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109TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 109–271

# SECURE ACCESS TO JUSTICE AND COURT PROTECTION ACT OF 2005

NOVEMBER 7, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

# R E P O R T

together with

## DISSENTING VIEWS AND ADDITIONAL DISSENTING VIEWS

[To accompany H.R. 1751]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1751) to amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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## THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Secure Access to Justice and Court Protection Act of 2005".

**SEC. 2. PENALTIES FOR INFLUENCING, IMPEDING, OR RETALIATING AGAINST JUDGES AND OTHER OFFICIALS BY THREATENING OR INJURING A FAMILY MEMBER.**

Section 115 of title 18, United States Code, is amended—

(1) in each of subparagraphs (A) and (B) of subsection (a)(1), by inserting "federally funded public safety officer (as defined for the purposes of section 1123)" after "Federal law enforcement officer,";

(2) so that subsection (b) reads as follows:

"(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is as follows:

"(A) The punishment for an assault in violation of this section is the same as that provided for a like offense under section 111.

"(B) The punishment for a kidnapping, attempted kidnapping, or conspiracy to kidnap in violation of this section is the same as provided for a like violation in section 1201.

"(C) The punishment for a murder, attempted murder, or conspiracy to murder in violation of this section is the same as provided for a like offense under section 1111, 1113, and 1117.

"(D) A threat made in violation of this section shall be punished by a fine under this title or imprisonment for not more than 10 years, or both.

"(2) If the victim of the offense under this section is an immediate family member of a United States judge, a Federal law enforcement officer (as defined for the purposes of section 1114) or of a federally funded public safety officer (as defined for the purposes of section 1123), in lieu of the punishments otherwise provided by paragraph (1), the punishments shall be as follows:

"(A) The punishment for an assault in violation of this section is as follows:

"(i) If the assault is a simple assault, a fine under this title or a term of imprisonment for not more than one year, or both.

"(ii) If the assault resulted in bodily injury (as defined in section 1365), a fine under this title and a term of imprisonment for not less than one year nor more than 10 years.

"(iii) If the assault resulted in substantial bodily injury (as defined in section 113), a fine under this title and a term of imprisonment for not less than 3 years nor more than 12 years.

"(iv) If the assault resulted in serious bodily injury (as defined in section 2119), a fine under this title and a term of imprisonment for not less than 10 years nor more than 30 years.

"(B) The punishment for a kidnapping, attempted kidnapping, or conspiracy to kidnap in violation of this section is a fine under this title and imprisonment for any term of years not less than 30, or for life.

"(C) The punishment for a murder, attempted murder, or conspiracy to murder in violation of this section is a fine under this title and imprisonment for any term of years not less than 30, or for life, or, if death results, the offender may be sentenced to death.

"(D) A threat made in violation of this section shall be punished by a fine under this title and imprisonment for not less than one year nor more than 10 years.

"(E) If a dangerous weapon was used during and in relation to the offense, the punishment shall include a term of imprisonment of 5 years in addition to that otherwise imposed under this paragraph.".

**SEC. 3. PENALTIES FOR CERTAIN ASSAULTS.**

(a) INCLUSION OF FEDERALLY FUNDED PUBLIC SAFETY OFFICERS.—Section 111(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting "or a federally funded public safety officer (as defined in section 1123)" after "1114 of this title"; and

(2) in paragraph (2), by inserting "or a federally funded public safety officer (as defined in section 1123)" after "1114".

(b) ALTERNATE PENALTY WHERE VICTIM IS A UNITED STATES JUDGE, A FEDERAL LAW ENFORCEMENT OFFICER, OR FEDERALLY FUNDED PUBLIC SAFETY OFFICER.—Section 111 of title 18, United States Code, is amended by adding at the end the following:

"(c) ALTERNATE PENALTY WHERE VICTIM IS A UNITED STATES JUDGE, A FEDERAL LAW ENFORCEMENT OFFICER, OR FEDERALLY FUNDED PUBLIC SAFETY OFFICER.—(1) Except as provided in paragraph (2), if the offense is an assault and the victim of the offense under this section is a United States judge, a Federal law enforcement officer (as defined for the purposes of section 1114) or of a federally funded public safety officer (as defined for the purposes of section 1123), in lieu of the penalties otherwise set forth in this section, the offender shall be subject to a fine under this title and—

"(A) If the assault is a simple assault, a fine under this title or a term of imprisonment for not more than one year, or both.

"(B) if the assault resulted in bodily injury (as defined in section 1365), shall be imprisoned not less than one nor more than 10 years;

"(C) if the assault resulted in substantial bodily injury (as defined in section 113), shall be imprisoned not less than 3 nor more than 12 years; and

"(D) if the assault resulted in serious bodily injury (as defined in section 2119), shall be imprisoned not less than 10 nor more than 30 years.

"(2) If a dangerous weapon was used during and in relation to the offense, the punishment shall include a term of imprisonment of 5 years in addition to that otherwise imposed under this subsection.".

**SEC. 4. PROTECTION OF FEDERALLY FUNDED PUBLIC SAFETY OFFICERS.**

(a) OFFENSE.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following:

**"§ 1123. Killing of federally funded public safety officers**

"(a) Whoever kills, or attempts or conspires to kill, a federally funded public safety officer while that officer is engaged in official duties, or arising out of the performance of official duties, or kills a former federally funded public safety officer arising out of the performance of official duties, shall be punished by a fine under this title and imprisonment for any term of years not less than 30, or for life, or, if death results, may be sentenced to death.

"(b) As used in this section—

"(1) the term 'federally funded public safety officer' means a public safety officer for a public agency (including a court system, the National Guard of a State to the extent the personnel of that National Guard are not in Federal service, and the defense forces of a State authorized by section 109 of title 32) that receives Federal financial assistance, of an entity that is a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States, an Indian tribe, or a unit of local government of that entity;

"(2) the term 'public safety officer' means an individual serving a public agency in an official capacity, as a judicial officer, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew;

"(3) the term 'judicial officer' means a judge or other officer or employee of a court, including prosecutors, court security, pretrial services officers, court reporters, and corrections, probation, and parole officers; and

"(4) the term 'firefighter' includes an individual serving as an official recognized or designated member of a legally organized volunteer fire department and an officially recognized or designated public employee member of a rescue squad or ambulance crew; and

"(5) the term 'law enforcement officer' means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1123. Killing of federally funded public safety officers.".

**SEC. 5. GENERAL MODIFICATIONS OF FEDERAL MURDER CRIME AND RELATED CRIMES.**

(a) MURDER AMENDMENTS.—Section 1111 of title 18, United States Code, is amended in subsection (b), by inserting "not less than 30" after "any term of years".

(b) MANSLAUGHTER AMENDMENTS.—Section 1112(b) of title 18, United States Code, is amended—

(1) by striking "ten years" and inserting "20 years"; and
(2) by striking "six years" and inserting "10 years".

**SEC. 6. MODIFICATION OF DEFINITION OF OFFENSE AND OF THE PENALTIES FOR, INFLUENCING OR INJURING OFFICER OR JUROR GENERALLY.**

Section 1503 of title 18, United States Code, is amended—

(1) so that subsection (a) reads as follows:

"(a)(1) Whoever—

"(A) corruptly, or by threats of force or force, endeavors to influence, intimidate, or impede a juror or officer in a judicial proceeding in the discharge of that juror or officer's duty;

"(B) injures a juror or an officer in a judicial proceeding arising out of the performance of official duties as such juror or officer; or

"(C) corruptly, or by threats of force or force, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice;

or attempts or conspires to do so, shall be punished as provided in subsection (b).

"(2) As used in this section, the term 'juror or officer in a judicial proceeding' means a grand or petit juror, or other officer in or of any court of the United States, or an officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate."; and

(2) in subsection (b), by striking paragraphs (1) through (3) and inserting the following:

"(1) in the case of a killing, or an attempt or a conspiracy to kill, the punishment provided in section 1111, 1112, 1113, and 1117; and

"(2) in any other case, a fine under this title and imprisonment for not more than 30 years.".

**SEC. 7. MODIFICATION OF TAMPERING WITH A WITNESS, VICTIM, OR AN INFORMANT OFFENSE.**

(a) CHANGES IN PENALTIES.—Section 1512 of title 18, United States Code, is amended—

(1) in each of paragraphs (1) and (2) of subsection (a), insert "or conspires" after "attempts";

(2) so that subparagraph (A) of subsection (a)(3) reads as follows:

"(A) in the case of a killing, the punishment provided in sections 1111 and 1112;";

(3) in subsection (a)(3)—

(A) in the matter following clause (ii) of subparagraph (B) by striking "20 years" and inserting "30 years" ; and

(B) in subparagraph (C), by striking "10 years" and inserting "20 years";

(4) in subsection (b), by striking "ten years" and inserting "30 years"; and

(5) in subsection (d), by striking "one year" and inserting "20 years".

**SEC. 8. MODIFICATION OF RETALIATION OFFENSE.**

Section 1513 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by inserting "or conspires" after "attempts";

(2) in subsection (a)(1)(B)—

(A) by inserting a comma after "probation"; and

(B) by striking the comma which immediately follows another comma;

(3) in subsection (a)(2)(B), by striking "20 years" and inserting "30 years";

(4) in subsection (b), by striking "ten years" and inserting "30 years";

(5) in the first subsection (e), by striking "10 years" and inserting "30 years"; and

(6) by redesignating the second subsection (e) as subsection (f).

**SEC. 9. INCLUSION OF INTIMIDATION AND RETALIATION AGAINST WITNESSES IN STATE PROSECUTIONS AS BASIS FOR FEDERAL PROSECUTION.**

Section 1952 of title 18, United States Code, is amended in subsection (b)(2), by inserting "intimidation of, or retaliation against, a witness, victim, juror, or informant," after "extortion, bribery,".

**SEC. 10. CLARIFICATION OF VENUE FOR RETALIATION AGAINST A WITNESS.**

Section 1513 of title 18, United States Code, is amended by adding at the end the following:

"(g) A prosecution under this section may be brought in the district in which the official proceeding (whether or not pending, about to be instituted or completed) was intended to be affected or was completed, or in which the conduct constituting the alleged offense occurred.".

**SEC. 11. WITNESS PROTECTION GRANT PROGRAM.**

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting after part BB (42 U.S.C. 3797j et seq.) the following new part:

## "PART CC—WITNESS PROTECTION GRANTS

**"SEC. 2811. PROGRAM AUTHORIZED.**

"(a) IN GENERAL.—From amounts made available to carry out this part, the Attorney General may make grants to States, units of local government, and Indian tribes to create and expand witness protection programs in order to prevent threats, intimidation, and retaliation against victims of, and witnesses to, crimes.

"(b) USES OF FUNDS.—Grants awarded under this part shall be—

"(1) distributed directly to the State, unit of local government, or Indian tribe; and

"(2) used for the creation and expansion of witness protection programs in the jurisdiction of the grantee.

