summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The court shall permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal. If the court enters an order denying relief to the United States under this paragraph, the United States may take an immediate, interlocutory appeal in accordance with the provisions of paragraph (3). For purposes of such an appeal, the entire text of the underlying written statement of the United States, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

''(2) INTRODUCTION OF CLASSIFIED INFORMATION; PRECAUTIONS BY COURT.—

''(A) EXHIBITS.—The United States, to prevent unnecessary or inadvertent disclosure of classified information in a civil trial or other proceeding brought by the United States under this section, may petition the court ex parte to admit, in lieu of classified writings, recordings or photographs, one or more of the following:

''(i) copies of those items from which classified information has been deleted;

''(ii) stipulations admitting relevant facts that specific classified information would tend to prove; or

''(iii) an unclassified summary of the specific classified information.

The court shall grant such a motion of the United States if the court finds that the redacted item, stipulation, or unclassified summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

''(B) TAKING OF TRIAL TESTIMONY.—During the examination of a witness in any civil proceeding brought by the United States under this section, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible. Following such an objection, the court shall take suitable action to determine whether the response is admissible and, in doing so, shall take precautions to guard against the compromise of any classified information. Such action may include permitting the United States to provide the court, ex parte, with a proffer of the witness's response to the question or line of inquiry, and requiring the defendant to provide the court with a proffer of the nature of the information the defendant seeks to elicit.

''(C) APPEAL.—If the court enters an order denying relief to the United States under this subsection, the United States may take an immediate interlocutory appeal in accordance with paragraph (3).

''(3) INTERLOCUTORY APPEAL.—

''(A) An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court—

''(i) authorizing the disclosure of classified information;

''(ii) imposing sanctions for nondisclosure of classified information; or

''(iii) refusing a protective order sought by the United States to prevent the disclosure of classified information.

''(B) An appeal taken pursuant to this paragraph either before or during trial shall be expedited by the court of appeals. Prior to trial, an appeal shall be taken not later than 10 days after the decision or order appealed from, and the trial shall not commence until the appeal is resolved. If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved. The court of appeals—

''(i) shall hear argument on such appeal not later than 4 days after the adjournment of the trial;

''(ii) may dispense with written briefs other than the supporting materials previously submitted to the trial court;

''(iii) shall render its decision not later than 4 days after argument on appeal; and

''(iv) may dispense with the issuance of a written opinion in rendering its decision.

''(C) An interlocutory appeal and decision under this paragraph shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error, reversal by the trial court on remand of a ruling appealed from during trial.

''(4) CONSTRUCTION.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

''(k) DEFINITIONS.—As used in this section—

''(1) the term 'classified information' means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph (r) of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y));

''(2)(A) the term 'control group' means the officers or agents charged with directing the affairs of the organization;

''(B) if a single officer or agent is authorized to conduct the affairs of the organization, the knowledge of the officer or agent that the organization or its resources are being used for terrorism activities shall constitute knowledge of the control group;

''(C) if a single officer or agent is a member of a group empowered to conduct the affairs of the organization but cannot conduct the affairs of the organization on his or her own authority, that person's knowledge shall not constitute knowledge by the control group unless that person's knowledge is shared by a sufficient number of members of the group so that the group with knowledge has the authority to conduct the affairs of the organization;

''(3) the term 'financial institution' has the meaning prescribed in section 5312(a)(2) of title 31, United States Code, including any regulations promulgated thereunder;

''(4) the term 'funds' includes coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

''(5) the term 'national security' means the national defense and foreign relations of the United States;

''(6) the term 'person' includes an individual, partnership, association, group, corporation, or other organization;

''(7) the term 'Secretary' means the Secretary of the Treasury; and

''(8) the term 'United States', when used in a geographical sense, includes all commonwealths, territories, and possessions of the United States.''.

(b) TECHNICAL AMENDMENT.—The analysis for chapter 113B of title 18, United States Code, is amended by adding at the end the following new item:

''2339B. Fundraising for terrorist organizations.''.

(c) CLASSIFIED INFORMATION IN CIVIL PROCEEDINGS.—Section 2339B(k) of title 18, United States Code (relating to classified information in civil proceedings brought by the United States), shall also be applicable to civil proceedings brought by the United States under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

SEC. 402. CORRECTION TO MATERIAL SUPPORT PROVISION.

Section 2339A of title 18, United States Code, is amended to read as follows:

''§ 2339A. Providing material support to terrorists

''(a) DEFINITION.—In this section, 'material support or resources' means currency or

other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, but does not include humanitarian assistance to persons not directly involved in such violations.

''(b) OFFENSE.—A person who, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 351, 844(f) or (i), 956, 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, or 2332a of this title or section 46502 of title 49, or in preparation for or carrying out the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both.''.

TITLE V—ASSISTANCE TO FEDERAL LAW ENFORCEMENT AGENCIES

Subtitle A—Antiterrorism Assistance

SEC. 501. DISCLOSURE OF CERTAIN CONSUMER REPORTS TO THE FEDERAL BUREAU OF INVESTIGATION FOR FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS.

(a) IN GENERAL.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by adding after section 623 the following new section:

''SEC. 624. DISCLOSURES TO THE FEDERAL BUREAU OF INVESTIGATION FOR FOREIGN COUNTERINTELLIGENCE PURPOSES.

''(a) IDENTITY OF FINANCIAL INSTITUTIONS.—(1) Notwithstanding section 604 or any other provision of this title, a court or magistrate judge may issue an order ex parte directing a consumer reporting agency to furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 1101 of the Right to Financial Privacy Act of 1978) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency. The court or magistrate judge shall issue the order if the Director of the Federal Bureau of Investigation, or the Director's designee, certifies in writing to the court or magistrate judge that—

''(A) such information is necessary for the conduct of an authorized foreign counterintelligence investigation; and

''(B) there are specific and articulable facts giving reason to believe that the consumer—

''(i) is a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978) or a person who is not a United States person (as defined in such section 101) and is an official of a foreign power; or

''(ii) is an agent of a foreign power and is engaging or has engaged in international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

''(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

''(b) IDENTIFYING INFORMATION.—(1) Notwithstanding section 604 or any other provision of this title, a court or magistrate judge shall issue an order ex parte directing a consumer reporting agency to furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation. The court or magistrate judge shall issue the order if the Director or the Director's designee, certifies in writing that—

''(A) such information is necessary to the conduct of an authorized foreign counterintelligence investigation; and

''(B) there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978).

''(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

''(c) COURT ORDER FOR DISCLOSURE OF CONSUMER REPORTS.—(1) Notwithstanding section 604 or any other provision of this title, if requested in writing by the Director of the Federal Bureau of Investigation, or an authorized designee of the Director, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in camera that—

''(A) the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation; and

''(B) there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought—

''(i) is an agent of a foreign power; and

''(ii) is engaging or has engaged in international terrorism (as that term is defined in section 101(c) of the Foreign Intelligence Surveillance Act of 1978) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

''(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

''(d) CONFIDENTIALITY.—(1) No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c).

''(2) No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report.

''(e) PAYMENT OF FEES.—The Federal Bureau of Investigation is authorized, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing reports or information in accordance with procedures established under this section, a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

''(f) LIMIT ON DISSEMINATION.—The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except—

''(1) to the Department of Justice, as may be necessary for the approval or conduct of a foreign counterintelligence investigation; or

''(2) where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

''(g) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, or in connection with a judicial or administrative proceeding to enforce the provisions of this Act. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.

''(h) REPORTS TO CONGRESS.—On an annual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking and Financial Services of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c).

''(i) DAMAGES.—Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of—

''(1) $100, without regard to the volume of consumer reports, records, or information involved;

''(2) any actual damages sustained by the consumer as a result of the disclosure;

''(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

''(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

''(j) DISCIPLINARY ACTIONS FOR VIOLATIONS.—If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

''(k) GOOD-FAITH EXCEPTION.—Notwithstanding any other provision of this title, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State notwithstanding.

''(l) INJUNCTIVE RELIEF.—In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of the Fair Credit Reporting Act (15 U.S.C. 1681a et seq.) is amended by adding after the item relating to section 623 the following new item:

''624. Disclosures to the Federal Bureau of Investigation for foreign counterintelligence purposes.''.

SEC. 502. ACCESS TO RECORDS OF COMMON CARRIERS, PUBLIC ACCOMMODATION FACILITIES, PHYSICAL STORAGE FACILITIES, AND VEHICLE RENTAL FACILITIES IN FOREIGN COUNTER-INTELLIGENCE AND COUNTERTERRORISM CASES.

Title 18, United States Code, is amended by inserting after chapter 121 the following new chapter:

"CHAPTER 122—ACCESS TO CERTAIN RECORDS

"§ 2720. Access to records of common carriers, public accommodation facilities, physical storage facilities, and vehicle rental facilities in counterintelligence and counterterrorism cases

''(a)(1) A court or magistrate judge may issue an order ex parte directing any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to furnish any records in its possession to the Federal Bureau of Investigation. The court or magistrate judge shall issue the order if the Director of the Federal Bureau of Investigation or the Director's designee (whose rank shall be no lower than Assistant Special Agent in Charge) certifies in writing that—

''(A) such records are sought for foreign counterintelligence purposes; and

''(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 801).

''(2) An order issued under this subsection shall not disclose that it is issued for purposes of a counterintelligence investigation.

''(b) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, or any officer, employee, or agent of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, shall disclose to any person, other than those officers, agents, or employees of the common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose the information to the Federal Bureau of Investigation under this section.

''(c) As used in this chapter—

''(1) the term 'common carrier' means a locomotive, rail carrier, bus carrying passengers, water common carrier, air common carrier, or private commercial interstate carrier for the delivery of packages and other objects;

''(2) the term 'public accommodation facility' means any inn, hotel, motel, or other establishment that provides lodging to transient guests;

''(3) the term 'physical storage facility' means any business or entity that provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof; and

''(4) the term 'vehicle rental facility' means any person or entity that provides vehicles for rent, lease, loan, or other similar use, to the public or any segment thereof.''.

SEC. 503. INCREASE IN MAXIMUM REWARDS FOR INFORMATION CONCERNING INTERNATIONAL TERRORISM.

(a) TERRORISM ABROAD.—Section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is amended—

(1) in subsection (c), by striking ''$2,000,000'' and inserting ''$10,000,000''; and

(2) in subsection (g), by striking ''$5,000,000'' and inserting ''$10,000,000.

(b) DOMESTIC TERRORISM.—Title 18, United States Code, is amended—

(1) in section 3072, by striking ''$500,000'' and inserting ''$10,000,000''; and

(2) in section 3075, by striking ''$5,000,000'' and inserting ''$10,000,000''.

(c) GENERAL REWARD AUTHORITY OF THE ATTORNEY GENERAL.—

(1) IN GENERAL.—Chapter 203 of title 18, United States Code, is amended by adding immediately after section 3059A the following section:

"§ 3059B. General reward authority

''(a) Notwithstanding any other provision of law, the Attorney General may pay rewards and receive from any department or agency funds for the payment of rewards under this section to any individual who assists the Department of Justice in performing its functions.

''(b) Not later than 30 days after authorizing a reward under this section that exceeds $100,000, the Attorney General shall give notice to the respective chairmen of the Committees on Appropriations and the Committees on the Judiciary of the Senate and the House of Representatives.

''(c) A determination made by the Attorney General to authorize an award under this section and the amount of any reward authorized shall be final and conclusive, and not subject to judicial review.''.