"(c) PREFERENTIAL CONSIDERATION.—In awarding grants under this part, the Attorney General may give preferential consideration, if feasible, to an application from a jurisdiction that—

"(1) has the greatest need for witness and victim protection programs;

"(2) has a serious violent crime problem in the jurisdiction; and

"(3) has had, or is likely to have, instances of threats, intimidation, and retaliation against victims of, and witnesses to, crimes.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2006 through 2010.".

**SEC. 12. GRANTS TO STATES TO PROTECT WITNESSES AND VICTIMS OF CRIMES.**

(a) IN GENERAL.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended—

(1) in paragraph (3), by striking "and" at the end;

(2) in paragraph (4), by striking the period at the end and inserting "; and" ; and

(3) by adding at the end the following:

"(5) to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

**"SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.**

"There are authorized to be appropriated $20,000,000 for each of the fiscal years 2006 through 2010 to carry out this subtitle.".

**SEC. 13. JUDICIAL BRANCH SECURITY REQUIREMENTS.**

(a) ENSURING CONSULTATION AND COORDINATION WITH THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Section 566 of title 28, United States Code, is amended by adding at the end the following:

"(i) The United States Marshals Service shall consult with the Administrative Office of the United States Courts on a continuing basis regarding the security requirements for the Judicial Branch, and inform the Administrative Office of the measures the Marshals Service intends to take to meet those requirements.".

(b) CONFORMING AMENDMENT.—Section 604(a) of title 28, United States Code, is amended—

(1) by redesignating existing paragraph (24) as paragraph (25);

(2) by striking "and" at the end of paragraph (23); and

(3) by inserting after paragraph (23) the following:

"(24) Consult with the United States Marshals Service on a continuing basis regarding the security requirements for the Judicial Branch, and inform the Administrative Office of the measures the Marshals Service intends to take to meet those requirements; and".

**SEC. 14. PROTECTIONS AGAINST MALICIOUS RECORDING OF FICTITIOUS LIENS AGAINST A FEDERAL EMPLOYEE.**

(a) OFFENSE.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

**"§ 1521. Retaliating against a Federal employee by false claim or slander of title**

"Whoever, with the intent to harass a person designated in section 1114 on account of the performance of official duties, files, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of that person, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 10 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new item:

"1521. Retaliating against a Federal employee by false claim or slander of title.".

**SEC. 15. PROHIBITION OF POSSESSION OF DANGEROUS WEAPONS IN FEDERAL COURT FACILITIES.**

Section 930(e) of title 18, United States Code, is amended by inserting "or other dangerous weapon" after "firearm".

**SEC. 16. REPEAL OF SUNSET PROVISION.**

Section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App) is amended by striking subparagraph (E).

**SEC. 17. PROTECTION OF INDIVIDUALS PERFORMING CERTAIN FEDERAL AND OTHER FUNCTIONS.**

(a) OFFENSE.—Chapter 7 of title 18, United States Code, is amended by adding at the end the following:

**"§ 117. Protection of individuals performing certain Federal and federally assisted functions**

"(a) Whoever knowingly, and with intent to harm, intimidate, or retaliate against a covered official makes restricted personal information about that covered official publicly available through the Internet shall be fined under this title and imprisoned not more than 5 years, or both.

"(b) It is a defense to a prosecution under this section that the defendant is a provider of Internet services and did not knowingly participate in the offense.

"(c) As used in this section—

"(1) the term 'restricted personal information' means, with respect to an individual, the Social Security number, the home address, home phone number, mobile phone number, personal email, or home fax number of, and identifiable to, that individual; and

"(2) the term 'covered official' means—

"(A) an individual designated in section 1114;

"(B) a public safety officer (as that term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968); or

"(C) a grand or petit juror, witness, or other officer in or of, any court of the United States, or an officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of title 18, United States Code, is amended by adding at the end the following new item:

"117. Protection of individuals performing certain Federal and federally assisted functions.".

**SEC. 18. ELIGIBILITY OF COURTS TO APPLY DIRECTLY FOR LAW ENFORCEMENT DISCRETIONARY GRANTS AND REQUIREMENT THAT STATE AND LOCAL GOVERNMENTS CONSIDER COURTS WHEN APPLYING FOR GRANT FUNDS.**

(a) COURTS TREATED AS UNITS OF LOCAL GOVERNMENTS FOR PURPOSES OF DISCRETIONARY GRANTS.—Section 901 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791) is amended in subsection (a)(3)—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) the judicial branch of a State or of a unit of local government within the State for purposes of discretionary grants;".

(b) STATE AND LOCAL GOVERNMENTS TO CONSIDER COURTS.—The Attorney General shall ensure that whenever a State or unit of local government applies for a grant from the Department of Justice, the State or unit demonstrate that, in developing the application and distributing funds, the State or unit—

(1) considered the needs of the judicial branch of the State or unit, as the case may be; and

(2) consulted with the chief judicial officer of the highest court of the State or unit, as the case may be.

**SEC. 19. REPORT ON SECURITY OF FEDERAL PROSECUTORS.**

Not later than 90 days after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the security of assistant United States attorneys and other Federal attorneys arising from the prosecution of terrorists, violent criminal gangs, drug traffickers, gun traffickers, white supremacists, and those who commit fraud and other white-collar offenses. The report shall describe each of the following:

(1) The number and nature of threats and assaults against attorneys handling those prosecutions and the reporting requirements and methods.

(2) The security measures that are in place to protect the attorneys who are handling those prosecutions, including measures such as threat assessments, response procedures, availability of security systems and other devices, firearms licensing (deputations), and other measures designed to protect the attorneys and their families.

(3) The Department of Justice's firearms deputation policies, including the number of attorneys deputized and the time between receipt of threat and completion of the deputation and training process.

(4) For each measure covered by paragraphs (1) through (3), when the report or measure was developed and who was responsible for developing and implementing the report or measure.

(5) The programs that are made available to the attorneys for personal security training, including training relating to limitations on public information disclosure, basic home security, firearms handling and safety, family safety, mail handling, counter- surveillance, and self-defense tactics.

(6) The measures that are taken to provide the attorneys with secure parking facilities, and how priorities for such facilities are established—

(A) among Federal employees within the facility;

(B) among Department of Justice employees within the facility; and

(C) among attorneys within the facility.

(7) The frequency such attorneys are called upon to work beyond standard work hours and the security measures provided to protect attorneys at such times during travel between office and available parking facilities.

(8) With respect to attorneys who are licensed under State laws to carry firearms, the Department of Justice's policy as to—

(A) carrying the firearm between available parking and office buildings;

(B) securing the weapon at the office buildings; and

(C) equipment and training provided to facilitate safe storage at Department of Justice facilities.

(9) The offices in the Department of Justice that are responsible for ensuring the security of the attorneys, the organization and staffing of the offices, and the manner in which the offices coordinate with offices in specific districts.

(10) The role, if any, that the United States Marshals Service or any other Department of Justice component plays in protecting, or providing security services or training for, the attorneys.

**SEC. 20. FLIGHT TO AVOID PROSECUTION FOR KILLING PEACE OFFICERS.**

(a) FLIGHT.—Chapter 49 of title 18, United States Code, is amended by adding at the end the following:

**"§ 1075. Flight to avoid prosecution for killing peace officers**

"Whoever moves or travels in interstate or foreign commerce with intent to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees or under section 1114 or 1123, for a crime consisting of the killing, an attempted killing, or a conspiracy to kill, an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws or for a crime punishable by section 1114 or 1123, shall be fined under this title and imprisoned, in addition to any other imprisonment for the underlying offense, for any term of years not less than 10.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 49 of title 18, United States Code, is amended by adding at the end the following new item:

"1075. Flight to avoid prosecution for killing peace officers.".

**SEC. 21. SPECIAL PENALTIES FOR MURDER, KIDNAPPING, AND RELATED CRIMES AGAINST FEDERAL JUDGES AND FEDERAL LAW ENFORCEMENT OFFICERS.**

(a) MURDER.—Section 1114 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "Whoever"; and

(2) by adding at the end the following:

"(b) If the victim of a murder punishable under this section is a United States judge (as defined in section 115) or a Federal law enforcement officer (as defined in 115) the offender shall be punished by a fine under this title and imprisonment for any term of years not less than 30, or for life, or, if death results, may be sentenced to death.".

(b) KIDNAPPING.—Section 1201(a) of title 18, United States Code, is amended by adding at the end the following: "If the victim of the offense punishable under this subsection is a United States judge (as defined in section 115) or a Federal law enforcement officer (as defined in 115) the offender shall be punished by a fine under this title and imprisonment for any term of years not less than 30, or for life, or, if death results, may be sentenced to death.".

**SEC. 22. MEDIA COVERAGE OF COURT PROCEEDINGS.**

(a) FINDINGS.—The Congress makes the following findings:

(1) The right of the people of the United States to freedom of speech, particularly as it relates to comment on governmental activities, as protected by the first amendment to the Constitution, cannot be meaningfully exercised without the ability of the public to obtain facts and information about the Government upon which to base their judgments regarding important issues and events. As the United States Supreme Court articulated in *Craig v. Harney*, 331 U.S. 367 (1947), "A trial is a public event. What transpires in the court room is public property.".

(2) The right of the people of the United States to a free press, with the ability to report on all aspects of the conduct of the business of government, as protected by the first amendment to the Constitution, cannot be meaningfully exercised without the ability of the news media to gather facts and information freely for dissemination to the public.

(3) The right of the people of the United States to petition the Government to redress grievances, particularly as it relates to the manner in which the Government exercises its legislative, executive, and judicial powers, as protected by the first amendment to the Constitution, cannot be meaningfully exercised without the availability to the public of information about how the affairs of government are being conducted. As the Supreme Court noted in Richmond Newspapers, Inc. v. Commonwealth of Virginia (1980), "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing."

(4) In the twenty-first century, the people of the United States obtain information regarding judicial matters involving the Constitution, civil rights, and other important legal subjects principally through the print and electronic media. Television, in particular, provides a degree of public access to courtroom proceedings that more closely approximates the ideal of actual physical presence than newspaper coverage or still photography.

(5) Providing statutory authority for the courts of the United States to exercise their discretion in permitting televised coverage of courtroom proceedings would enhance significantly the access of the people to the Federal judiciary.

(6) Inasmuch as the first amendment to the Constitution prevents Congress from abridging the ability of the people to exercise their inherent rights to freedom of speech, to freedom of the press, and to petition the Government for a redress of grievances, it is good public policy for the Congress affirmatively to facilitate the ability of the people to exercise those rights.

(7) The granting of such authority would assist in the implementation of the constitutional guarantee of public trials in criminal cases, as provided by the sixth amendment to the Constitution. As the Supreme Court stated in In re Oliver (1948), "Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, the guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution. The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power.".