Subtitle B—Intelligence and Investigation Enhancements

SEC. 511. STUDY AND REPORT ON ELECTRONIC SURVEILLANCE.

(a) STUDY.—The Attorney General and the Director of the Federal Bureau of Investigation shall study all applicable laws and guidelines relating to electronic surveillance and the use of pen registers and other trap and trace devices.

(b) REPORT.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit a report to the Congress that includes—

(1) the findings of the study conducted pursuant to subsection (a);

(2) recommendations for the use of electronic devices in conducting surveillance of terrorist or other criminal organizations, and for any modifications in the law necessary to enable the Federal Government to fulfill its law enforcement responsibilities within appropriate constitutional parameters; and

(3) a summary of efforts to use current wiretap authority, including detailed examples of situations in which expanded authority would have enabled law enforcement authorities to fulfill their responsibilities.

SEC. 512. AUTHORIZATION FOR INTERCEPTIONS OF COMMUNICATIONS IN CERTAIN TERRORISM RELATED OFFENSES.

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (c)—

(A) by inserting before ''or section 1992 (relating to wrecking trains)'' the following: ''section 2332 (relating to terrorist acts abroad), section 2332a (relating to weapons of mass destruction, section 2332b (relating to acts of terrorism transcending national boundaries), section 2339A (relating to providing material support to terrorists), section 37 (relating to violence at international airports),''; and

(B) by inserting after ''section 175 (relating to biological weapons),'' the following: ''or a felony violation under section 1028 (relating to production of false identification documentation), sections 1541, 1542, 1543, 1544, and 1546 (relating to passport and visa offenses),'';

(2) by striking ''and'' at the end of paragraph (o), as so redesignated by section 512(a)(2);

(3) by redesignating paragraph (p), as so redesignated by section 512(a)(2), as paragraph (s); and

(4) by inserting after paragraph (o), as so redesignated by section 512(a)(2), the following new subparagraphs:

''(p) any violation of section 956 or section 960 of title 18, United States Code (relating to certain actions against foreign nations);

''(q) any violation of section 46502 of title 49, United States Code; and''.

SEC. 513. REQUIREMENT TO PRESERVE EVIDENCE.

Section 2703 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(f) REQUIREMENT TO PRESERVE EVIDENCE.—A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. Such records shall be retained for a period of 90 days, which period shall be extended for an additional 90-day period upon a renewed request by the governmental entity.''.

Subtitle C—Additional Funding for Law Enforcement

SEC. 521. FEDERAL BUREAU OF INVESTIGATION ASSISTANCE TO COMBAT TERRORISM.

(a) IN GENERAL.—With funds made available pursuant to subsection (b), the Attorney General shall—

(1) develop digital telephony technology;

(2) support and enhance the technical support center and tactical operations;

(3) create a Federal Bureau of Investigation counterterrorism and counterintelligence fund for costs associated with terrorism cases;

(4) expand and improve the instructional, operational support, and construction of the Federal Bureau of Investigation academy;

(5) construct an FBI laboratory, provide laboratory examination support, and provide for a Command Center;

(6) make funds available to the chief executive officer of each State to carry out the activities described in subsection (d); and

(7) enhance personnel to support counterterrorism activities.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the activities of the Federal Bureau of Investigation, to help meet the increased demands for activities to combat terrorism—

(1) $300,000,000 for fiscal year 1996;

(2) $225,000,000 for fiscal year 1997;

(3) $328,000,000 for fiscal year 1998;

(4) $190,000,000 for fiscal year 1999; and

(5) $183,000,000 for fiscal year 2000.

(c) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—Funds made available pursuant to subsection (b), in any fiscal year, shall remain available until expended.

(d) STATE GRANTS.—

(1) IN GENERAL.—Any funds made available for purposes of subsection (a)(6) may be expended—

(A) by the Director of the Federal Bureau of Investigation to expand the combined DNA Identification System (CODIS) to include Federal crimes and crimes committed in the District of Columbia; and

(B) by the Attorney General, in consultation with the Director of the Federal Bureau of Investigation to make funds available to the chief executive officer of each State to carry out the activities described in paragraph (2).

(2) GRANT PROGRAM.—

(A) USE OF FUNDS.—The executive officer of each State shall use any funds made available under paragraph (1)(B) in conjunction with units of local government, other States, or combinations thereof, to carry out all or part of a program to establish, develop, update, or upgrade—

(i) computerized identification systems that are compatible and integrated with the databases of the National Crime Information Center of the Federal Bureau of Investigation;

(ii) ballistics identification programs that are compatible and integrated with the Drugfire Program of the Federal Bureau of Investigation;

(iii) the capability to analyze deoxyribonucleic acid (DNA) in a forensic laboratory in ways that are compatible and integrated with the combined DNA Identification System (CODIS) of the Federal Bureau of Investigation; and

(iv) automated fingerprint identification systems that are compatible and integrated with the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation.

(B) ELIGIBILITY.—To be eligible to receive funds under this paragraph, a State shall require that each person convicted of a felony of a sexual nature shall provide to appropriate State law enforcement officials, as designated by the chief executive officer of the State, a sample of blood, saliva, or other specimen necessary to conduct a DNA analysis consistent with the standards established for DNA testing by the Director of the Federal Bureau of Investigation.

(C) INTERSTATE COMPACTS.—A State may enter into a compact or compacts with another State or States to carry out this subsection.

(D) ALLOCATION.—(i) Of the total amount appropriated pursuant to this section in a fiscal year—

(I) $500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(II) of the total funds remaining after the allocation under subclause (I), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this subparagraph as the population of such State bears to the population of all States.

(ii) DEFINITION.—For purposes of this subparagraph, 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 for purposes of the allocation under this subparagraph, American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one State and that for these purposes, 67 percent of the amounts allocated shall be allocated to American Samoa, and 33 percent to the Commonwealth of the Northern Mariana Islands.

SEC. 522. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE UNITED STATES CUSTOMS SERVICE.

(a) IN GENERAL.—There are authorized to be appropriated for the activities of the United States Customs Service, to help meet the increased needs of the United States Customs Service—

(1) $6,000,000 for fiscal year 1996;
(2) $6,000,000 for fiscal year 1997;
(3) $6,000,000 for fiscal year 1998;
(4) $5,000,000 for fiscal year 1999; and
(5) $5,000,000 for fiscal year 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to subsection (a), in any fiscal year, shall remain available until expended.

SEC. 523. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE IMMIGRATION AND NATURALIZATION SERVICE.

(a) IN GENERAL.—There are authorized to be appropriated for the activities of the Immigration and Naturalization Service, to help meet the increased needs of the Immigration and Naturalization Service $5,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to subsection (a), in any fiscal year, shall remain available until expended.

SEC. 524. DRUG ENFORCEMENT ADMINISTRATION.

(a) ACTIVITIES OF DRUG ENFORCEMENT ADMINISTRATION.—With funds made available pursuant to subsection (b), the Attorney General shall—

(1) fund antiviolence crime initiatives;
(2) fund major violators' initiatives; and
(3) enhance or replace infrastructure.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Drug Enforcement Administration, to help meet the increased needs of the Drug Enforcement Administration—

(1) $60,000,000 for fiscal year 1996;
(2) $70,000,000 for fiscal year 1997;
(3) $80,000,000 for fiscal year 1998;
(4) $90,000,000 for fiscal year 1999; and
(5) $100,000,000 for fiscal year 2000.

(c) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

SEC. 525. DEPARTMENT OF JUSTICE.

(a) IN GENERAL.—Subject to the availability of appropriations, the Attorney General shall—

(1) hire additional Assistant United States Attorneys, and

(2) provide for increased security at courthouses and other facilities housing Federal workers.

(b) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS.—There are authorized to be appropriated for the activities of the Department of Justice, to hire additional Assistant United States Attorneys and personnel for the Criminal Division of the Department of Justice and provide increased security to meet the needs resulting from this Act $20,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

(c) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

SEC. 526. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE DEPARTMENT OF THE TREASURY.

(a) IN GENERAL.—There are authorized to be appropriated for the activities of the Bureau of Alcohol, Tobacco and Firearms, to augment counterterrorism efforts—

(1) $20,000,000 for fiscal year 1996;
(2) $20,000,000 for fiscal year 1997;
(3) $20,000,000 for fiscal year 1998;
(4) $20,000,000 for fiscal year 1999; and
(5) $20,000,000 for fiscal year 2000.

(b) IN GENERAL.—There are authorized to be appropriated for the activities of the United States Secret Service, to augment White House security and expand Presidential protection activities—

(1) $62,000,000 for fiscal year 1996;
(2) $25,000,000 for fiscal year 1997;
(3) $25,000,000 for fiscal year 1998;
(4) $25,000,000 for fiscal year 1999; and
(5) $25,000,000 for fiscal year 2000.

SEC. 527. FUNDING SOURCE.

Notwithstanding any other provision of law, funding for authorizations provided in this subtitle may be paid for out of the Violent Crime Reduction Trust Fund.

SEC. 528. DETERRENT AGAINST TERRORIST ACTIVITY DAMAGING A FEDERAL INTEREST COMPUTER.

The United States Sentencing Commission shall review existing guideline levels as they apply to sections 1030(a)(4) and 1030(a)(5) of title 18, United States Code, and report to Congress on their findings as to their deterrent effect within 60 calendar days. Furthermore, the Commission shall promulgate guideline amendments that will ensure that individuals convicted under sections 1030(a)(4) and 1030(a)(5) of title 18, United States Code, are incarcerated for not less than 6 months.

TITLE VI—CRIMINAL PROCEDURAL IMPROVEMENTS

Subtitle A—Habeas Corpus Reform

SEC. 601. FILING DEADLINES.

Section 2244 of title 28, United States Code, is amended by adding at the end the following new subsection:

''(d)(1) A 1-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—

''(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

''(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

''(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

''(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

''(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim shall not be counted toward any period of limitation under this subsection.''.

SEC. 602. APPEAL.

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 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

''(b) There shall be no right of appeal from a final 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 such person's detention pending removal proceedings.

''(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

''(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

''(B) the final order in a proceeding under section 2255.

''(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

''(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).''.

SEC. 603. AMENDMENT OF FEDERAL RULES OF APPELLATE PROCEDURE.

Rule 22 of the Federal Rules of Appellate Procedure is amended to read as follows:

''Rule 22. Habeas corpus and section 2255 proceedings

''(a) APPLICATION FOR THE ORIGINAL WRIT.—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 shall 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 shall not be permitted. The applicant may, pursuant to section 2253 of title 28, United States Code, appeal to the appropriate court of appeals from the order of the district court denying the writ.

''(b) CERTIFICATE OF APPEALABILITY.—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate of appealability pursuant to section 2253(c) of title 28, United States Code. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of appealability or state the reasons why such a certificate should not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request 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 its representative, a certificate of appealability is not required.''.

SEC. 604. SECTION 2254 AMENDMENTS.

Section 2254 of title 28, United States Code, is amended—

(1) by amending subsection (b) to read as follows:

''(b)(1) 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 unless it appears that—

''(A) the applicant has exhausted the remedies available in the courts of the State; or

''(B)(i) there is an absence of available State corrective process; or

''(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

''(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

''(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.'';

(2) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(3) by inserting after subsection (c) the following new subsection:

''(d) 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 adjudicated on the merits in State court proceedings unless the adjudication of the claim—

''(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

''(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'';

(4) by amending subsection (e), as redesignated by paragraph (2), to read as follows:

''(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

''(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

''(A) the claim relies on—

''(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

''(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

''(B) 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 applicant guilty of the underlying offense.''; and

(5) by adding at the end the following new subsections:

''(h) Except as provided in title 21, United States Code, section 848, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

''(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.''.