(b) AUTHORITY OF PRESIDING JUDGE TO ALLOW MEDIA COVERAGE OF COURT PROCEEDINGS.—

(1) AUTHORITY OF APPELLATE COURTS.—Notwithstanding any other provision of law, the presiding judge of an appellate court of the United States may, in his or her discretion, permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides.

(2) AUTHORITY OF DISTRICT COURTS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, any presiding judge of a district court of the United States may, in his or her dis-

cretion, permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides.

(B) OBSCURING OF WITNESSES AND JURORS.—(i) Upon the request of any witness (other than a party) or a juror in a trial proceeding, the court shall order the face and voice of the witness or juror (as the case may be) to be disguised or otherwise obscured in such manner as to render the witness or juror unrecognizable to the broadcast audience of the trial proceeding.

(ii) The presiding judge in a trial proceeding shall inform—

(I) each witness who is not a party that the witness has the right to request that his or her image and voice be obscured during the witness' testimony; and

(II) each juror that the juror has the right to request that his or her image be obscured during the trial proceeding.

(3) ADVISORY GUIDELINES.—The Judicial Conference of the United States is authorized to promulgate advisory guidelines to which a presiding judge, in his or her discretion, may refer in making decisions with respect to the management and administration of photographing, recording, broadcasting, or televising described in paragraphs (1) and (2).

(c) DEFINITIONS.—In this section:

(1) PRESIDING JUDGE.—The term "presiding judge" means the judge presiding over the court proceeding concerned. In proceedings in which more than one judge participates, the presiding judge shall be the senior active judge so participating or, in the case of a circuit court of appeals, the senior active circuit judge so participating, except that—

(A) in en banc sittings of any United States circuit court of appeals, the presiding judge shall be the chief judge of the circuit whenever the chief judge participates; and

(B) in en banc sittings of the Supreme Court of the United States, the presiding judge shall be the Chief Justice whenever the Chief Justice participates.

(2) APPELLATE COURT OF THE UNITED STATES.—The term "appellate court of the United States" means any United States circuit court of appeals and the Supreme Court of the United States.

(d) SUNSET.—The authority under subsection (b)(2) shall terminate on the date that is 3 years after the date of the enactment of this Act.

**SEC. 23. FUNDING FOR STATE COURTS TO ASSESS AND ENHANCE COURT SECURITY AND EMERGENCY PREPAREDNESS.**

(a) IN GENERAL.—The Attorney General, through the Office of Justice Programs, shall make grants under this section to the highest State courts in States participating in the program, for the purpose of enabling such courts—

(1) to conduct assessments focused on the essential elements for effective courtroom safety and security planning; and

(2) to implement changes deemed necessary as a result of the assessments.

(b) ESSENTIAL ELEMENTS.—As used in subsection (a)(1), the essential elements include, but are not limited to—

(1) operational security and standard operating procedures;

(2) facility security planning and self-audit surveys of court facilities;

(3) emergency preparedness and response and continuity of operations;

(4) disaster recovery and the essential elements of a plan;

(5) threat assessment;

(6) incident reporting;

(7) security equipment;

(8) developing resources and building partnerships; and

(9) new courthouse design.

(c) APPLICATIONS.—To be eligible for a grant under this section, a highest State court shall submit to the Attorney General an application at such time, in such form, and including such information and assurances as the Attorney General shall require.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2006 through 2010.

**SEC. 24. ADDITIONAL AMOUNTS FOR UNITED STATES MARSHALS SERVICE TO PROTECT THE JUDICIARY.**

In addition to any other amounts authorized to be appropriated for the United States Marshals Service, there are authorized to be appropriated for the United States Marshals Service to protect the judiciary, $20,000,000 for each of fiscal years 2006 through 2010 for—

(1) hiring entry-level deputy marshals for providing judicial security;

(2) hiring senior-level deputy marshals for investigating threats to the judiciary and providing protective details to members of the judiciary and Assistant United States Attorneys; and

(3) for the Office of Protective Intelligence, for hiring senior-level deputy marshals, hiring program analysts, and providing secure computer systems.

**SEC. 25. GRANTS TO STATES FOR THREAT ASSESSMENT DATABASES.**

(a) IN GENERAL.—From amounts made available to carry out this section, the Attorney General shall carry out a program under which the Attorney General makes grants to States for use by the State to establish and maintain a threat assessment database described in subsection (b).

(b) DATABASE.—For purposes of subsection (a), a threat assessment database is a database through which a State can—

(1) analyze trends and patterns in domestic terrorism and crime;

(2) project the probabilities that specific acts of domestic terrorism or crime will occur; and

(3) develop measures and procedures that can effectively reduce the probabilities that those acts will occur.

(c) CORE ELEMENTS.—The Attorney General shall define a core set of data elements to be used by each database funded by this section so that the information in the database can be effectively shared with other States and with the Department of Justice.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2006 through 2009.

**SEC. 26. GRANTS FOR YOUNG WITNESS ASSISTANCE.**

(a) DEFINITIONS.—For purposes of this section:

(1) DIRECTOR.—The term "Director" means the Director of the Bureau of Justice Assistance.

(2) JUVENILE.—The term "juvenile" means an individual who is 17 years of age or younger.

(3) YOUNG ADULT.—The term "young adult" means an individual who is between the ages of 18 and 21.

(4) STATE.—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.

(b) PROGRAM AUTHORIZATION.—The Director may make grants to State and local prosecutors and law enforcement agencies in support of juvenile and young adult witness assistance programs, including State and local prosecutors and law enforcement agencies that have existing juvenile and adult witness assistance programs.

(c) ELIGIBILITY.—To be eligible to receive a grant under this section, State and local prosecutors and law enforcement officials shall—

(1) submit an application to the Director in such form and containing such information as the Director may reasonably require; and

(2) give assurances that each applicant has developed, or is in the process of developing, a witness assistance program that specifically targets the unique needs of juvenile and young adult witnesses and their families.

(d) USE OF FUNDS.—Grants made available under this section may be used—

(1) to assess the needs of juvenile and young adult witnesses;

(2) to develop appropriate program goals and objectives; and

(3) to develop and administer a variety of witness assistance services, which includes—

(A) counseling services to young witnesses dealing with trauma associated in witnessing a violent crime;

(B) pre- and post-trial assistance for the youth and their family;

(C) providing education services if the child is removed from or changes their school for safety concerns;

(D) protective services for young witnesses and their families when a serious threat of harm from the perpetrators or their associates is made; and

(E) community outreach and school-based initiatives that stimulate and maintain public awareness and support.

(e) REPORTS.—

(1) REPORT.—State and local prosecutors and law enforcement agencies that receive funds under this section shall submit to the Director a report not later than May 1st of each year in which grants are made available under this section. Reports shall describe progress achieved in carrying out the purpose of this section.

(2) REPORT TO CONGRESS.—The Director shall submit to Congress a report by July 1st of each year which contains a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants, and an evaluation of programs established under this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2006, 2007, and 2008.

## PURPOSE AND SUMMARY

H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005," is a comprehensive measure designed to improve the security and protection of judges, law enforcement, prosecutors, and other personnel. The tragic shootings of family members of United States District Judge Joan Lefkow, and the brutal slayings of Judge Rowland Barton, his court reporter, his deputy sheriff, and a Federal officer in Atlanta, as well as the violent attacks outside the Tyler, Texas courthouse—all underscore the importance of enhanced security for judges, courthouse personnel, witnesses and law enforcement officers.

At the State and local level, there is a clear and demonstrated need for assistance in the protection of judges, law enforcement officers, witnesses and courthouse personnel. The bulk of criminal prosecutions occur at the State and local level. Witness intimidation is a regular occurrence in State courthouses. H.R. 1751 provides a number of important new protections and resources for Federal, State and local judges, law enforcement officers, witnesses and other courthouse personnel.

## BACKGROUND AND NEED FOR THE LEGISLATION

The administration of justice requires that court and law enforcement personnel discharge their responsibilities without fear of violence or intimidation. The House Committee on the Judiciary has for many years focused on the issue of protecting witnesses and victims of crime. Recent brutal acts of violence, increasing number of threats, and attempts to derail our civil and criminal justice system only underscore the urgency of addressing this issue. Judges, witnesses, courthouse personnel and law enforcement officers must be free of threats and violence when carrying out their duties. H.R. 1751 seeks to provide the resources and the tools necessary to ensure the safety to those who play critical roles in our judicial system.

Courthouse protection should not be confined to the physical security of the courthouse itself—security must extend to the homes and areas that judges, prosecutors, law enforcement and witnesses reside. Without such protection, justice will be subverted as criminals seek to undermine our justice system. H.R. 1751 would strengthen the integrity of our judicial system by enhancing protections against: a disgruntled civil litigant; a dangerous criminal seeking to harm a judge or a prosecutor; the murder of a gang member who has agreed to testify against other gang members; or the murder of innocent civilian witnesses who are trying to merely carry out their civil obligation to testify against a violent criminal.

At the Federal level, the United States Marshals Service is charged with protecting those working in the Judicial Branch, as well as witnesses in Federal trials. The Committee has received in-

formation that raises concerns about the United States Marshals' ability to carry out its duties. A recent Inspector General's report raised questions about the Marshals' witness protection program.[1] In addition, there are questions regarding: the adequacy of critical resources allocated to the Marshals necessary in fulfilling their mission; the proper allocation of resources between the field and headquarters locations; and arbitrary decisions at the Marshals' Headquarters that may adversely impact both morale and security efforts in the field.

*Murders and Assaults of Law Enforcement Officers*

According to the Bureau of Justice Statistics, 52 law enforcement officers were feloniously killed in the United States in 2003. In 2002, 56 officers were killed in the United States. In the ten-year period from 1994 through 2003, a total of 616 law enforcement officers were feloniously killed in the line of duty in the United States, 100 of whom were killed in ambush situations—*i.e.* entrapment or premeditated situations.[2] If bulletproof vests had not been provided to these personnel, it is estimated that an additional 400 officers would have been killed over the last decade.[3]

Of those responsible for the unlawful killings of police officers between 1994 through 2003, 521 had a prior criminal arrest—including 153 who had a prior arrest for assaulting a police officer or resisting arrest; 264 for a crime of violence; 230 for a weapons violation; and 23 for murder. More than 57,000 law enforcement officers were assaulted in 2003, or one in every 10 officers serving in the United States.[4] These attacks have been increasing since 1999, even as other crime rates have decreased or held steady. As the Executive Director of the Fraternal Order of Police recently noted, "there's less respect for authority in general and police officers specifically. The predisposition of criminals to use firearms is probably at the highest point in our history."[5]

H.R. 1751 addresses this problem by sending a strong message of deterrence to would-be assailants. The existing penalty for assaulting a law enforcement officer is 8 years (15 with a weapon). Under current criminal law, a false statement made to an FBI agent in a terrorism investigation carries the same penalty as a violent assault of a police officer. The bill adopts a reasonable penalty structure requiring 1 to 10 years for an assault that results in bodily injury (cut, abrasion, bruise, burn or disfigurement, pain, illness); 3 to 12 years for substantial bodily injury (temporary but substantial disfigurement, temporary but substantial loss or impairment); and 10 to 30 years for serious bodily injury (substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty). These penalties roughly

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[1] U.S. Department of Justice, March 2004—*Review of United States Marshal's Judicial Security Process,* March 2004, Report No. I–2004–0004, *available at http://www.usdoj.gov/oig/reports/USMS/e0404/final.pdf*

[2] Federal Bureau of Investigation, U.S. Department of Justice, November 2004—Law Enforcement Officers Killed and Assaulted 2003, *available at http://www.fbi.gov/ucr/killed/leoka03.pdf.*

[3] Faye Fiore & Miles Corwin, *Tole of Violence Haunts Families of Police Officers,* N.Y. TIMES, Feb. 21, 1994, at 1.

[4] *Id.*

[5] Jerry Nachtigal, *Crime Down, but Number of Police Officers Killed Holds Steady,* Associated Press Newswires, Apr. 11, 1999.

correspond to existing guideline ranges and simply ensure that Federal judges impose the required penalty, but can exercise discretion to a higher penalty if warranted.

*Assaults and Violence Against Judges*

Federal, State and local judges have suffered from rising threats and deadly attacks against courthouse personnel—prosecutors, witnesses, defense counsel and others have also come under more regular and violent assault. These include the killing of an individual with a grenade in the Seattle Federal courthouse, the killing of a State judge and other court personnel in Atlanta, the murders of a Federal Judge Lefkow's family members, and the murders immediately outside the Tyler, Texas courthouse. According to the Administrative Office of United States Courts, there are almost 700 threats a year made against Federal judges, and in numerous cases Federal judges have had security details assigned to them for fear of attack by members of terrorist associates, violent gangs, drug organizations and disgruntled litigants.

The recent killing of Judge Lefkow's husband and mother by a disgruntled litigant shows that this threat extends to judges and their family members. The Judge Lefkow attack follows on the heels of the 1989 bombing of Circuit Judge Robert Vance in the 11th Circuit, the 1998 shooting of Judge Daronoco, and the 1979 shooting of Judge Wood outside his San Antonio home.

At the State and local level, there is no comprehensive data or incident reports. However, the recent slayings of Judge Rowland Barton, his court reporter, his deputy sheriff, and a Federal officer in Atlanta, and the cold-blooded shootings outside the Tyler, Texas courthouse all underscore the importance of security for judges, courthouse personnel, witnesses and law enforcement officers. The scourge of violence against these individuals threatens the very integrity of our judicial system.

Two States, Missouri and Massachusetts, have gathered data that shows an increasing trend of violence against courts and court personnel. For the years 2003 and 2004, in Massachusetts, assaults and disturbances, medical emergencies, and weapons/contraband seized constituted the majority of incidents reported (72.12 percent) for the 2004 reporting period. There were 295 assaults and 30 threats against judges or courthouse employees. In Missouri, for 2001, 74 percent of reporting courts indicated that their court had experienced at least one security incident during the reporting period. Of the five most frequent types of security incidents, four involved a level of violence or threat of violence.

H.R. 1751 authorizes but does not require Federal prosecution of Federally-funded State and local judges, and first responders (law enforcement officers, firefighters and ambulance crews). First, the bill provides that jurisdiction only exists when it involves Federal funding and the protection of Federal investment. Second, under current Federal law the Department of Justice pays survivor benefits to families of first responders who are killed in the line of duty. The Federal interest in minimizing these assaults and murders is obvious.

These crucial provisions would authorize Federal prosecution only after State, local, and Federal prosecutors determine where such prosecution would best be brought. Some States do not have

a death penalty and Federal prosecution of a law enforcement murder suspect may be warranted; Federal prosecution may be advantageous over State or local prosecution for a variety of reasons (law relating to evidence, statute of limitations, or other reasons). The provisions do not require Federal prosecution, but add another vital tool to Federal, State, and local efforts to protect law enforcement officers, judges and other courthouse personnel.

*Witness Intimidation and Killings*

A 1996 Justice Department study concluded that "witness intimidation is a pervasive and insidious problem. No part of the country is spared and no witness can feel entirely free or safe."[6] Prosecutors estimated that witness intimidation occurs in 75 percent to 100 percent of the violent crimes committed in some gang-dominated neighborhoods.

States do not have significant witness protection programs. However, States do not have the ability to relocate witnesses and their families, if necessary, like the Federal system. There is an overwhelming need for such programs. Prosecutors in Baltimore estimate that 35 percent to 50 percent of non-fatal shooting cases in the city cannot proceed because of reluctant witnesses, and about 90 percent of all homicide cases involve some manner of witness intimidation. Every year in New York City, hundreds of witnesses in court cases report being threatened, and at least 19 have been killed since 1980, according to law enforcement officials.

H.R. 1751 addresses the issue of witness intimidation by: (1) authorizing a new grant program to provide funding to States to create witness protection programs; (2) amending existing grant program authorizations to include witness protection; (3) raising the maximum penalties for applicable crimes (18 U.S.C. §§ 1512–13); and (4) adding witness obstruction crimes in Interstate Transportation in Aid of Racketeering.

*Penalty Enhancement*

The bill includes mandatory minimum penalties for assaults and killings of police officers, judges and family members. Law enforcement officers deserve our fullest protection—brazen criminals show less and less regard for the police and the hard work that they do. As revised, the mandatory minimums are commensurate with existing Federal sentencing guidelines. However, in the absence of a mandatory guideline system, there is too much at risk to leave the sentencing decisions to judges who sometimes depart from the guidelines when presented with a case.

Mandatory minimum penalties protect law enforcement, judges, witnesses, and send a significant message—if you attack members of the judicial system or law enforcement officers, you will pay a definite price. Such penalties increase public safety, and provide effective tools against criminals who depend on witness intimidation and judicial obstruction to derail the justice system. Mandatory minimum penalties are effective means for ensuring consistency in sentencing. Since the Supreme Court's decision in *United States v. Booker,* judges now have complete discretion to ignore the Federal

[6] National Institute of Justice, Department of Justice, *Preventing Gang- and Drug-Related Witness Intimidation* (1996).

sentencing guidelines and impose whatever sentence they want—all to the detriment of public safety and fairness in sentencing through consistent and clear punishment schemes.

Congress has a duty to set sentencing policies for Federal crimes—and to make sure that judges impose such sentences. Unfortunately, that has not been the experience since the *Booker* decision. Once freed from mandatory sentencing schemes, Federal judges are now starting to ignore the guidelines: in 1 of every 10 criminal cases, they are imposing sentences below the previously mandated guideline range. In a recently released report, United States Sentencing Commission data confirmed that this trend is continuing, and highlighted such data by Circuits. This data showed that judges in the 2nd and 9th Circuits followed the guideline ranges in imposing sentences in a substantially lower percentage than other circuits. Sentences now for similar crimes are being handed in disparate fashion depending on the region in which the offense occurs. This sentencing disparity imperils equal justice in the Federal system.

In a recent speech, Attorney General Gonzales noted the problems since the *Booker* decision and the absence of a mandatory sentencing scheme.

> More and more frequently, judges are exercising their discretion to impose sentences that depart from the carefully considered ranges developed by the U.S. Sentencing Commission. In the process, we risk losing a sentencing system that requires serious sentences for serious offenders and helps prevent disparate sentences for equally serious crimes. . . . And, indeed, the evidence the Department has seen since the Booker decision suggests an increasing disparity in sentences, and a drift toward lesser sentences.

Mandatory minimums have been supported, and adopted on a bipartisan basis in the last 30 years for: (1) drug traffickers; (2) armed criminals who commit a drug trafficking offense or a crime of violence; (3) criminals who commit crimes against children (including 387 Members of Congress who recently voted for the "Children's Safety Act of 2005"); (4) criminals who engage in identity theft; and (5) terrorists who possess and threaten to use atomic, chemical and biological weapons and anti-aircraft missiles.

Mandatory minimum penalties provide the tools for prosecutors to secure the cooperation of co-conspirators, co-defendants and other organized criminals to solve crimes and dismantle organizations that may be involved in child pornography. In addition, *every defendant* may obtain a reduced sentence *below the statutory mandatory minimum* by providing "substantial assistance in the investigation and prosecution of another person."

Mandatory sentencing schemes—truth-in-sentencing, determinate sentencing practices, "three-strikes and you're out"—have resulted in dramatic reductions in crime since the 1970s.[7] Other

[7] Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors That Explain the Decline and Seven That Do Not,* 18 J.Econ. Perspectives 163 (2004); Joanna M. Shepherd, *Police, Prosecutors, Criminals and Determinate Sentencing: The Truth about Truth-in-Sentencing Laws,* 45 J.L. & Econ. 509 (2002).

studies confirm the obvious point—incarcerating an offender prevents him from repeating his crimes while he is in prison.[8]

*Federal Death Penalty*

The need for a swift and effective death penalty is significant in the case of violent offenders who assault and kill law enforcement officers, judges, and witnesses. Several scientifically valid statistical studies—those that examine a period of years, and control for national trends—consistently show that capital punishment is a substantial deterrent and saves lives—recent estimates show that each execution deters 18 murders.

With respect to the Federal death penalty, opponents continue to argue, contrary to the evidence, that imposition of the death penalty has been racially-biased and had a disproportionate impact on minority populations. To the contrary, the evidence shows that the Federal death penalty, with the rigorous review procedures, is imposed at a higher rate against white defendants than minority defendants. The Justice Department has concluded, after two comprehensive studies—one conducted in 2000 (under Attorney General Janet Reno) and another in 2001, that at no stage of the [death penalty] review process were decisions to recommend or approve the seeking of a capital sentence made at higher rates for Black or Hispanic defendants than for White Defendants.[9]

*Additional Tools to Protect Judges, Law Enforcement Officers and Witnesses*

H.R. 1751 includes provisions to address other security issues and problems. First, the bill provides permanent authorization for Federal judges to redact information from financial disclosure reports that could endanger the filer. It is important for Congress to act soon because this essential security measure for Federal judges, employees, and their families will expire on December 31, 2005.

In 1998, Congress amended the Ethics in Government Act to provide the judiciary with authority to redact financial disclosure reports before they are released to the public. Congress recognized that the judiciary faced security risks greater than those of 25 years earlier when the Ethics in Government Act first became law. Congress established a process by which the judiciary would consult with the United States Marshals Service to determine whether information on a financial disclosure report should be redacted because its release could jeopardize the life or safety of a judge or judiciary employee.