SEC. 605. SECTION 2255 AMENDMENTS.

Section 2255 of title 28, United States Code, is amended—

(1) by striking the second and fifth undesignated paragraphs; and

(2) by adding at the end the following new undesignated paragraphs:

''A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

''(1) the date on which the judgment of conviction becomes final;

''(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

''(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

''(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

''Except as provided in title 21, United States Code, section 848, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for a movant who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

''A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

''(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

''(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.''.

SEC. 606. LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.

(a) CONFORMING AMENDMENT TO SECTION 2244(a).—Section 2244(a) of title 28, United States Code, is amended by striking ''and the petition'' and all that follows through ''by such inquiry.'' and inserting '', except as provided in section 2255.''.

(b) LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.—Section 2244(b) of title 28, United States Code, is amended to read as follows:

''(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

''(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

''(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

''(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

''(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

''(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

''(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

''(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

''(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

''(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

''(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.''.

SEC. 607. DEATH PENALTY LITIGATION PROCEDURES.

(a) ADDITION OF CHAPTER TO TITLE 28, UNITED STATES CODE.—Title 28, United States

Code, is amended by inserting after chapter 153 the following new chapter:

"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

"Sec.
"2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.
"2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.
"2263. Filing of habeas corpus application; time requirements; tolling rules.
"2264. Scope of Federal review; district court adjudications.
"2265. Application to State unitary review procedure.
"2266. Limitation periods for determining applications and motions.

"§ 2261. 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 statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction 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 counsels 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 post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. 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 post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

"§ 2262. 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 2261(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 shall recite that the State has invoked the post-conviction 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 application under section 2254 within the time required in section 2263;

"(2) before a court of competent jurisdiction, in the presence of counsel, unless the prisoner has competently and knowingly waived such counsel, and after having been advised of the consequences, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254; or

"(3) a State prisoner files a habeas corpus petition under section 2254 within the time required by section 2263 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.

"(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 in the case, unless the court of appeals approves the filing of a second or successive application under section 2244(b).

"§ 2263. Filing of habeas corpus application; time requirements; tolling rules

"(a) Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.

"(b) The time requirements established by subsection (a) 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) from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

"(3) during an additional period not to exceed 30 days, if—

"(A) a motion for an extension of time is filed in the Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

"(B) a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.

"§ 2264. 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 made retroactively applicable; or

"(3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

"(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.

"§ 2265. 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. 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) To qualify under this section, a unitary review procedure 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 2261(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 2262, 2263, 2264, and 2266 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 such sections shall be understood as referring to unitary review under the State procedure. The reference in section 2262(a) to 'an order under section 2261(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 180-day limitation period under section 2263 shall be deferred until a transcript is made available to the prisoner or counsel of the prisoner.

"§ 2266. Limitation periods for determining applications and motions

"(a) The adjudication of any application under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 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.

"(b)(1)(A) A district court shall render a final determination and enter a final judgment on any application for a writ of habeas corpus brought under this chapter in a capital case not later than 180 days after the date on which the application is filed.

"(B) A district court shall afford the parties at least 120 days in which to complete all actions, including the preparation of all pleadings and briefs, and if necessary, a hearing, prior to the submission of the case for decision.

"(C)(i) A district court may delay for not more than one additional 30-day period beyond the period specified in subparagraph (A), the rendering of a determination of an application for a writ of habeas corpus if the court issues a written order making a finding, and stating the reasons for the finding,

that the ends of justice that would be served by allowing the delay outweigh the best interests of the public and the applicant in a speedy disposition of the application.

''(ii) The factors, among others, that a court shall consider in determining whether a delay in the disposition of an application is warranted are as follows:

''(I) Whether the failure to allow the delay would be likely to result in a miscarriage of justice.

''(II) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate briefing within the time limitations established by subparagraph (A).

''(III) Whether the failure to allow a delay in a case, that, taken as a whole, is not so unusual or so complex as described in subclause (II), but would otherwise deny the applicant reasonable time to obtain counsel, would unreasonably deny the applicant or the government continuity of counsel, or would deny counsel for the applicant or the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

''(iii) No delay in disposition shall be permissible because of general congestion of the court's calendar.

''(iv) The court shall transmit a copy of any order issued under clause (i) to the Director of the Administrative Office of the United States Courts for inclusion in the report under paragraph (5).

''(2) The time limitations under paragraph (1) shall apply to—

''(A) an initial application for a writ of habeas corpus;

''(B) any second or successive application for a writ of habeas corpus; and

''(C) any redetermination of an application for a writ of habeas corpus following a remand by the court of appeals or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

''(3)(A) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

''(B) No amendment to an application for a writ of habeas corpus under this chapter shall be permitted after the filing of the answer to the application, except on the grounds specified in section 2244(b).

''(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

''(B) The State may enforce a time limitation under this section by petitioning for a writ of mandamus to the court of appeals. The court of appeals shall act on the petition for a writ or mandamus not later than 30 days after the filing of the petition.

''(5)(A) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the district courts with the time limitations under this section.

''(B) The report described in subparagraph (A) shall include copies of the orders submitted by the district courts under paragraph (1)(B)(iv).

''(c)(1)(A) A court of appeals shall hear and render a final determination of any appeal of an order granting or denying, in whole or in part, an application brought under this chapter in a capital case not later than 120 days after the date on which the reply brief is filed, or if no reply brief is filed, not later than 120 days after the date on which the answering brief is filed.

''(B)(i) A court of appeals shall decide whether to grant a petition for rehearing or other request for rehearing en banc not later than 30 days after the date on which the petition for rehearing is filed unless a responsive pleading is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the responsive pleading is filed.

''(ii) If a petition for rehearing or rehearing en banc is granted, the court of appeals shall hear and render a final determination of the appeal not later than 120 days after the date on which the order granting rehearing or rehearing en banc is entered.

''(2) The time limitations under paragraph (1) shall apply to—

''(A) an initial application for a writ of habeas corpus;

''(B) any second or successive application for a writ of habeas corpus; and

''(C) any redetermination of an application for a writ of habeas corpus or related appeal following a remand by the court of appeals en banc or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

''(3) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

''(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

''(B) The State may enforce a time limitation under this section by applying for a writ of mandamus to the Supreme Court.

''(5) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the courts of appeals with the time limitations under this section.''.

(b) TECHNICAL AMENDMENT.—The part analysis for part IV of title 28, United States Code, is amended by adding after the item relating to chapter 153 the following new item:

''154. Special habeas corpus procedures in capital cases ..... 2261.''.

(c) EFFECTIVE DATE.—Chapter 154 of title 28, United States Code (as added by subsection (a)) shall apply to cases pending on or after the date of enactment of this Act.

SEC. 608. TECHNICAL AMENDMENT.

Section 408(q) of the Controlled Substances Act (21 U.S.C. 848(q)) is amended by amending paragraph (9) to read as follows:

''(9) Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the defendant's attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses therefor under paragraph (10). No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.''.

Subtitle B—Criminal Procedural Improvements

SEC. 621. CLARIFICATION AND EXTENSION OF CRIMINAL JURISDICTION OVER CERTAIN TERRORISM OFFENSES OVERSEAS.

(a) AIRCRAFT PIRACY.—Section 46502(b) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking ''and later found in the United States'';

(2) by amending paragraph (2) to read as follows:

''(2) The courts of the United States have jurisdiction over the offense in paragraph (1) if—

''(A) a national of the United States was aboard the aircraft;

''(B) an offender is a national of the United States; or

''(C) an offender is afterwards found in the United States.''; and

(3) by adding at the end the following new paragraph:

''(3) For purposes of this subsection, the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''.

(b) DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.—Section 32(b) of title 18, United States Code, is amended—

(1) by striking ''(b) Whoever'' and inserting ''(b)(1) Whoever'';

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;

(3) by striking '', if the offender is later found in the United States,''; and

(4) by adding at the end the following new paragraphs:

''(2) The courts of the United States have jurisdiction over an offense described in this subsection if—

''(A) a national of the United States was on board, or would have been on board, the aircraft;

''(B) an offender is a national of the United States; or

''(C) an offender is afterwards found in the United States.

''(3) For purposes of this subsection, the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''.

(c) MURDER OR MANSLAUGHTER OF INTERNATIONALLY PROTECTED PERSONS.—Section 1116 of title 18, United States Code, is amended—

(1) in subsection (a), by striking '', except that'';

(2) in subsection (b), by adding at the end the following new paragraph:

''(7) 'National of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''; and

(3) in subsection (c), by striking the first sentence and inserting the following: ''If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.''.

(d) PROTECTION OF INTERNATIONALLY PROTECTED PERSONS.—Section 112 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting ''national of the United States,'' before ''and''; and

(2) in subsection (e), by striking the first sentence and inserting the following: ''If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.''.

(e) THREATS AGAINST INTERNATIONALLY PROTECTED PERSONS.—Section 878 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting ''national of the United States,'' before ''and''; and

(2) in subsection (d), by striking the first sentence and inserting the following: ''If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.''.

(f) KIDNAPPING OF INTERNATIONALLY PROTECTED PERSONS.—Section 1201(e) of title 18, United States Code, is amended—

(1) by striking the first sentence and inserting the following: ''If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.''; and

(2) by adding at the end the following: ''For purposes of this subsection, the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22).''.

(g) VIOLENCE AT INTERNATIONAL AIRPORTS.—Section 37(b)(2) of title 18, United States Code, is amended to read as follows:

''(2) the prohibited activity takes place outside the United States, and—

''(A) the offender is later found in the United States; or

''(B) an offender or a victim is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))).''.

(h) NATIONAL OF THE UNITED STATES DEFINED.—Section 178 of title 18, United States Code, is amended—

(1) by striking the ''and'' at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(5) the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''.

SEC. 622. EXPANSION OF TERRITORIAL SEA.

(a) TERRITORIAL SEA EXTENDING TO TWELVE MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.—The Congress declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, for purposes of criminal jurisdiction is part of the United States, subject to its sovereignty, and, for purposes of Federal criminal jurisdiction, is within the special maritime and territorial jurisdiction of the United States wherever that term is used in title 18, United States Code.

(b) ASSIMILATED CRIMES IN EXTENDED TERRITORIAL SEA.—Section 13 of title 18, United States Code (relating to the adoption of State laws for areas within Federal jurisdiction), is amended—

(1) in subsection (a), by inserting after ''title,'' the following: ''or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district''; and

(2) by adding at the end the following new subsection:

''(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Commonwealth, territory, possession, or district, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed for purposes of subsection (a) to lie within the area of that State, Commonwealth, territory, possession, or district it would lie within if the boundaries of such State, Commonwealth, territory, possession, or district were extended seaward to the outer limit of the territorial sea of the United States.''.

SEC. 623. EXPANSION OF WEAPONS OF MASS DESTRUCTION STATUTE.

Section 2332a of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting ''threatens,'' before ''attempts'';

(B) in paragraph (2), by striking ''; or'' and inserting the following: ''and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce if such use had occurred;'';

(C) by redesignating paragraph (3) as paragraph (4);

(D) by inserting after paragraph (2) the following:

''(3) against a victim, or intended victim, that is the United States Government, a member of the uniformed services, or any official, officer, employee, or agent of the legislative, executive, or judicial branches, or any department or agency, of the United States; and''; and

(E) in paragraph (4), as redesignated, by inserting before the comma at the end the following: '', or is within the United States and is used in any activity affecting interstate or foreign commerce''.

(2) by redesignating subsection (b) as subsection (c);

(3) by adding immediately after subsection (a) the following new subsection:

''(b) USE OUTSIDE UNITED STATES.—Any national of the United States who outside of the United States uses, threatens, attempts, or conspires to use, a weapon of mass destruction, shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisonment for any term of years or for life. The preceding sentence does not apply to a person performing an act that, as performed, is within the scope of the person's official duties as an officer or employee of the United States or as a member of the Armed Forces of the United States, or to a person employed by a contractor of the United States for performing an act that, as performed, is authorized under the contract.''; and

(4) by amending subsection (c)(2)(B), as redesignated by paragraph (3), by striking ''poison gas'' and inserting ''any poisonous chemical agent or substance, regardless of form or delivery system, designed for causing widespread death or injury;''.

SEC. 624. ADDITION OF TERRORISM OFFENSES TO THE RICO STATUTE.

Section 1961(1) of title 18, United States Code, is amended—

(1) in subparagraph (B)—

(A) by inserting after ''Section'' the following: ''32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section'';

(B) by inserting after ''section 224 (relating to sports bribery),'' the following: ''section 351 (relating to congressional or Cabinet officer assassination),'';

(C) by inserting after ''section 664 (relating to embezzlement from pension and welfare funds),'' the following: ''section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce),'';

(D) by inserting after ''sections 891–894 (relating to extortionate credit transactions),'' the following: ''section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),'';

(E) by inserting after ''section 1084 (relating to the transmission of gambling information),'' the following: ''section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1203 (relating to hostage taking),'';

(F) by inserting after ''section 1344 (relating to financial institution fraud),'' the following: ''section 1361 (relating to willful injury of government property within the special maritime and territorial jurisdiction),'';

(G) by inserting after ''section 1513 (relating to retaliating against a witness, victim, or an informant),'' the following: ''section 1751 (relating to Presidential assassination),'';

(H) by inserting after ''section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire),'' the following: ''section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),''; and

(I) by inserting after ''2321 (relating to trafficking in certain motor vehicles or motor vehicle parts),'' the following: ''section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to acts of terrorism transcending national boundaries), section 2339A (relating to providing material support to terrorists),'';

(2) by striking ''or'' before ''(E)''; and

(3) by inserting before the semicolon at the end the following: '', or (F) section 46502 of title 49, United States Code''.

SEC. 625. ADDITION OF TERRORISM OFFENSES TO THE MONEY LAUNDERING STATUTE.

Section 1956(c)(7) of title 18, United States Code, is amended—

(1) in subparagraph (B), by amending clause (ii) to read as follows:

''(ii) murder, kidnapping, robbery, extortion, or destruction of property by means of explosive or fire;''; and

(2) in subparagraph (D)—

(A) by inserting after ''an offense under'' the following: ''section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member),'';

(B) by inserting after ''section 215 (relating to commissions or gifts for procuring loans),'' the following: ''section 351 (relating to congressional or Cabinet officer assassination),'';

(C) by inserting after ''section 798 (relating to espionage),'' the following: ''section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce),'';

(D) by inserting after ''section 875 (relating to interstate communications),'' the following: ''section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),'';

(E) by inserting after ''section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution),'' the following: ''section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons),'';

(F) by inserting after ''section 1203 (relating to hostage taking)'' the following: ''section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),'';

(G) by inserting after ''section 1708 (relating to theft from the mail)'' the following: ''section 1751 (relating to Presidential assassination),'';

(H) by inserting after ''2114 (relating to bank and postal robbery and theft),'' the following: ''section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),''; and

(I) by striking ''of this title'' and inserting the following: ''section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code,''.

SEC. 626. PROTECTION OF CURRENT OR FORMER OFFICIALS, OFFICERS, OR EMPLOYEES OF THE UNITED STATES.

(a) AMENDMENT TO INCLUDE ASSAULTS, MURDERS, AND THREATS AGAINST FAMILIES OF FEDERAL OFFICIALS.—Section 115(a)(2) of title 18, United States Code, is amended by inserting '', or threatens to assault, kidnap, or murder, any person who formerly served as a person designated in paragraph (1), or'' after ''assaults, kidnaps, or murders, or attempts to kidnap or murder''.

(b) MURDER OR ATTEMPTS TO MURDER CURRENT OR FORMER FEDERAL OFFICERS OR EMPLOYEES.—Section 1114 of title 18, United States Code, is amended to read as follows:

''§ 1114. Protection of officers and employees of the United States

''Whoever kills or attempts to kill a current or former officer or employee of the United States or its instrumentalities, or an immediate family member of such officer or employee, or any person assisting such an officer or employee in the performance of official duties, during or on account of the performance of such duties or the provision of such assistance, shall be punished—

''(1) in the case of murder, as provided under section 1111;

''(2) in the case of manslaughter, as provided under section 1112; and

''(3) in the case of attempted murder or manslaughter as provided in section 1113, not more than 20 years.''.

(c) AMENDMENT TO CLARIFY THE MEANING OF THE TERM DEADLY OR DANGEROUS WEAPON IN THE PROHIBITION ON ASSAULT ON FEDERAL OFFICERS OR EMPLOYEES.—Section 111(b) of title 18, United States Code, is amended by inserting after ''deadly or dangerous weapon'' the following: ''(including a weapon intended to cause death or danger but that fails to do so by reason of a defective or missing component)''.

SEC. 627. ADDITION OF CONSPIRACY TO TERRORISM OFFENSES.

(a) DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.—(1) Section 32(a)(7) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(2) Section 32(b)(D) of title 18, United States Code, as redesignated by section 721(b)(2), is amended by inserting ''or conspires'' after ''attempts''.

(b) VIOLENCE AT INTERNATIONAL AIRPORTS.—Section 37(a) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(c) INFLUENCING, IMPEDING, OR RETALIATING AGAINST A FEDERAL OFFICIAL BY THREATENING OR INJURING A FAMILY MEMBER.—(1) Section 115(a)(1)(A) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(2) Section 115(a)(2) of title 18, United States Code, as amended by section 729, is further amended by inserting ''or conspires'' after ''attempts''.

(3) Section 115(b)(2) of title 18, United States Code, is amended by striking both times it appears ''or attempted kidnapping'' and inserting both times '', attempted kidnapping or conspiracy to kidnap''.

(4)(A) Section 115(b)(3) of title 18, United States Code, is amended by striking ''or attempted murder'' and inserting '', attempted murder or conspiracy to murder''.

(B) Section 115(b)(3) of title 18, United States Code, is further amended by striking ''and 1113'' and inserting '', 1113, and 1117''.

(d) PROHIBITIONS WITH RESPECT TO BIOLOGICAL WEAPONS.—Section 175(a) of title 18, United States Code, is amended by inserting '', or conspires to do so,'' after ''any organization to do so,''.

(e) HOSTAGE TAKING.—Section 1203(a) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(f) VIOLENCE AGAINST MARITIME NAVIGATION.—Section 2280(a)(1)(H) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(g) VIOLENCE AGAINST MARITIME FIXED PLATFORMS.—Section 2281(a)(1)(F) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(h) AIRCRAFT PIRACY.—Section 46502 of title 49, United States Code, is amended—

(1) in subsection (a)(2), by inserting '', conspiring,'' after ''committing'' and

(2) in subsection (b)—

(A) in paragraph (1), by inserting ''or conspiring to commit'' after ''committing'';

(B) in paragraph (2), by inserting ''conspired or'' after ''has placed,''; and

(C) in paragraph (3), by inserting ''conspired or'' after ''has placed,''.

(i) CLARIFICATION OF MARITIME VIOLENCE JURISDICTION.—Section 2280(b)(1)(A) of title 18, United States Code, is amended—

(1) in clause (ii), by striking ''and the activity is not prohibited as a crime by the State in which the activity takes place''; and

(2) in clause (iii), by striking ''the activity takes place on a ship flying the flag of a foreign country or outside the United States,''.

SEC. 628. CLARIFICATION OF FEDERAL JURISDICTION OVER BOMB THREATS.

Section 844(e) of title 18, United States Code, is amended—

(1) by striking ''(e) Whoever'' and inserting ''(e)(1) Whoever''; and

(2) by adding at the end the following new paragraph:

''(2) Whoever willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made to violate subsection (f) or (i) of this section or section 81 of this title shall be fined under this title, imprisoned for not more than 5 years, or both.''.

TITLE VII—MARKING OF PLASTIC EXPLOSIVES

SEC. 701. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) plastic explosives were used by terrorists in the bombings of Pan Am flight 103 in December 1988 and UTA flight 722 in September 1989;

(2) plastic explosives can be used with little likelihood of detection for acts of unlawful interference with civil aviation, maritime navigation, and other modes of transportation;

(3) the criminal use of plastic explosives places innocent lives in jeopardy, endangers national security, affects domestic tranquility, and gravely affects interstate and foreign commerce;

(4) the marking of plastic explosives for the purpose of detection would contribute significantly to the prevention and punishment of such unlawful acts; and

(5) for the purpose of deterring and detecting such unlawful acts, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991, requires each contracting State to adopt appropriate measures to ensure that plastic explosives are duly marked and controlled.

(b) PURPOSE.—The purpose of this title is to fully implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

SEC. 702. DEFINITIONS.

Section 841 of title 18, United States Code, is amended by adding at the end the following new subsections:

''(o) 'Convention on the Marking of Plastic Explosives' means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

''(p) 'Detection agent' means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

''(1) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

''(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

''(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

''(4) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

''(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, which has been added to the table in part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

''(q) 'Plastic explosive' means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form have a vapor pressure less than 10^{-4} Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.''.

SEC. 703. REQUIREMENT OF DETECTION AGENTS FOR PLASTIC EXPLOSIVES.

Section 842 of title 18, United States Code, is amended by adding after subsection (k) the following new subsections:

''(l) It shall be unlawful for any person to manufacture any plastic explosive that does not contain a detection agent.

''(m)(1) It shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive that does not contain a detection agent.

''(2) This subsection does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive that was imported, brought into, or manufactured in the United States prior to the date of enactment of title VII of the Comprehensive Terrorism Prevention Act of 1995 by or on behalf of any agency of the United States performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

''(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent.

''(2) This subsection does not apply to—

''(A) the shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported, brought into, or manufactured in the United States prior to the date of enactment of the Comprehensive Terrorism Prevention Act of 1995 by any person during a period not exceeding 3 years after the date of enactment of title VII of the Comprehensive Terrorism Prevention Act of 1995; or

''(B) the shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported, brought into, or manufactured in the United States prior to the date of enactment of title VII of the Comprehensive Terrorism Prevention Act of 1995 by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

''(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the date of enactment of title VII of the Comprehensive Terrorism Prevention Act of 1995, to fail to report to the Secretary within 120 days after such effective date the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may by regulations prescribe.''.

SEC. 704. CRIMINAL SANCTIONS.

Section 844(a) of title 18, United States Code, is amended to read as follows:

''(a) Any person who violates any of subsections (a) through (i) or (l) through (o) of section 842 shall be fined under this title or imprisoned not more than 10 years, or both.''.

SEC. 705. EXCEPTIONS.