There have been a disturbingly high number of instances of unauthorized incursions into information databases containing personal information of court personnel. These incursions, when coupled with other personal information already available on the Internet, give wrongdoers the capability to cause harm as never be-

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[8] Peter W. Greenwood *et al., Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law, in Three Strikes and You're Out: Vengeance as Public Policy* (David Schichor & Dale K. Sechrest eds. 1996). Joanna M. Shepherd, *Fear of First Strike: The Full Deterrent Effect of California's Two- and Three-Strikes Legislation,* 31 J. Legal Stud. 159 (2002).

[9] U.S. Department of Justice, 12 Sept. 2000)*Survey of the Federal Death Penalty System* (1988–2000), *available at http://www.usdoj.gov/dag/pubdoc/dp—survey—toc.pdf.* U.S. Department of Justice, 6 June 2001—*The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capitol Case Review, available at http://www.usdoj.gov/dag/pubdoc/dp—survey—toc.pdf.*

fore. Were the redaction authority to be removed from the Act, certain personal information in the financial disclosure reports, not otherwise widely available, such as the unsecured location where a spouse works or a child attends school, may be widely publicized through the Internet and other information outlets.

Making the redaction authority permanent by removing the sunset provision from section 105(b)(3)(E) of the Act can be accomplished without diminishing the basic purpose of the Act—to allow members of the public to form independent opinions as to the integrity of government officials. The regulations adopted by the Judicial Conference carefully balance judges' security concerns with the public's right to view the information contained in financial disclosure reports. The judiciary has made a concerted effort to ensure that the authority conferred by section 105(b)(3) is exercised in a consistent and prudent manner.

*Protected Information and Disclosure*

The bill also restricts Internet dissemination of private information concerning law enforcement, judges, and other judicial system participants with the intent to harm these individuals. It has become all too common for the Internet to be used as a conduit to identify cooperating witnesses, informants and witnesses for purposes of intimidation, assault or even murder. The bill adopts a five-year maximum penalty and imposes an intent requirement that such disclosure is meant to "harm or retaliate" against the protected persons.

*Coordination/Consultation Between U.S. Marshals and Judges*

At the Federal level, the United States Marshals Service is charged with protecting those working in the Judicial Branch, as well as witnesses in Federal trials. The Committee has received information that raises concerns about the United States Marshals' ability to carry out its duties. A recent Inspector General's report raised questions about the Marshals' witness protection program. In addition, there are questions regarding: the adequacy of critical resources allocated to the Marshals necessary in fulfilling their mission; the proper allocation of resources between the field and headquarters locations; and arbitrary decisions at the Marshals' Headquarters that may adversely impact both morale and security efforts in the field. The bill responds to suggestions made by the Federal judiciary and directs coordination and notification requirements on the Marshals when dealing with security needs of the Federal judiciary. This request is reasonable and will ensure that judges are adequately informed, and that they have sufficient opportunity to provide input to the United States Marshals concerning their security needs. This provision is meant to improve communication and coordination efforts between the Marshals and the Federal judiciary.

*Fictitious Liens and Encumbrances*

The Judicial Conference, as well as the Justice Department, have explained that organized efforts to file such liens and encumbrances are regularly employed by groups opposed to Federal law enforcement and judicial participants, and who conduct organized efforts to harass judges, prosecutors and other Federal officials. In

order to protect court and law enforcement personnel, H.R. 1751 creates a new Federal ten year maximum penalty crime that provides for the filing of false liens and encumbrances against real or personal property.

*Flight to Avoid Prosecution for Killing Peace Officers*

The bill incorporates provisions from a bill offered by Rep. Drier and Rep. Schiff, the "Peace Officer Justice Act," to address the problem of law enforcement murder suspects who flee to Mexico in order to escape arrest. Mexico has limited extradition authority under treaties with the United States. On April 29, 2002, Los Angeles County Sheriff's Deputy David March was brutally slain in an execution-style murder during a routine traffic stop. Suspect Armando Garcia fled to Mexico within hours of Deputy March's death and has eluded prosecution by U.S. authorities.

Tragically, Mexico's refusal to extradite individuals who may face the death penalty or life imprisonment has complicated efforts to bring Armando Garcia back to the U.S. to face prosecution for his crimes. As a result, three years later, Armando Garcia and thousands of other fugitives still roam free. The provision ensures that criminals who murder law enforcement officials and escape to another country will have the full weight of the Federal Government on their trail. Currently under Federal law, it is a crime to kill a Federal peace officer or State and local officers if they are engaged in a Federal investigation. H.R. 1751 makes it a Federal crime for the killing of a Federally-financed public safety officer. The current punishment for fleeing prosecution under existing law is no more than five years or merely a fine. Under the bill, the punishment would be increased to a mandatory-minimum of 10 years to life.

## HEARINGS

The Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security held a legislative hearing on H.R. 1751 on April 26, 2005. Testimony was received from four witnesses: Judge Jane Roth, Chairwoman of Judicial Conference Committee on Facilities; Judge Cynthia Kent, 114th Judicial District of Texas; United States Attorney Paul McNulty, Eastern District of Virginia; and United States Marshal John Clark, Eastern District of Virginia.

## COMMITTEE CONSIDERATION

On June 30, 2005, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill H.R. 1751 as amended by a voice vote, a quorum being present. On October 27, 2005, the full Committee met in open session and ordered favorably reported the bill H.R. 1751 as amended by a recorded vote of 26 to 5, a quorum being present.

## VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were the following recorded votes during the committee consideration of H.R. 1751:

1. An amendment offered by Rep. Chabot to permit broadcast of Federal judicial proceedings was adopted by a vote of 20 to 12.

ROLLCALL NO. 1

| | Ayes | Nays | Present |
|---|---|---|---|
| Mr. Hyde | | | |
| Mr. Coble | X | | |
| Mr. Smith (Texas) | | X | |
| Mr. Gallegly | | X | |
| Mr. Goodlatte | X | | |
| Mr. Chabot | X | | |
| Mr. Lungren | | | |
| Mr. Jenkins | | X | |
| Mr. Cannon | | X | |
| Mr. Bachus | | | |
| Mr. Inglis | X | | |
| Mr. Hostettler | X | | |
| Mr. Green | X | | |
| Mr. Keller | | X | |
| Mr. Issa | | X | |
| Mr. Flake | | X | |
| Mr. Pence | | | |
| Mr. Forbes | | X | |
| Mr. King | X | | |
| Mr. Feeney | | X | |
| Mr. Franks | X | | |
| Mr. Gohmert | | X | |
| Mr. Conyers | X | | |
| Mr. Berman | X | | |
| Mr. Boucher | | | |
| Mr. Nadler | X | | |
| Mr. Scott | | X | |
| Mr. Watt | | X | |
| Ms. Lofgren | X | | |
| Ms. Jackson Lee | | | |
| Ms. Waters | X | | |
| Mr. Meehan | X | | |
| Mr. Delahunt | X | | |
| Mr. Wexler | | | |
| Mr. Weiner | X | | |
| Mr. Schiff | X | | |
| Ms. Sánchez | X | | |
| Mr. Van Hollen | X | | |
| Ms. Wasserman Schultz | X | | |
| Mr. Sensenbrenner, Chairman. | | | |
| Total | 20 | 12 | |

2. H.R. 1751 was favorably reported to the full House, as amended, by a vote of 26 to 5.

ROLLCALL NO. 2

| | Ayes | Nays | Present |
|---|---|---|---|
| Mr. Hyde | | | |
| Mr. Coble | | | |
| Mr. Smith (Texas) | X | | |
| Mr. Gallegly | X | | |
| Mr. Goodlatte | X | | |
| Mr. Chabot | X | | |
| Mr. Lungren | X | | |
| Mr. Jenkins | X | | |
| Mr. Cannon | X | | |
| Mr. Bachus | | | |
| Mr. Inglis | X | | |

ROLLCALL NO. 2—Continued

| | Ayes | Nays | Present |
|---|---|---|---|
| Mr. Hostettler | X | | |
| Mr. Green | X | | |
| Mr. Keller | X | | |
| Mr. Issa | | | |
| Mr. Flake | | | |
| Mr. Pence | | | |
| Mr. Forbes | X | | |
| Mr. King | X | | |
| Mr. Feeney | X | | |
| Mr. Franks | X | | |
| Mr. Gohmert | X | | |
| Mr. Conyers | | X | |
| Mr. Berman | X | | |
| Mr. Boucher | | | |
| Mr. Nadler | X | | |
| Mr. Scott | | X | |
| Mr. Watt | | X | |
| Ms. Lofgren | X | | |
| Ms. Jackson Lee | | X | |
| Ms. Waters | | X | |
| Mr. Meehan | X | | |
| Mr. Delahunt | X | | |
| Mr. Wexler | | | |
| Mr. Weiner | X | | |
| Mr. Schiff | X | | |
| Ms. Sánchez | X | | |
| Mr. Van Hollen | X | | |
| Ms. Wasserman Schultz | X | | |
| Mr. Sensenbrenner, Chairman. | | | |
| Total | 26 | 5 | |

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the H.R. 1751, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, November 7, 2005.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
*Committee on the Judiciary,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has completed the enclosed cost estimate for H.R. 1751, the Secure Access to Justice and Court Protection Act of 2005.

The CBO staff contact for this estimate is Gregory Waring, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

*H.R. 1751—Secure Access to Justice and Court Protection Act of 2005.*

SUMMARY

H.R. 1751 would authorize the appropriation of $409 million over the 2006–2010 period to provide increased court security through the U.S. Marshals Service and to provide grants to States to increase the security of courts and protect witnesses. CBO estimates that it would authorize additional appropriations of $25 million a year over the 2006–2009 period for grants to States to create threat assessment databases. The bill also would establish mandatory minimum-prison sentences for certain crimes committed against judges and certain public safety officers and their families. Moreover, H.R. 1751 would increase the mandatory minimum-federal sentences for the crimes of murder in the second degree and manslaughter.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1751 would cost about $385 million over the 2006–2010 period. Enacting the bill could affect direct spending and revenues, but CBO estimates that any such effects would not be significant.

H.R. 1751 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). It would benefit State, local, and tribal governments by authorizing the appropriation of more than $400 million over fiscal years 2006–2010 for new and existing programs to increase protection for public safety officers, court personnel, and witnesses. Any costs to those governments would be incurred voluntarily as a condition of receiving Federal assistance.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1751 is shown in the following table. The cost of this legislation falls within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

| | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1] | | | | | |
| Court Security and Witness Programs | | | | | |
| Authorization Level | 63 | 63 | 63 | 60 | 60 |
| Estimated Outlays | 14 | 33 | 45 | 54 | 61 |
| U.S. Marshals Service | | | | | |
| Authorization Level | 20 | 20 | 20 | 20 | 20 |
| Estimated Outlays | 12 | 26 | 20 | 20 | 20 |
| Threat Assessment Database Grants | | | | | |
| Estimated Authorization Level | 25 | 25 | 25 | 25 | 0 |
| Estimated Outlays | 61 | 31 | 82 | 22 | 0 |
| Total Changes | | | | | |
| Estimated Authorization Level | 108 | 108 | 108 | 105 | 80 |
| Estimated Outlays | 32 | 72 | 83 | 96 | 101 |

1. In addition to the amounts shown above, enacting H.R. 1751 also could affect revenues and direct spending, but CBO estimates that any such effects would not be significant in any year.

## BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted in December 2005. CBO estimates that implementing H.R. 1751 would cost about $385 million over the 2006–2010 period, assuming appropriation of the necessary funds. We also estimate that enacting the bill could increase both direct spending and revenues, but any such effects would not be significant in any year.

### *Spending Subject to Appropriation*

For this estimate, CBO assumes that the necessary amounts will be appropriated near the start of each fiscal year and that spending will follow the historical spending patterns for these or similar activities.

**Court Security and Witness Programs.** H.R. 1751 would authorize the appropriation of:

- $20 million for each of the fiscal years 2006 through 2010 for the Attorney General to make grants to State and local governments to bolster or create witness protection programs;
- $20 million for each of fiscal years 2006 through 2010 for the Attorney General to make grants to community-based programs to assist both witnesses to and victims of violence;
- $20 million for each of fiscal years 2006 through 2010 for the Office of Justice Programs to provide grants to State courts to assess and implement courtroom security needs; and
- $3 million for each of fiscal years 2006 through 2008 for the Bureau of Justice Assistance to make grants to State and local agencies specifically for the needs of juvenile and young adult witnesses.

**U.S. Marshals Service.** H.R. 1751 would authorize the appropriation of $20 million for each of fiscal years 2006 through 2010 for the U.S. Marshals Service to provide additional protection for the judiciary. The agency would hire additional Deputy Marshals, new investigators, and additional intelligence officers.

**Threat Assessment Database Grants.** The bill would authorize appropriation of the necessary amounts for each of fiscal years

2006 through 2009 for the Attorney General to provide grants to States to assess threats of domestic terrorism and crime. State recipients would use the funds to analyze trends in historical data, project the likelihood of future acts of terrorism and crime, and develop steps to reduce the chance such events will occur. Based on the cost of similar information sharing and technology initiatives, we expect that the Department of Justice would award each State around $500,000 a year over this period for staff and data analysis tools. Assuming appropriation of the necessary amounts ($25 million a year), we estimate that the grant program would cost $79 million over the 2006–2010 period. (Some outlays would occur after 2010.)

**Federal Prison System.** H.R. 1751 would establish mandatory minimum-prison sentences and fines for a wide range of offenses committed by individuals against judges, federally funded public safety officers, and family members of such individuals. In addition, the bill would increase the mandatory minimum sentence for murder in the second degree to not less than 30 years and the mandatory minimum sentences for voluntary and involuntary manslaughter to 20 and 10 years, respectively.

Based on information from the U.S. Sentencing Commission, CBO estimates that the longer sentences required under the bill would not have a significant impact on the prison population over the 2006–2010 period, and thus, would not impose any significant new costs over that period.

*Direct Spending and Receipts*

H.R. 1751 would subject individuals to penalties for various crimes against judges, federally funded public safety officers, and their families. Thus, the Federal Government might collect additional fines if the bill is enacted. Collections of criminal fines are deposited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would not be significant.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

This bill contains no intergovernmental or private-sector mandates as defined in UMRA. It would benefit State, local, and tribal governments by authorizing the appropriation of more than $400 million over fiscal years 2006–2010 for new and existing programs to increase protection for public safety officers, court personnel, and witnesses. Any costs to those governments would be incurred voluntarily as a condition of receiving Federal assistance.

ESTIMATE PREPARED BY:

Federal Costs: Gregory Waring (226–2860)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

## PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R 1751, is intended to protect Federal, State and local judges, law enforcement officers, witnesses, victims and other courthouse personnel.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in part. I, § 8 of the Constitution.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following describes the bill as reported by the Committee.

*Sec. 1. Short Title*

This section cites the short title of the bill as "The Secure Access to Justice and Court Protection Act of 2005."

*Sec. 2. Penalties for Influencing, Impeding, to Retaliating Against Judges and Other Officials by Threatening or Injuring a Family Member*

This section increases penalties for assault, kidnaping, murdering a member of the immediate family of, or the designated persons, including a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be covered under 18 U.S.C. § 1114. Criminal penalties for assault, kidnaping, murder and threats would be increased: (1) for assaults, the penalty would increase depending on the severity of the assault and the injuries suffered by the victim; (2) for kidnaping (or attempt or conspiracy), the penalty would increase to a mandatory minimum of 30 years to a maximum of life imprisonment; and (3) for threats, the penalty would increase to a mandatory minimum of 1 year to a maximum of 10 years. The substitute amendment that was adopted during the Committee's markup made several revisions to this section. The amendment added "Federally Financed Public Safety Officer" to coverage of 18 U.S.C. § 1111; provides enhanced criminal penalties where the victim is a United States judge, Federal law enforcement officer, or a Federally Financed Public Safety Officer (same as 1B above for assaults and use of a dangerous weapon); restricts Federal prosecution of assaults of Federally-financed public safety officers to require Attorney General approval, consultation with State and local prosecutors, and approval only when in the interest of justice; and increases maximum penalties for assaults of other Federal officials and employees.

*Sec. 3. Penalties for Certain Assaults*

The substitute amendment that was adopted during the Committee's markup added this section to H.R. 1751. This section adds "Federally Financed Public Safety Officer" to coverage of 18 U.S.C. § 1111; provides enhanced criminal penalties where the victim is a United States judge, Federal law enforcement officer, or a Federally Financed Public Safety Officer (same as 1B above for assaults and use of a dangerous weapon); restricts Federal prosecution of

assaults of Federally-financed public safety officers to require Attorney General approval, consultation with State and local prosecutors, and approval only when in the interest of justice; and increases maximum penalties for assaults of other Federal officials and employees.

*Sec. 4. Protection of Federally-Funded Public Safety Officers*

This section creates a new criminal offense for killing, attempting to kill or conspiring to kill, any public safety officer for a public agency that receives Federal funding, including a judicial officer, judicial employee, law enforcement officer, firefighter, or other State or local employee. The substitute amendment that was adopted during the Committee's markup made several revisions to this section. It provides a 30-year mandatory minimum to life or death penalty for killing of Federally-financed public safety officer; adds provisions from Rep. Drier's proposed bill, H.R. 3900, the "Justice for Peace Officer's Act," to include killing of State and local law enforcement officers; and adds provisions from Rep. Mica's bill, H.R. 3833, the "National Guard Emergency Protection Act of 2005," to extend to the killing of members of the National Guard when authorized by States, as protected public safety officers under proposed new Section 1123 of title 18.

*Sec. 5. General Modifications of Federal Murder Crime and Related Crimes*

This section modifies the Federal murder and manslaughter statutes to include new mandatory minimums of 30 years imprisonment for second-degree murder; and a maximum of 20 years imprisonment, and 10 years imprisonment for involuntary manslaughter; and modifies the attempted murder and conspiracy to murder provisions to punish such crimes the same as the substantive offense.

*Sec. 6. Modification of Definition of Offense and of the Penalties for Influencing or Injuring Officer or Juror Generally*

This section clarifies 18 U.S.C. § 1503 relating to influencing or injuring jurors or officers of judicial proceedings, and increases maximum penalties for an attempted killing, use of force, or threats of force. The substitute amendment that was adopted during the Committee's markup eliminated the mandatory minimum, but increased the maximum punishment to 30 years.

*Sec. 7. Modification of Tampering with a Witness, Victim, or Informant Offense*

This section modifies 18 U.S.C. § 1512 to increase maximum penalties for killing or attempting to kill a witness, victim or informant to obstruct justice. The substitute amendment that was adopted during the Committee's markup eliminated all three proposed mandatory minimums for 18 U.S.C. § 1512, and increased the maximum penalties.

*Sec. 8. Modification of Retaliation Offense*

This section modifies 18 U.S.C. § 1513 for killing or attempting to kill a witness, victim or an informant in retaliation for their testifying or providing information to law enforcement by increasing

maximum penalties. The substitute amendment that was adopted during the Committee's markup eliminated two mandatory minimum penalties and increased the maximum penalties.

*Sec. 9. Inclusion of Intimidation and Retaliation Against Witnesses in State Prosecutions as Basis for Federal Prosecution*

This section amends 18 U.S.C. § 1952 relating to interstate and foreign travel in aid of racketeering enterprise by expanding the prohibition against "unlawful activity" to include "intimidation of, or retaliation against, a witness, victim, juror, or informant."

*Sec. 10. Clarification of Venue for Retaliation Against a Witness*

This section amends 18 U.S.C. § 1513 to clarify proper venue for prosecutions to include the district in which the official proceeding or conduct occurred.

*Sec. 11. Witness Protection Grant Program*

This section creates a new grant program for States, units of local government, and Indian tribes to create and expand witness protection programs in order to prevent threats, intimidation and retaliation against victims of, and witnesses to, crimes. The authorized funding is $20 million for each fiscal year 2006 through 2010.

*Sec. 12. Grants to States to Protect Witnesses and Victims of Crime*

This section amends the Violent Crime Control Act to authorize grants to create and expand witness protection programs to assist witnesses and victims of crime. The authorized funding is $20 million for each fiscal year 2006 through 2010.

*Sec. 13. Judicial Branch Security Requirements*

This section would ensure consultation and coordination in determining security requirements for United States Courts between the United States Marshals Service and the Administrative Office of the United States Courts. This section seeks to improve the coordination and implementation of security measures to protect judges, court employees, law enforcement officers, jurors and other members of the public who are regularly in Federal courthouses and other buildings used by the Judicial Branch. This section would not alter the responsibility of the Marshals Services for protection of the judiciary in buildings occupied by the courts, pursuant to a memorandum of understanding between the General Services Administration and the Marshals Service, and the Marshals Service would still be responsible for the security of the judges and the court facilities.

*Sec. 14. Protections Against Malicious Recording of Fictitious Liens Against Federal Judges and Attorneys*

This section would create a new Federal criminal offense for the filing of fictitious liens against real or personal property owned by Federal judges, Federal attorneys and Federal employees. The substitute amendment that was adopted during markup restricted coverage to Federal officials and employees (including judges, law enforcement officers and prosecutors).

*Sec. 15. Prohibition of Dangerous Weapons in Federal Court Facilities*

This section amends 18 U.S.C. § 930(c) to prohibit the possession of "a dangerous weapon" in a Federal court facility.