Section 845 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting ''(l), (m), (n), or (o) of section 842 and subsections'' after ''subsections'';

(2) in paragraph (1), by inserting before the semicolon '', and which pertain to safety''; and

(3) by adding at the end the following new subsection:

''(c) It is an affirmative defense against any proceeding involving subsections (l) through (o) of section 842 if the proponent proves by a preponderance of the evidence that the plastic explosive—

''(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

''(A) research, development, or testing of new or modified explosive materials;

''(B) training in explosives detection or development or testing of explosives detection equipment; or

''(C) forensic science purposes; or

''(2) was plastic explosive that, within 3 years after the date of enactment of the Comprehensive Terrorism Prevention Act of 1995, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located.

''(3) For purposes of this subsection, the term 'military device' includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.''.

SEC. 706. INVESTIGATIVE AUTHORITY.

Section 846 of title 18, United States Code, is amended—

(1) in the last sentence, by inserting in the last sentence before ''subsection'' the phrase ''subsection (m) or (n) of section 842 or;'', and

(2) by adding at the end the following: ''The Attorney General shall exercise authority over violations of subsection (m) or (n) of section 842 only when they are committed by a member of a terrorist or revolutionary group. In any matter involving a terrorist or revolutionary group or individual, as determined by the Attorney General, the Attorney General shall have primary investigative responsibility and the Secretary shall assist the Attorney General as requested.''.

SEC. 707. EFFECTIVE DATE.

Except as otherwise provided in this title, this title and the amendments made by this title shall take effect 1 year after the date of enactment of this Act.

SEC. 708. STUDY AND REQUIREMENTS FOR TAGGING OF EXPLOSIVE MATERIALS, AND STUDY AND RECOMMENDATIONS FOR RENDERING EXPLOSIVE COMPONENTS INERT AND IMPOSING CONTROLS ON PRECURSORS OF EXPLOSIVES.

(a) The Secretary of the Treasury shall conduct a study and make recommendations concerning—

(1) the tagging of explosive materials for purposes of detection and identification;

(2) whether common chemicals used to manufacture explosive materials can be rendered inert and whether it is feasible to require it; and

(3) whether controls can be imposed on certain precursor chemicals used to manufacture explosive materials and whether it is feasible and cost-effective to require it.

In conducting the study, the Secretary shall consult with other Federal, State and local officials with expertise in this area and such other individuals as shall be deemed necessary. Such study shall be completed within twelve months after the enactment of this Act and shall be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation.

(b) There are authorized to be appropriated for the study and recommendations contained in paragraph (a) such sums as may be necessary.

(c) Section 842, of title 18, United States Code, is amended by inserting after subsection (k), a new subsection (l) which reads as follows:

''(l)(1) It shall be unlawful for any person to manufacture, import, ship, transport, receive, possess, transfer, or distribute any explosive material that does not contain a tracer element as prescribed by the Secretary pursuant to regulation, knowing or having reasonable cause to believe that the explosive material does not contain the required tracer element.

''(2) For purposes of this subsection, explosive material does not include smokeless or black powder manufactured for uses set forth in section 845(a) (4) and (5) of this chapter.''.

(d) Section 844, of title 18, United States Code, is amended by inserting after ''(a) through (i)'' the phrase ''and (l)''.

(e) Section 846, of title 18, United States Code, is amended by designating the present section as ''(a)'' and by adding a new subsection (b) reading as follows:

''(b) to facilitate the enforcement of this chapter the Secretary shall, within 6 months after submission of the study required by subsection (a), promulgate regulations for the addition of tracer elements to explosive materials manufactured in or imported into the United States. Tracer elements to be added to explosive materials under provisions of this subsection shall be of such character and in such quantity as the Secretary may authorize or require, and such as will not substantially impair the quality of the explosive materials for their intended lawful use, adversely affect the safety of these explosives, or have a substantially adverse effect on the environment.''.

(f) The penalties provided herein shall not take effect until ninety days after the date of promulgation of the regulations provided for herein.

TITLE VIII—NUCLEAR MATERIALS

SEC. 801. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) nuclear materials, including byproduct materials, can be used to create radioactive dispersal devices that are capable of causing serious bodily injury as well as substantial damage to property and the environment;

(2) the potential use of nuclear materials, including byproduct materials, enhances the threat posed by terrorist activities and thereby has a greater effect on the security interests of the United States;

(3) due to the widespread hazards presented by the threat of nuclear contamination, as well as nuclear bombs, the United States has a strong interest in ensuring that persons who are engaged in the illegal acquisition and use of nuclear materials, including byproduct materials, are prosecuted for their offenses;

(4) the threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially since the enactment in 1982 of the legislation that implemented the Convention on the Physical Protection of Nuclear Material, codified at section 831 of title 18, United States Code;

(5) the successful efforts to obtain agreements from other countries to dismantle nuclear weapons have resulted in increased packaging and transportation of nuclear materials, thereby decreasing the security of such materials by increasing the opportunity for unlawful diversion and theft;

(6) the illicit trafficking in the relatively more common, commercially available and usable nuclear and byproduct materials poses a potential to cause significant loss of life and environmental damage;

(7) reported trafficking incidents in the early 1990's suggest that the individuals involved in trafficking these materials from Eurasia and Eastern Europe frequently conducted their black market sales of these materials within the Federal Republic of Germany, the Baltic States, the former Soviet

Union, Central Europe, and to a lesser extent in the Middle European countries;

(8) the international community has become increasingly concerned over the illegal possession of nuclear and nuclear byproduct materials;

(9) the potentially disastrous ramifications of increased access to nuclear and nuclear byproduct materials pose such a significant future threat that the United States must use all lawful methods available to combat the illegal use of such materials;

(10) the United States has an interest in encouraging United States corporations to do business in the countries that comprised the former Soviet Union, and in other developing democracies;

(11) protection of such United States corporations from threats created by the unlawful use of nuclear materials is important to the success of the effort to encourage such business ventures, and to further the foreign relations and commerce of the United States;

(12) the nature of nuclear contamination is such that it may affect the health, environment, and property of United States nationals even if the acts that constitute the illegal activity occur outside the territory of the United States, and are primarily directed toward foreign nationals; and

(13) there is presently no Federal criminal statute that provides adequate protection to United States interests from nonweapons grade, yet hazardous radioactive material, and from the illegal diversion of nuclear materials that are held for other than peaceful purposes.

(b) PURPOSE.—The purpose of this title is to provide Federal law enforcement agencies the necessary tools and fullest possible basis allowed under the Constitution to combat the threat of nuclear contamination and proliferation that may result from illegal possession and use of radioactive materials.

SEC. 802. EXPANSION OF SCOPE AND JURISDICTIONAL BASES OF NUCLEAR MATERIALS PROHIBITIONS.

Section 831 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''nuclear material'' each place it appears and inserting ''nuclear material or nuclear byproduct material'';

(B) in paragraph (1)—

(i) in subparagraph (A), by inserting ''or the environment'' after ''property''; and

(ii) by amending subparagraph (B) to read as follows:

''(B)(i) circumstances exist that are likely to cause the death or serious bodily injury to any person or substantial damage to property or the environment, or such circumstances have been represented to the defendant to exist;''; and

(C) in paragraph (6), by inserting ''or the environment'' after ''property'';

(2) in subsection (c)—

(A) by amending paragraph (2) to read as follows:

''(2) an offender or a victim is a national of the United States or a United States corporation or other legal entity;'';

(B) in paragraph (3)—

(i) by striking ''at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and''; and

(ii) by striking ''or'' at the end of the paragraph;

(C) in paragraph (4)—

(i) by striking ''nuclear material for peaceful purposes'' and inserting ''nuclear material or nuclear byproduct material''; and

(ii) by striking the period at the end of the paragraph and inserting ''; or''; and

(D) by adding at the end the following new paragraph:

''(5) the governmental entity under subsection (a)(5) is the United States or the threat under subsection (a)(6) is directed at the United States.''; and

(3) in subsection (f)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking ''with an isotopic concentration not in excess of 80 percent plutonium 238''; and

(ii) in subparagraph (C), by striking ''(C) uranium'' and inserting ''(C) enriched uranium, defined as uranium'';

(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (4), (5), and (6), respectively;

(C) by inserting after paragraph (1) the following new paragraph:

''(2) the term 'nuclear byproduct material' means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;'';

(D) by striking ''and'' at the end of paragraph (4), as redesignated;

(E) by striking the period at the end of subsection (f)(5), as redesignated, and inserting a semicolon; and

(F) by adding at the end the following new paragraphs:

''(6) the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

''(7) the term 'United States corporation or other legal entity' means any corporation or other entity organized under the laws of the United States or any State, Commonwealth, territory, possession, or district of the United States.''.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. PROHIBITION ON DISTRIBUTION OF INFORMATION RELATING TO EXPLOSIVE MATERIALS FOR A CRIMINAL PURPOSE.

(a) Section 842 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(l) It shall be unlawful for any person to teach or demonstrate the making of explosive materials, or to distribute by any means information pertaining to, in whole or in part, the manufacture of explosive materials, if the person intends or knows, that such explosive materials or information will be used for, or in furtherance of, an activity that constitutes a Federal criminal offense or a criminal purpose affecting interstate commerce.''.

(b) Section 844 of title 18, United States Code, is amended by designating subsection (a) as subsection (a)(1) and by adding the following new subsection:

''(a)(2) Any person who violates subsection (l) of section 842 of this chapter shall be fined under this title or imprisoned not more than twenty years, or both.''.

SEC. 902. DESIGNATION OF CARTNEY KOCH MCRAVEN CHILD DEVELOPMENT CENTER.

(a) DESIGNATION.—

(1) IN GENERAL.—The Federal building at 1314 LeMay Boulevard, Ellsworth Air Force Base, South Dakota, shall be known and designated as the ''Cartney Koch McRaven Child Development Center''.

(2) REPLACEMENT BUILDING.—If, after the date of enactment of this Act, a new Federal building is built at the location described in paragraph (1) to replace the building described in the paragraph, the new Federal building shall be known and designated as the ''Cartney Koch McRaven Child Development Center''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to a Federal building referred to in subsection (a) shall be deemed to be a reference to the ''Cartney Koch McRaven Child Development Center''.

SEC. 903. FOREIGN AIR TRAVEL SAFETY.

Section 44906 of title 49, United States Code, is amended to read as follows:

''§ 44906. Foreign air carrier security programs

''The Administrator of the Federal Aviation Administration shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the Administrator. The Administrator shall only approve a security program of a foreign air carrier under section 129.25, or any successor regulation, if the Administrator decides the security program provides passengers of the foreign air carrier a level of protection identical to the level those passengers would receive under the security programs of air carriers serving the same airport. The Administrator shall prescribe regulations to carry out this section.''.

SEC. 904. PROOF OF CITIZENSHIP.

Notwithstanding any other provision of law, a Federal, State, or local government agency may not use a voter registration card (or other related document) that evidences registration for an election for Federal office, as evidence to prove United States citizenship.

SEC. 905. COOPERATION OF FERTILIZER RESEARCH CENTERS.

In conducting any portion of the study relating to the regulation and use of fertilizer as a pre-explosive material, the Secretary of the Treasury shall consult with and receive input from non-profit fertilizer research centers and include their opinions and findings in the report required under subsection (c).

SEC. 906. SPECIAL ASSESSMENTS ON CONVICTED PERSONS.