*Sec. 16. Repeal of Sunset Provision*

This section repeals the sunset applicable to the filing of disclosure statements by Federal judges pursuant to the Ethics in Government Act of 1978 so that Federal judges may continue to redact identifying information about them and their families while ensuring that sufficient information is publicly available to ensure that no conflicts or other potential conflicts may arise while conducting their official duties.

*Sec. 17. Protection of Individuals Performing Certain Federal and Federally-Assisted Functions*

This section creates a new Federal criminal offense prohibiting persons from making available on the Internet restricted personal information concerning judges, law enforcement, public safety officers, jurors, witnesses or other officers in any United States Court. The penalty for a knowing violation is a maximum term of imprisonment of 5 years. The substitute amendment that was adopted during the Committee's markup required the intent to harm or retaliate for the new criminal offense protecting disclosure of personal information on the Internet.

*Sec. 18. Eligibility of Courts to Apply Directly for Law Enforcement Discretionary Grants and Requirement that State and Local Governments Consider Courts When Applying for Grant Funds*

This section modifies the eligibility requirements for discretionary Byrne grants to restrict State court eligibility for Justice Department programs to discretionary grants.

*Sec. 19. Report on Security of Federal Prosecutors*

This section requires the Justice Department to submit a report to the House and Senate Judiciary Committees on security measures taken to protect Assistant U.S. Attorneys and other Federal attorneys.

*Sec 20. Flight to Avoid Prosecution for Killing Peace Officers*

This section is derived from H.R. 3900, the "Justice for Peace Officers Act" (Rep. Dreier). It creates a new Federal criminal offense for flight to avoid prosecution for killing a peace officer, and imposes mandatory-minimum penalty of ten years imprisonment for violating its terms.

*Sec 21. Special penalties for Murder and Kidnaping and Related Crimes Against Federal Judges and Federal Law Enforcement Officers*

This section creates a mandatory minimum of 30 years imprisonment or, life or death penalty if death results for crimes against Federal judges and law enforcement officers.

*Sec. 22. Media Coverage of Court Proceedings*

This section authorizes the presiding judges of each court to permit media broadcast of judicial proceedings, and provides specific procedures to be used to protect the security of witnesses.

*Sec. 23. Funding for State Courts to Enhance Court Security and Emergency Preparedness*

This section authorizes grants to State courts to conduct threat assessments and implement recommended security changes.

*Sec. 24. Additional Amounts for the United States Marshals Service to Protect the Federal Judiciary*

This section authorizes an additional $20 million for the U.S. Marshals service to protect the Federal judiciary.

*Sec. 25. Grants to States For Threat Assessment Databases*

This section authorizes a new grant program to provide States with funds to develop threat assessment databases.

*Sec. 26. Grants for Young Witness Assistance*

This section authorizes grants for State and local prosecutors and law enforcement agencies to provide witnesses assistance programs for young witnesses.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## TITLE 18, UNITED STATES CODE

* * * * * * *

# PART I—CRIMES

* * * * * * *

## CHAPTER 7—ASSAULT

Sec.
111. Assaulting, resisting, or impeding certain officers or employees.
* * * * * * *
*117. Protection of individuals performing certain Federal and federally assisted functions.*
* * * * * * *

### § 111. Assaulting, resisting, or impeding certain officers or employees

(a) IN GENERAL.—Whoever—

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this

title *or a federally funded public safety officer (as defined in section 1123)* while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 *or a federally funded public safety officer (as defined in section 1123)* on account of the performance of official duties during such person's term of service,

* * * * * * *

*(c) ALTERNATE PENALTY WHERE VICTIM IS A UNITED STATES JUDGE, A FEDERAL LAW ENFORCEMENT OFFICER, OR FEDERALLY FUNDED PUBLIC SAFETY OFFICER.—(1) Except as provided in paragraph (2), if the offense is an assault and the victim of the offense under this section is a United States judge, a Federal law enforcement officer (as defined for the purposes of section 1114) or of a federally funded public safety officer (as defined for the purposes of section 1123), in lieu of the penalties otherwise set forth in this section, the offender shall be subject to a fine under this title and—*

*(A) If the assault is a simple assault, a fine under this title or a term of imprisonment for not more than one year, or both.*

*(B) if the assault resulted in bodily injury (as defined in section 1365), shall be imprisoned not less than one nor more than 10 years;*

*(C) if the assault resulted in substantial bodily injury (as defined in section 113), shall be imprisoned not less than 3 nor more than 12 years; and*

*(D) if the assault resulted in serious bodily injury (as defined in section 2119), shall be imprisoned not less than 10 nor more than 30 years.*

*(2) If a dangerous weapon was used during and in relation to the offense, the punishment shall include a term of imprisonment of 5 years in addition to that otherwise imposed under this subsection.*

* * * * * * *

**§ 115. Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member**

(a)(1) Whoever—

(A) assaults, kidnaps, or murders, or attempts or conspires to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, *federally funded public safety officer (as defined for the purposes of section 1123)* or an official whose killing would be a crime under section 1114 of this title; or

(B) threatens to assault, kidnap, or murder, a United States official, a United States judge, a Federal law enforcement officer, *federally funded public safety officer (as defined for the purposes of section 1123)* or an official whose killing would be a crime under such section,

with intent to impede, intimidate, or interfere with such official, judge, or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official,

judge, or law enforcement officer on account of the performance of official duties, shall be punished as provided in subsection (b).

[(b)(1) An assault in violation of this section shall be punished as provided in section 111 of this title.

[(2) A kidnapping, attempted kidnapping, or conspiracy to kidnap in violation of this section shall be punished as provided in section 1201 of this title for the kidnapping or attempted kidnapping of, or a conspiracy to kidnap, a person described in section 1201(a)(5) of this title.

[(3) A murder, attempted murder, or conspiracy to murder in violation of this section shall be punished as provided in sections 1111 and 1113 of this title.

[(4) A threat made in violation of this section shall be punished by a fine under this title or imprisonment for a term of not more than 10 years, or both, except that imprisonment for a threatened assault shall not exceed 6 years.]

*(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is as follows:*

*(A) The punishment for an assault in violation of this section is the same as that provided for a like offense under section 111.*

*(B) The punishment for a kidnapping, attempted kidnapping, or conspiracy to kidnap in violation of this section is the same as provided for a like violation in section 1201.*

*(C) The punishment for a murder, attempted murder, or conspiracy to murder in violation of this section is the same as provided for a like offense under section 1111, 1113, and 1117.*

*(D) A threat made in violation of this section shall be punished by a fine under this title or imprisonment for not more than 10 years, or both.*

*(2) If the victim of the offense under this section is an immediate family member of a United States judge, a Federal law enforcement officer (as defined for the purposes of section 1114) or of a federally funded public safety officer (as defined for the purposes of section 1123), in lieu of the punishments otherwise provided by paragraph (1), the punishments shall be as follows:*

*(A) The punishment for an assault in violation of this section is as follows:*

*(i) If the assault is a simple assault, a fine under this title or a term of imprisonment for not more than one year, or both.*

*(ii) If the assault resulted in bodily injury (as defined in section 1365), a fine under this title and a term of imprisonment for not less than one year nor more than 10 years.*

*(iii) If the assault resulted in substantial bodily injury (as defined in section 113), a fine under this title and a term of imprisonment for not less than 3 years nor more than 12 years.*

*(iv) If the assault resulted in serious bodily injury (as defined in section 2119), a fine under this title and a term of imprisonment for not less than 10 years nor more than 30 years.*

*(B) The punishment for a kidnapping, attempted kidnapping, or conspiracy to kidnap in violation of this section*

*is a fine under this title and imprisonment for any term of years not less than 30, or for life.*

*(C) The punishment for a murder, attempted murder, or conspiracy to murder in violation of this section is a fine under this title and imprisonment for any term of years not less than 30, or for life, or, if death results, the offender may be sentenced to death.*

*(D) A threat made in violation of this section shall be punished by a fine under this title and imprisonment for not less than one year nor more than 10 years.*

*(E) If a dangerous weapon was used during and in relation to the offense, the punishment shall include a term of imprisonment of 5 years in addition to that otherwise imposed under this paragraph.*

* * * * * * *

***§ 117. Protection of individuals performing certain Federal and federally assisted functions***

*(a) Whoever knowingly, and with intent to harm, intimidate, or retaliate against a covered official makes restricted personal information about that covered official publicly available through the Internet shall be fined under this title and imprisoned not more than 5 years, or both.*

*(b) It is a defense to a prosecution under this section that the defendant is a provider of Internet services and did not knowingly participate in the offense.*

*(c) As used in this section—*

*(1) the term "restricted personal information" means, with respect to an individual, the Social Security number, the home address, home phone number, mobile phone number, personal email, or home fax number of, and identifiable to, that individual; and*

*(2) the term "covered official" means—*

*(A) an individual designated in section 1114;*

*(B) a public safety officer (as that term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968); or*

*(C) a grand or petit juror, witness, or other officer in or of, any court of the United States, or an officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate.*

## CHAPTER 44—FIREARMS

* * * * * * *

**§ 930. Possession of firearms and dangerous weapons in Federal facilities**

(a) * * *

* * * * * * *

(e)(1) Except as provided in paragraph (2), whoever knowingly possesses or causes to be present a firearm *or other dangerous*

*weapon* in a Federal court facility, or attempts to do so, shall be fined under this title, imprisoned not more than 2 years, or both.

* * * * * * *

## CHAPTER 49—FUGITIVES FROM JUSTICE

Sec.
1071. Concealing person from arrest.

* * * * * * *

*1075. Flight to avoid prosecution for killing peace officers.*

* * * * * * *

### *§ 1075. Flight to avoid prosecution for killing peace officers*

*Whoever moves or travels in interstate or foreign commerce with intent to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees or under section 1114 or 1123, for a crime consisting of the killing, an attempted killing, or a conspiracy to kill, an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws or for a crime punishable by section 1114 or 1123, shall be fined under this title and imprisoned, in addition to any other imprisonment for the underlying offense, for any term of years not less than 10.*

* * * * * * *

## CHAPTER 51—HOMICIDE

Sec.
1111. Murder.

* * * * * * *

*1123. Killing of federally funded public safety officers.*

### § 1111. Murder

(a) * * *

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years *not less than 30* or for life.

### § 1112. Manslaughter

(a) * * *

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of voluntary manslaughter, shall be fined under this title or imprisoned not more than **[**ten**]** *20* years, or both;

Whoever is guilty of involuntary manslaughter, shall be fined under this title or imprisoned not more than **[**six**]** *10* years, or both.