Section 3013(a)(2) of title 18, United States Code, is amended—

(A) in subparagraph (A), by striking ''$50'' and inserting ''not less than $100''; and

(B) in subparagraph (B), by striking ''$200'' and inserting ''not less than $400''.

SEC. 907. PROHIBITION ON ASSISTANCE UNDER ARMS EXPORT CONTROL ACT FOR COUNTRIES NOT COOPERATING FULLY WITH UNITED STATES ANTITERRORISM EFFORTS.

Chapter 3 of the Arms Export Control Act (22 U.S.C. 2771 et seq.) is amended by adding at the end the following:

''**Sec. 40A. Transactions with Countries Not Fully Cooperating with United States Antiterrorism Efforts.**

''(a) PROHIBITED TRANSACTIONS.—No defense article or defense service may be sold or licensed for export under this Act to a foreign country in a fiscal year unless the President determines and certifies to Congress at the beginning of that fiscal year, or at any other time in that fiscal year before such sale or license, that the country is cooperating fully with United States antiterrorism efforts.

''(b) WAIVER.—The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is essential to the national security interests of the United States.''.

SEC. 908. AUTHORITY TO REQUEST MILITARY ASSISTANCE WITH RESPECT TO OFFENSES INVOLVING BIOLOGICAL AND CHEMICAL WEAPONS.

(a) BIOLOGICAL WEAPONS OF MASS DESTRUCTION.—Section 175 of title 18, United States Code, is amended by adding at the end the following:

''(c)(1) MILITARY ASSISTANCE.—The Attorney General may request that the Secretary of Defense provide assistance in support of

Department of Justice activities relating to the enforcement of this section in an emergency situation involving biological weapons of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if—

''(A) the Secretary of Defense and the Attorney General determine that an emergency situation involving biological weapons of mass destruction exists; and

''(B) the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

''(2) As used in this section, 'emergency situation involving biological weapons of mass destruction' means a circumstance involving a biological weapon of mass destruction—

''(A) that poses a serious threat to the interests of the United States; and

''(B) in which—

''(i) civilian expertise is not readily available to provide the required assistance to counter the threat posed by the biological weapon of mass destruction involved;

''(ii) Department of Defense special capabilities and expertise are needed to counter the threat posed by the biological weapon of mass destruction involved; and

''(iii) enforcement of the law would be seriously impaired if the Department of Defense assistance were not provided.

''(3) The assistance referred to in paragraph (1) includes the operation of equipment (including equipment made available under section 372 of title 10) to monitor, contain, disable, or dispose of a biological weapon of mass destruction or elements of the weapon.

''(4) The Attorney General and the Secretary of Defense shall jointly issue regulations concerning the types of assistance that may be provided under this subsection. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this subsection. Such regulations shall not authorize arrest or any assistance in conducting searches and seizures that seek evidence related to violations of this section, except for the immediate protection of human life.

''(5) The Secretary of Defense shall require reimbursement as a condition for providing assistance under this subsection in accordance with section 377 of title 10.

''(6)(A) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this subsection. The Attorney General may delegate the Attorney General's authority under this subsection only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

''(B) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this subsection. The Secretary of Defense may delegate the Secretary's authority under this subsection only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.''.

(b) CHEMICAL WEAPONS OF MASS DESTRUCTION.—The chapter 113B of title 18, United States Code, that relates to terrorism, is amended by inserting after section 2332a the following:

''§ 2332b. Use of chemical weapons

''(a) OFFENSE.—A person who without lawful authority uses, or attempts or conspires to use, a chemical weapon—

''(1) against a national of the United States while such national is outside of the United States;

''(2) against any person within the United States; or

''(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

''(b) DEFINITIONS.—For purposes of this section—

''(1) the term 'national of the United States' has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

''(2) the term 'chemical weapon' means any weapon that is designed to cause widespread death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors.

''(c)(1) MILITARY ASSISTANCE.—The Attorney General may request that the Secretary of Defense provide assistance in support of Department of Justice activities relating to the enforcement of this section in an emergency situation involving chemical weapons of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if—

''(A) the Secretary of Defense and the Attorney General determine that an emergency situation involving chemical weapons of mass destruction exists; and

''(B) the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

''(2) As used in this section, 'emergency situation involving chemical weapons of mass destruction' means a circumstance involving a chemical weapon of mass destruction—

''(A) that poses a serious threat to the interests of the United States; and

''(B) in which—

''(i) civilian expertise is not readily available to provide the required assistance to counter the threat posed by the chemical weapon of mass destruction involved;

''(ii) Department of Defense special capabilities and expertise are needed to counter the threat posed by the biological weapon of mass destruction involved; and

''(iii) enforcement of the law would be seriously impaired if the Department of Defense assistance were not provided.

''(3) The assistance referred to in paragraph (1) includes the operation of equipment (including equipment made available under section 372 of title 10) to monitor, contain, disable, or dispose of a chemical weapon of mass destruction or elements of the weapon.

''(4) The Attorney General and the Secretary of Defense shall jointly issue regulations concerning the types of assistance that may be provided under this subsection. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this subsection. Such regulations shall not authorize arrest or any assistance in conducting searches and seizures that seek evidence related to violations of this section, except for the immediate protection of human life.

''(5) The Secretary of Defense shall require reimbursement as a condition for providing assistance under this subsection in accordance with section 377 of title 10.

''(6)(A) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this subsection. The Attorney General may delegate the Attorney General's authority under this subsection only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

''(B) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this subsection. The Secretary of Defense may delegate the Secretary's authority under this subsection only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.''.

(c)(1) CIVILIAN EXPERTISE.—The President shall take reasonable measures to reduce civilian law enforcement officials' reliance on Department of Defense resources to counter the threat posed by the use or potential use of biological and chemical weapons of mass destruction within the United States, including—

(A) increasing civilian law enforcement expertise to counter such threat;

(B) improving coordination between civilian law enforcement officials and other civilian sources of expertise, both within and outside the Federal Government, to counter such threat.

(2) REPORT REQUIREMENT.—The President shall submit to the Congress—

(A) ninety days after the date of enactment of this Act, a report describing the respective policy functions and operational roles of Federal agencies in countering the threat posed by the use or potential use of biological and chemical weapons of mass destruction within the United States;

(B) one year after the date of enactment of this Act, a report describing the actions planned to be taken and the attendant cost pertaining to paragraph (1); and

(C) three years after the date of enactment of this Act, a report updating the information provided in the reports submitted pursuant to subparagraphs (A) and (B), including measures taken pursuant to paragraph (1).

(d) CLERICAL AMENDMENT.—The chapter analysis for chapter 113B of title 18, United States Code, is amended by inserting after the item relating to section 2332a the following:

''2332b. Use of chemical weapons.''.

(e) USE OF WEAPONS OF MASS DESTRUCTION.—Section 2332a(a) of title 18, United States Code, is amended by inserting ''without lawful authority'' after ''A person who''.

SEC. 909. REVISION TO EXISTING AUTHORITY FOR MULTIPOINT WIRETAPS.

(a) Section 2518(11)(b)(ii) of title 18 is amended: by deleting ''of a purpose, on the part of that person, to thwart interception by changing facilities.'' and inserting ''that the person had the intent to thwart interception or that the person's actions and conduct would have the effect of thwarting interception from a specified facility.''.

(b) Section 2518(11)(b)(iii) is amended to read:

''(iii) the judge finds that such showing has been adequately made.''.

SEC. 910. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE UNITED STATES PARK POLICE.

(a) IN GENERAL.—There are authorized to be appropriated from the General Fund of the Treasury for the activities of the United States Park Police, to help meet the increased needs of the United States Park Police, $1,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

SEC. 911. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.

(a) IN GENERAL.—There are authorized to be appropriated from the General Fund of the Treasury for the activities of the Administrative Office of the United States Courts, to help meet the increased needs of the Administrative Office of the United States Courts, $4,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

SEC. 912. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE UNITED STATES CUSTOMS SERVICE.

(a) IN GENERAL.—There are authorized to be appropriated from the General Fund of the Treasury for the activities of the United States Customs Service, to help meet the increased needs of the United States Customs Service, $10,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

(b) AVAILABILITY OF FUNDS.—Funds made available pursuant to this section, in any fiscal year, shall remain available until expended.

SEC. 913. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

TITLE X—VICTIMS OF TERRORISM ACT

SEC. 1001. TITLE.

This title may be cited as the ''Victims of Terrorism Act of 1995''.

SEC. 1002. AUTHORITY TO PROVIDE ASSISTANCE AND COMPENSATION TO VICTIMS OF TERRORISM.

The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404A the following new section:

''SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

''(a) VICTIMS OF ACTS OF TERRORISM OUTSIDE THE UNITED STATES.—The Director may make supplemental grants to States to provide compensation and assistance to the residents of such States who, while outside the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

''(b) VICTIMS OF DOMESTIC TERRORISM.—The Director may make supplemental grants to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney's Offices for use in coordination with State victims compensation and assistance efforts in providing emergency relief.''.

SEC. 1003. FUNDING OF COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM, MASS VIOLENCE, AND CRIME.

Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended to read as follows:

''(4)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 1403(a)(1), the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed $50,000,000.

''(B) The emergency reserve may be used for supplemental grants under section 1404B and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 1403 and 1404 in years in which supplemental grants are needed.''.

SEC. 1004. CRIME VICTIMS FUND AMENDMENTS.

(a) UNOBLIGATED FUNDS.—Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(1) in subsection (c), by striking ''subsection'' and inserting ''chapter''; and

(2) by amending subsection (e) to read as follows:

''(e) AMOUNTS AWARDED AND UNSPENT.—Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 2 succeeding fiscal years, at the end of which period, any remaining unobligated sums shall be returned to the Fund.''.

(b) BASE AMOUNT.—Section 1404(a)(5) of such Act (42 U.S.C. 10603(a)(5)) is amended to read as follows:

''(5) As used in this subsection, the term 'base amount' means—

''(A) except as provided in subparagraph (B), $500,000; and

''(B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and Palau, $200,000.''.

Mr. HATCH. Madam President, I would like to thank BOB DOLE for his strong leadership. It was an honor to work with him. ARLEN SPECTER for his legal acumen, JOE BIDEN for his statesmanship and DON NICKLES and JAMES INHOFE for their able input. All of these Senators were vital to the passage of this bill.

I would also like to commend the following staffers for their long, hard work:

Democrats: Cynthia Hogan, Ankor Gouel, Chris Putals, Demetra Lambros, Mimi Murphy, Tracy Doherty, and Mike O'Leary.

Republicans: Mike O'Neill and Mike Kennedy. These two men worked, literally, around the clock. Also, Ashley Disque, John Gibbons, Dennis Shea, Richard Hertling, Lee Otis, Eric Mayfield, and Manus Cooney.

All of these people helped make this bill possible. The President called on Congress for swift action, and we delivered.

Mr. DOLE. Madam President, immediately after the Oklahoma City tragedy, President Clinton was right on target when he said that the perpetrators of this vicious crime should face justice that was ''swift, certain, and severe.''

I am pleased to report to the American people and to the President that, with today's passage of the antiterrorism bill, we are one giant step closer to achieving this important goal.

The most critical element of this bill, and the one that bears most directly on the tragic events in Oklahoma City, is the provision reforming the so-called habeas corpus rules.

By imposing filing deadlines on all death row inmates, and by limiting condemned killers convicted in State or Federal court to one Federal habeas petition—one bite of the apple—these landmark reforms will go a long, long way to streamline the lengthy appeals process and bridge the gap between crime and punishment in America.

It is dead wrong that we must wait 8, or 9, or even 10 years before a capital sentence is actually carried out. And, of course, it is terribly unjust to the innocent victims of violent crime and their families.

As I said yesterday, if the Federal Government prosecutes the Oklahoma City case and the death penalty is sought and imposed, the execution of the sentence could take as a little as 1 year once these reforms are enacted into law.

I want to thank President Clinton for his efforts this past week in discrouraging Democratic amendments. No doubt about it, the President's involvement has helped speed up the process here in the Senate. I particularly commend the President for finally coming around to the view that habeas reform is an essential ingredient of any serious anti-terrorism plan.

I want to thank the two managers, Senator HATCH and Senator BIDEN, for their persistence in guiding this legislation through the Senate. On this side of aisle, Senator HATCH has provided the intellectual glue that has kept this effort together. And, of course, I want to thank my two colleagues from Oklahoma, Senator NICKLES and Senator INHOFEE, whose help in this process has also been invaluable.

Finally, I commend the good people of Oklahoma City, who self-sacrifice and resiliency during this very difficult time has been an inspiration for us all. The families of some of the bombing victims travelled all the way to Washington this past Monday to let us know that we must take action now to put an end to the endless delays and appeals that have done so much to weaken public confidence in our system of criminal justice. It is gratifying to see that their efforts have had such a profound impact here in the Senate.

Mr. HATFIELD. Madam President, it has been a difficult process, but we have now reached the conclusion of this worthy debate. I want to commend Majority Leader DOLE and Minority Leader DASCHLE and the managers of this legislation, Chairman HATCH and

Senator BIDEN, the ranking member of the Judiciary Committee, for their skill and resolve in moving this important and complex measure through the Senate.

It is proper for the Senate, at the request of the President, to undertake this legislative action to put in place safeguards to ensure, to the extent we can, that terrorism does not occur in the future. It is my hope that this legislation will provide one more avenue toward the national healing that is needed in the aftermath of one of the most senseless and disturbing acts in the history of man.

I have joined with all my colleagues to condemn this act in the harshest terms. However, despite my abhorrence of this horrible crime, I am unable to support this legislation. As many of my colleagues are aware, I am a longtime opponent of capital punishment. This legislation, under section 2332b, on page 7 of the bill, provides for the imposition of the death penalty in the following manner:

(1) Whoever violates this section shall, in addition to the punishment provided for any other crime charged in the indictment, be punished—

(A) if death results to any person, by death, or by life imprisonment for any term of years or for life;

Madam President, I could support this provision if the clause ''by death'' were excluded. Because it has not been deleted, and because the death penalty is so repugnant me, I am unable to support this legislation which has many meritorious provisions.

I would like my colleagues to take note of a recent event in the country of South Africa. I am informed that the highest court in South Africa has struck down the death penalty in that country on the basis that it constitutes cruel and inhumane punishment. In his opinion, Chief Justice Arthur Chaskalson said, ''Retribution cannot be accorded the same weight under our constitution as the right to life and dignity.'' He went on to make a point made by death penalty opponents on this floor many times: ''It has not been shown that the death sentence would be materially more effective to deter or prevent murder than the alternative sentence of life imprisonment.''

I believe it is time for this country to follow the lead of the South Africans. I have long held that capital punishment is a barbaric penalty, certainly one that should be abhorrent to a society such as our own.

I have marveled at the strides the South Africans have made over the past decade. It was not too many years ago that the United States put great pressure on the Government of South Africa to improve their horrible human rights record. While this new decision is being met with the expected cries of opposition, it now appears to me that the South Africans are setting an example for us on human rights.

I merely make note of this enlightenment in South Africa as this body continues down the road of support for capital punishment. It is my hope that some day my colleagues will realize this is a failed, primitive and sickening policy. I regret that, on that basis, I am unable to support S. 735.

THE COMPREHENSIVE TERRORISM PREVENTION ACT

Mr. MOYNIHAN. Madam President, I am deeply concerned that the Senate has chosen in this legislation to radically alter the ancient writ of habeas corpus an subjiciendum. Four separate Democratic amendments that would have moderated the bill's extreme habeas corpus provisions were rejected today.

It is troubling that the Senate has undertaken to revise the Great Writ of Liberty in a bill designed as a response to the Oklahoma City bombing. Habeas corpus reform has very little to do with terrorism. The Oklahoma City bombing was a Federal crime and will be tried in Federal courts. The controversy over habeas corpus is a result of excess litigation by State court prisoners who believe they were wrongly convicted in State courts. According to the Emergency Committee to Save Habeas Corpus, a group of 100 of the Nation's most distinguished attorneys, scholars, and civic leaders, ''Cutting back the enforcement of constitutional liberties for people unlawfully held in State custody is neither necessary to habeas reform nor relevant to terrorism.''

Article I, section 9 of the U.S. Constitution provides that:

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.

The Habeas Corpus Act of 1867 permitted State prisoners convicted in State courts to challenge the constitutionality of their imprisonment in Federal district court. This is a right we have honored in the United States for well over a century.

The legislation before us will require our Federal courts to defer to State court judgments unless a State court's application of Federal law is unreasonable. Our Federal courts will be powerless to correct State court decisions—even if a State court decision is wrong. The bill requires deference by the Federal courts unless a State court's decision is unreasonably wrong. This is a standard that will effectively preclude Federal review.

This Senator understands the need for habeas corpus reform, and I would support legislation to impose reasonable limitations on appeals. But this bill goes far too far. It will in many cases transform the State courts—not the Federal courts established under article III of the U.S. Constitution—into the arbiters of Federal constitutionality.

This legislation will eviscerate the writ of habeas corpus, and that is something this Senator in good conscience must oppose. Mr. President, I ask unanimous consent that a letter from the Emergency Committee to Save Habeas Corpus, and the list of its members, be printed in the RECORD.

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

EMERGENCY COMMITTEE
TO SAVE HABEAS CORPUS,
Washington, DC, June 1, 1995.

Hon. Daniel Patrick Moynihan,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MOYNIHAN: We understand that the Senate may act next week on the habeas corpus provisions in Senator Dole's terrorism legislation. Among these provisions is a requirement that federal courts must defer to state courts incorrectly applying federal constitutional law, unless it can be said that the state ruling was ''unreasonably'' incorrect. This is a variation of past proposals to strip the federal courts of the power to enforce the Constitution when the state court's interpretation of it, though clearly wrong, had been issued after a ''full and fair'' hearing.

The Emergency Committee was formed in 1991 to fight this extreme proposal. Our membership consists of both supporters and opponents of the death penalty, Republicans and Democrats, united in the belief that the federal habeas corpus process can be dramatically streamlined without jeopardizing its constitutional core. At a time when proposals to curtail civil liberties in the name of national security are being widely viewed with suspicion, we believe it is vital to ensure that habeas corpus—the means by which all civil liberties are enforced—is not substantively diminished.

The habeas corpus reform bill President Clinton proposed in 1993, drafted in close cooperation with the nation's district attorneys and state attorneys general, appropriately recognizes this point. It would codify the long-standing principal of independent federal review of constitutional questions, and specifically reject the ''full and fair'' deference standard.

Independent federal review of state court judgments has existed since the founding of the Republic, whether through writ of error or writ of habeas corpus. It has a proud history of guarding against injustices born of racial prejudice and intolerance, of saving the innocent from imprisonment or execution, and in the process, ensuring the rights of all law-abiding citizens. Independent federal review was endorsed by the committee chaired by Justice Powell on which all subsequent reform proposals have been based, and the Supreme Court itself specifically considered but declined to require deference to the states, in *Wright* v. *West* in 1992.

We must emphasize that this issue of deference to state rulings has absolutely no bearing on the swift processing of terrorism offenses in the federal system. For federal inmates, the pending habeas reform legislation proposes dramatic procedural reforms but appropriately avoids any curtailment of the federal courts' power to decide federal constitutional issues. This same framework of reform will produce equally dramatic results in state cases. Cutting back the enforcement of constitutional liberties for people unlawfully held in state custody is neither necessary to habeas reform nor relevant to terrorism.

We are confident that the worthwhile goal of streamlining the review of criminal cases can be accomplished without diminishing constitutional liberties. Please support the continuation of independent federal review of federal constitutional claims through habeas corpus.

Sincerely,

BENJAMIN CIVILETTI.

EDWARD H. LEVI.
NICHOLAS DEB.
KATZENBACH.
ELLIOT L. RICHARDSON.

STATEMENTS ON PROPOSALS REQUIRING FEDERAL COURTS IN HABEAS CORPUS CASES TO DEFER TO STATE COURTS ON FEDERAL CONSTITUTIONAL QUESTIONS

Capital cases should be subject to one fair and complete course of collateral review through the state and federal system * * * . Where the death penalty is involved, fairness means a searching and impartial review of the propriety of the sentence—Justice Lewis F. Powell, Jr., presenting the 1989 report of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, chaired by him and appointed by Chief Justice William Rehnquist.

The federal courts should continue to review de novo mixed and pure questions of federal law. Congress should codify this review standard * * *. Senator Dole's bill [containing the ''full and fair'' deference requirement' would rather straightforwardly eliminate federal habeas jurisdiction over most constitutional claims by state inmates—150 former state and federal prosecutors, in a December 7, 1993 letter to Judiciary Committee Chairman Biden and Brooks.

Racial distinctions are evident in every aspect of the process that leads to execution * * *. [W]e feverently and respectfully urge a steadfast review by federal judiciary in state death penalties as absolutely essential to ensure justice—Rev. Dr. Joseph E. Lowery, President, Southern Christian Leadership Conference, U.S. House Judiciary Committee hearing on capital habeas corpus reform, June 6, 1990.

The State court cannot have the last say when it, though on fair consideration and what procedurally may be deemed fairness, may have misconceived a federal constitutional right—Justice Felix Frankfurter, for the Court, in Brown v. Allen, 344 U.S. 443, 508(1953)

[There is no case in which] a state court's incorrect legal determination has ever been allowed to stand because it was reasonable. We have always held that federal courts, even on habeas, have an independent obligation to say what the law is—Justice Sandra Day O'Connor, concurring in *Wright* v. *West*, 112 S.Ct. 2482(1992), citing 29 Supreme Court cases and ''many others'' to reject the urging of Justices Thomas, Scalia and Rhenquist to adopt a standard of deference to state courts on federal constitutional matters.

EMERGENCY COMMITTEE TO SAVE HABEAS CORPUS

CHAIRS

Benjamin Civiletti, Former Attorney General of the United States.
Nicholas DeB. Katzenbach, Former Attorney General of the United States.
Edward H. Levi, Former Attorney General of the United States.
Elliot L. Richardson, Former Attorney General of the United States.

MEMBERS

Floyd Abrams, Attorney.
Robert Abrams, Former Attorney General, New York.
Philip S. Anderson, Attorney.
Dennis W. Archer, Mayor of Detroit; Former Justice, Michigan Supreme Court.
Birch Bayh, Former U.S. Senator, Indiana.
Francis X. Bellotti, Former Attorney General, Massachusetts.
Lindy Boggs, Former Member of Congress, Louisiana.
Hyman Bookbinder, Washington Representative Emeritus, American Jewish Committee.
Albert Brewer, Former Governor of Alabama.
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John Buchanan, Former Member of Congress, Alabama.
Haywood Burns, Dean, City University of New York Law School.
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Julius Chambers, Director-Counsel, NAACP Legal Defense and Educational Fund.
L. Stanley Chauvin, Jr., Former President, American Bar Association.
Dick Clark, Former United States Senator, Iowa.
W.J. Michael Cody, Former Attorney General, Tennessee.
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Joseph Curran, Attorney General, Maryland.
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Lloyd N. Cutler, Former Counsel to the President.
Talbot D'Alemberte, Former President, American Bar Association.
Samuel Dash, Professor, Georgetown Law School; Former Chief Counsel, Senate Watergate Committee; Former District Attorney of Philadelphia.
John A. Dixon, Jr., Former Chief Justice, Louisiana Supreme Court.
John Douglas, Former Assistant Attorney General of the United States.
Father Robert Drinan, Former Member of Congress, Massachusetts.
Thomas Eagleton, Former U.S. Senator, Missouri.
Raymond Ehrlich, Former Chief Justice, Florida Supreme Court.
Arthur J. England, Jr., Former Justice, Florida Supreme Court.
Marvin Frankel, Former U.S. District Judge, New York.
John Hope Franklin, Historian.
Donald Fraser, Mayor of Minneapolis; Former Member of Congress, Minnesota.
Stanley H. Fuld, Former Chief Judge, New York Court of Appeals.
Susan Getzendanner, Former U.S. District Judge, Illinois.
Joseph I. Giarrusso, Former Superintendent, New Orleans Police Department.
John J. Gibbons, Former Chief Judge, United States Court of Appeals for the Third Circuit.
William A. Grimes, Former Justice, New Hampshire Supreme Court.
Joseph R. Grodin, Former Justice, California Supreme Court.
Gerald Gunther, Professor, Stanford Law School.
William J. Guste, Former Attorney General, Louisiana.
Reverend Theodore Hesburgh, C.S.C., President Emeritus, University of Notre Dame.
L. Eades Hogue, Former Trial Attorney, Criminal Division, U.S. Department of Justice.
Elizabeth Holtzman, New York City Comptroller; Former Member of Congress, New York.
Shirley Hufstedler, Former Judge, United States Court of Appeals for the Ninth Circuit, Former U.S. Secretary of Education.
Richard J. Hughes, Former Governor and Supreme Court Chief Justice, New Jersey (deceased).
Charles J. Hynes, District Attorney for Kings County (Brooklyn), New York.
Thomas Johnson, Former County Attorney, Hennepin County, Minnesota.
Barbara Jordan, former Member of Congress, Texas.
Robert W. Kastenmeier, former Member of Congress, Wisconsin.
William W. Kilgarlin, former Justice, Supreme Court of Texas.
Coretta Scott King, President, Martin Luther King Center.
Lane Kirkland, President, AFL–CIO.
Richard H. Kuh, former Manhattan District Attorney.
Phillip Kurland, Professor, University of Chicago Law School.
Phillip Lacovara, former Deputy Solicitor General of the United States.
Shelby Lanier, Jr., Chairman, National Black Police Association.
William Leech, former Attorney General, Tennessee.
George N. Leighton, former U.S. District Judge, Illinois.
Arthur Liman, former Chief Counsel, U.S. Senate Iran/Contra Committee.
Hans Linde, former Justice, Oregon Supreme Court.
Robert MacCrate, former President, American Bar Association.
Charles McC. Mathias, former U.S. Senator, Maryland.
Darrell McGraw, Attorney General, West Virginia.
Robert S. McNamara, former U.S. Secretary of Defense; former President, World Bank.
Jim Mattox, former Attorney General and Member of Congress, Texas.
Harry McPherson, former Counsel to the President.
Walter F. Mondale, former U.S. Vice President; former U.S. Senator and Attorney General, Minnesota.
James Neal, former Chief Watergate Special Prosecutor; former United States Attorney.
William G. Paul, General Counsel, Phillips Petroleum Company.
John H. Pickering, Attorney.
Jack Pope, former Chief Justice, Texas Supreme Court.
Edward E. Pringle, former Chief Justice, Colorado Supreme Court.
Thomas Railsback, former Member of Congress, Illinois.
Joseph Rauh, Attorney (deceased).
Robert Raven, former President, American Bar Association.
Cruz Reynoso, former Justice, California Supreme Court.
Leroy C. Richie, Vice President, General Counsel, Chrysler Corporation.
Peter W. Rodino, Jr., former Chairman, U.S. House Judiciary Committee.
Stephen Sachs, former Attorney General and former United States Attorney, Maryland.
Carl Sagan, Astronomer.
Whitney North Seymour, Jr., former United States Attorney, New York.
James Shannon, former Attorney General, Massachusetts.
Robert L. Shevin, former Attorney General, Florida.
Seymour Simon, former Justice, Illinois Supreme Court.
Chesterfield Smith, former President, American Bar Association.
Nicholas Spaeth, former Attorney General, North Dakota.
Robert Spire, former Attorney General, Nebraska (deceased).
Geoffrey Stone, Dean, University of Chicago Law School.
Alan Sundberg, former Chief Justice, Florida Supreme Court.
Leonard v.B. Sutton, former Chief Justice, Colorado Supreme Court.
Telford Taylor, Professor, Columbia Law School; former Prosecutor, Nuremburg War Crimes Tribunal.
James Tierney, former Attorney General, Maine.
Joseph D. Tydings, former U.S. Senator and United States Attorney, Maryland.

Harold R. Tyler, Jr., former U.S. District Judge, New York; former Deputy Attorney General of the United States.

Cyrus Vance, former U.S. Secretry of State.

James Vollers, former Judge, Texas Court of Criminal Appeals.

Andrew Young, former Ambassador to the United Nations, former Mayor, Atlanta, Georgia.

EXECUTIVE DIRECTOR

H. Scott Wallace, 1625 K Street, N.W., Suite 800, Washington, D.C. 20006.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. I ask unanimous consent to speak as in morning business briefly for the purpose of introducing a bill.

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

(The remarks of Mr. GRASSLEY pertaining to the introduction of S. 888 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

PRESIDENT CLINTON'S VETO OF THE RESCISSIONS BILL

Mr. KENNEDY. Madam President, I commend President Clinton for his veto of the rescissions bill this afternoon. Once again, the President has made clear his strong commitment to education and to the students and working families of the Nation.

By vetoing this bill, the President has said ''no'' to the elimination of violence and drug prevention programs for 20 million students in 90 percent of our schools.

He has said ''no'' to the elimination of school reform grants to 2,000 schools in 47 States.

He has said ''no'' to the drastic cuts in reading and math assistance for 135,000 pupils.

He has said ''no'' to the elimination of community service support for 15,000 young men and women ready, willing, and able to serve their communities and earn money for their education.

He has said ''no'' to the elimination of opportunities for thousands of young high school students to participate in school-to-work programs.

He has said ''no'' to ending the promising start we have made on putting modern technology in schools.

He has said ''no'' to deep cuts like this to pay for tax cuts for the rich.

The battle has now been squarely joined against drastic anti-education Republican budget proposals that would mean the largest education cuts in the Nation's history.

These Republican budgets are indefensible—they would cut 33 percent of the Federal investment in education by the year 2002, and slash over $30 billion in Federal aid to college students.

Every student, every parent, every American understands that education is the indispensable foundation of a better life for themselves and their children. Deep Republican cuts in education are a betrayal of the hopes and dreams of families for their children. They undermine the Nation's future strength. Our schools, colleges, and students deserve a helping Federal hand—not the back of Republican hands.

This veto is right, and I am confident it will be sustained by the Congress.

ADMINISTRATION POLICY ON BOSNIA

Mr. DOLE. Madam President, it is indeed ironic that the Clinton administration—whose policy on Bosnia needs to be checked hourly—is on the attack against those in Congress like myself who have consistently argued for a policy that candidate Clinton advocated. Maybe administration officials are tired of attacking each other in the press and have decided to take their frustration out on the Congress.

The administration's arguments against withdrawing the U.N. protection forces and lifting the arms embargo are neither based on fact nor on American experience.

First we have a statement from the Secretary of Defense today that withdrawing U.N. forces would lead to a humanitarian disaster. I do not know if the Pentagon has been keeping up with the news over the last few months, but the situation in Bosnia is and has been a humanitarian disaster for the last couple of years, despite the presence of 22,000 U.N. troops. The U.N. mission in Bosnia has failed. Bandages like the quick reaction force will not change that fact.

Secretary Perry also told the Armed Services Committee today that the casualty rate in Bosnia dramatically dropped, which he attributed to the presence of U.N. forces. As the recent hostage taking has painfully demonstrated, the U.N. forces cannot even protect themselves let alone the Bosnians. And I say this understanding the bravery of each of the individuals who are there. They are in a very, very difficult situation. They cannot protect themselves. They are placed there by their governments.

Furthermore, the heaviest Bosnian casualties were in areas where U.N. forces were either not deployed or deployed too late—in northern and eastern Bosnia.

So it seems to me that the real reason casualties dropped is because the Bosnians, over time, have acquired more weapons and have been able to better defend themselves. That is why the casualty rate has gone down.

The second argument made by the administration is that the lifting of the arms embargo would Americanize the war and make the United States responsible for events in Bosnia.

Let us not fool ourselves—America is responsible now. We already have a responsibility. America is responsible because it has not been a leader, rather it has meekly followed the Europeans' failed approach.

As for the accusation that lifting the arms embargo would ''Americanize'' the conflict, it seems to me that the United States has plenty of experience from Central America to Afghanistan in providing military assistance without being drawn into a quagmire with American troops on the ground. The real recipe for getting bogged down is to send United States ground troops into Bosnia without a mission, which is why the resolution I intend to submit would authorize, with strict conditions, the use of United States ground forces for the clearly stated purpose of withdrawing U.N. protection forces from Bosnia—not for peacekeeping, not for reconfiguration, not for strengthening, or any other proposed deployments supported by the Clinton administration.

Furthermore, Bosnian officials have repeated time and time again that they do not want United States ground troops. Just a couple days ago, in response to news that a European quick reaction force would be created, Bosnian Prime Minister Haris Silajdzic said ''Please untie our hands, arm the Bosnians. We do not want your boys to die for us''—British boys, French boys, or American boys.

Finally, when those of us who advocate lifting the arms embargo—and I am talking about Republicans and Democrats; this has never been a partisan issue on this floor, it has been supported by many Democrats and a great number of Republicans—point out that other countries would also participate in arming the Bosnians, we are told this would allow Iran to arm the Bosnians. The fact is the arms embargo has guaranteed that Iran is a key supplier of arms to Bosnia and administration officials have actually used that fact to argue that there is no need to lift the arms embargo.

What other choices do the Bosnians have? They are going to find weapons where they can find weapons.

From statements made by State Department officials to the press, one gets the impression that Iran is the Clinton administration's preferred provider of weapons to the Bosnians. If the administration has a problem with Iran arming Bosnia, it should be prepared to do something about it.

We can do something about it. It would not take very long.

If the arms embargo is lifted, America would not be the only country to provide assistance. Countries like Turkey, Malaysia, Saudi Arabia, Kuwait, and Pakistan would offer financial and military assistance. In addition, former Warsaw Pact countries would be free to sell their vast arsenal of Soviet-style weapons that have been designated for export pursuant to the Conventional Forces in Europe Treaty. Since the Bosnians presently use Soviet-style equipment, acquiring former Soviet bloc equipment would minimize the amount of training they would require. Furthermore, any training, whether by United States military advisers or other country military advisers, could