* * * * * * *

**§ 1114. Protection of officers and employees of the United States**

*(a)* Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished—

(1) * * *

* * * * * * *

*(b) If the victim of a murder punishable under this section is a United States judge (as defined in section 115) or a Federal law enforcement officer (as defined in 115) the offender shall be punished by a fine under this title and imprisonment for any term of years not less than 30, or for life, or, if death results, may be sentenced to death.*

* * * * * * *

***§ 1123. Killing of federally funded public safety officers***

*(a) Whoever kills, or attempts or conspires to kill, a federally funded public safety officer while that officer is engaged in official duties, or arising out of the performance of official duties, or kills a former federally funded public safety officer arising out of the performance of official duties, shall be punished by a fine under this title and imprisonment for any term of years not less than 30, or for life, or, if death results, may be sentenced to death.*

*(b) As used in this section—*

*(1) the term "federally funded public safety officer" means a public safety officer for a public agency (including a court system, the National Guard of a State to the extent the personnel of that National Guard are not in Federal service, and the defense forces of a State authorized by section 109 of title 32) that receives Federal financial assistance, of an entity that is a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States, an Indian tribe, or a unit of local government of that entity;*

*(2) the term "public safety officer" means an individual serving a public agency in an official capacity, as a judicial officer, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew;*

*(3) the term "judicial officer" means a judge or other officer or employee of a court, including prosecutors, court security, pretrial services officers, court reporters, and corrections, probation, and parole officers; and*

*(4) the term "firefighter" includes an individual serving as an official recognized or designated member of a legally organized volunteer fire department and an officially recognized or designated public employee member of a rescue squad or ambulance crew; and*

*(5) the term "law enforcement officer" means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws.*

* * * * * * *

## CHAPTER 55—KIDNAPPING

* * * * * * *

### § 1201. Kidnapping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1) * * *

* * * * * * *

shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment. *If the victim of the offense punishable under this subsection is a United States judge (as defined in section 115) or a Federal law enforcement officer (as defined in 115) the offender shall be punished by a fine under this title and imprisonment for any term of years not less than 30, or for life, or, if death results, may be sentenced to death.*

* * * * * * *

## CHAPTER 73—OBSTRUCTION OF JUSTICE

Sec.
1501. Assault on process server.
* * * * * * *
*1521. Retaliating against a Federal employee by false claim or slander of title.*
* * * * * * *

### § 1503. Influencing or injuring officer or juror generally

[(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that other-

wise provided by law or the maximum term that could have been imposed for any offense charged in such case.]

*(a)(1) Whoever—*

*(A) corruptly, or by threats of force or force, endeavors to influence, intimidate, or impede a juror or officer in a judicial proceeding in the discharge of that juror or officer's duty;*

*(B) injures a juror or an officer in a judicial proceeding arising out of the performance of official duties as such juror or officer; or*

*(C) corruptly, or by threats of force or force, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice;*

*or attempts or conspires to do so, shall be punished as provided in subsection (b).*

*(2) As used in this section, the term "juror or officer in a judicial proceeding" means a grand or petit juror, or other officer in or of any court of the United States, or an officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate.*

(b) The punishment for an offense under this section is—

[(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

[(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and

[(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.]

*(1) in the case of a killing, or an attempt or a conspiracy to kill, the punishment provided in section 1111, 1112, 1113, and 1117; and*

*(2) in any other case, a fine under this title and imprisonment for not more than 30 years.*

* * * * * * *

**§ 1512. Tampering with a witness, victim, or an informant**

(a)(1) Whoever kills or attempts *or conspires* to kill another person, with intent to—

(A) * * *

* * * * * * *

(2) Whoever uses physical force or the threat of physical force against any person, or attempts *or conspires* to do so, with intent to—

(A) * * *

* * * * * * *

(3) The punishment for an offense under this subsection is—

[(A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;]

*(A) in the case of a killing, the punishment provided in sections 1111 and 1112;*

(B) in the case of—

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person;

imprisonment for not more than [20] *30* years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than [10] *20* years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) * * *

* * * * * * *

shall be fined under this title or imprisoned not more than [ten years] *30 years*, or both.

* * * * * * *

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) * * *

* * * * * * *

or attempts to do so, shall be fined under this title or imprisoned not more than [one year] *20 years*, or both.

* * * * * * *

**§ 1513. Retaliating against a witness, victim, or an informant**

(a)(1) Whoever kills or attempts *or conspires* to kill another person with intent to retaliate against any person for—

(A) * * *

(B) providing to a law enforcement officer any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release,[,] parole, or release pending judicial proceedings,

(2) The punishment for an offense under this subsection is—

(A) * * *

(B) in the case of an attempt, imprisonment for not more than [20] *30* years.

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

(1) * * *

* * * * * * *

or attempts to do so, shall be fined under this title or imprisoned not more than [ten] *30* years, or both.

* * * * * * *

(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than [10] *30* years, or both.

[(e)] *(f)* Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed

for the offense the commission of which was the object of the conspiracy.

*(g) A prosecution under this section may be brought in the district in which the official proceeding (whether or not pending, about to be instituted or completed) was intended to be affected or was completed, or in which the conduct constituting the alleged offense occurred.*

* * * * * * *

### *§ 1521. Retaliating against a Federal employee by false claim or slander of title*

*Whoever, with the intent to harass a person designated in section 1114 on account of the performance of official duties, files, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of that person, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 10 years, or both.*

* * * * * * *

## CHAPTER 95—RACKETEERING

* * * * * * *

### § 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) * * *

(b) As used in this section (i) "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, *intimidation of, or retaliation against, a witness, victim, juror, or informant,* or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

* * * * * * *

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## OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

TITLE I—JUSTICE SYSTEM IMPROVEMENT

* * * * * * *

PART I—DEFINITIONS

DEFINITIONS

SEC. 901. (a) As used in this title—

(1) * * *

* * * * * * *

(3) "unit of local government" means—

(A) * * *

* * * * * * *

*(C) the judicial branch of a State or of a unit of local government within the State for purposes of discretionary grants;*

**[**(C)**]** *(D)* an Indian Tribe (as that term is defined in section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603)) that performs law enforcement functions, as determined by the Secretary of the Interior; or

**[**(D)**]** *(E)* for the purposes of assistance eligibility, any agency of the government of the District of Columbia or the Federal Government that performs law enforcement functions in and for—

(i) * * *

* * * * * * *

## *PART CC—WITNESS PROTECTION GRANTS*

***SEC. 2811. PROGRAM AUTHORIZED.***

*(a) IN GENERAL.—From amounts made available to carry out this part, the Attorney General may make grants to States, units of local government, and Indian tribes to create and expand witness protection programs in order to prevent threats, intimidation, and retaliation against victims of, and witnesses to, crimes.*

*(b) USES OF FUNDS.—Grants awarded under this part shall be—*

*(1) distributed directly to the State, unit of local government, or Indian tribe; and*

*(2) used for the creation and expansion of witness protection programs in the jurisdiction of the grantee.*

*(c) PREFERENTIAL CONSIDERATION.—In awarding grants under this part, the Attorney General may give preferential consideration, if feasible, to an application from a jurisdiction that—*

*(1) has the greatest need for witness and victim protection programs;*

*(2) has a serious violent crime problem in the jurisdiction; and*

*(3) has had, or is likely to have, instances of threats, intimidation, and retaliation against victims of, and witnesses to, crimes.*

*(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2006 through 2010.*

* * * * * * *

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## VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

* * * * * * *

# TITLE III—CRIME PREVENTION

* * * * * * *

## Subtitle Q—Community-Based Justice Grants for Prosecutors

* * * * * * *

**SEC. 31702. USE OF FUNDS.**

Grants made by the Attorney General under this section shall be used—

(1) * * *

* * * * * * *

(3) to fund programs that coordinate criminal justice resources with educational, social service, and community resources to develop and deliver violence prevention programs, including mediation and other conflict resolution methods, treatment, counseling, educational, and recreational programs that create alternatives to criminal activity; **[**and**]**

(4) in rural States (as defined in section 1501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796bb(B)), to fund cooperative efforts between State and local prosecutors, victim advocacy and assistance groups, social and community service providers, and law enforcement agencies to investigate and prosecute child abuse cases, treat youthful victims of child abuse, and work in cooperation with the community to develop education and prevention strategies directed toward the issues with which such entities are concerned**[**.**]***; and*

*(5) to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.*

* * * * * * *

**[SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.**

**[**There are authorized to be appropriated to carry out this subtitle—

**[**(1) $7,000,000 for fiscal year 1996;
**[**(2) $10,000,000 for fiscal year 1997;
**[**(3) $10,000,000 for fiscal year 1998;
**[**(4) $11,000,000 for fiscal year 1999; and

[(5) $12,000,000 for fiscal year 2000.]

***SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.***

*There are authorized to be appropriated $20,000,000 for each of the fiscal years 2006 through 2010 to carry out this subtitle.*

* * * * * * *

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## TITLE 28, UNITED STATES CODE

* * * * * * *

# PART II—DEPARTMENT OF JUSTICE

* * * * * * *

## CHAPTER 37—UNITED STATES MARSHALS SERVICE

* * * * * * *

**§ 566. Powers and duties**

(a) * * *

* * * * * * *

*(i) The United States Marshals Service shall consult with the Administrative Office of the United States Courts on a continuing basis regarding the security requirements for the Judicial Branch, and inform the Administrative Office of the measures the Marshals Service intends to take to meet those requirements.*

* * * * * * *

# PART III—COURT OFFICERS AND EMPLOYEES

* * * * * * *

## CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

* * * * * * *

**§ 604. Duties of Director generally(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:**

(1) * * *

* * * * * * *

(23) Regulate and pay annuities to judges of the United States Court of Federal Claims in accordance with section 178 of this title; [and]

*(24) Consult with the United States Marshals Service on a continuing basis regarding the security requirements for the Judicial Branch, and inform the Administrative Office of the measures the Marshals Service intends to take to meet those requirements; and*

[(24)] *(25)* Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States.

* * * * * * *

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## SECTION 105 OF THE ETHICS IN GOVERNMENT ACT OF 1978

CUSTODY OF AND PUBLIC ACCESS TO REPORTS

SEC. 105. (a) * * *
(b)(1) * * *

* * * * * * *

(3)(A) * * *

* * * * * * *

[(E) This paragraph shall expire on December 31, 2005, and apply to filings through calendar year 2005.]

* * * * * * *

MARKUP TRANSCRIPT

# BUSINESS MEETING

**THURSDAY, OCTOBER 27, 2005**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Committee met, pursuant to notice, at 10:06 a.m., in Room 2141, Rayburn House Office Building, the Honorable Howard Coble, (acting Chair of the Committee) presiding.

Mr. COBLE. I note the presence of a working quorum and we will come to order.

Before we start, I want to advise Members of the Committee that the Chairman's sister-in-law died as a result of an accident last night, and he will not be able to be here today. But we will proceed accordingly. I have been pressed into duty here, so we will do the best we can today, folks.

[Intervening business.]

Mr. COBLE. The next item on the agenda is H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005." The chair recognizes the primary sponsor, the distinguished gentleman from Texas, Mr. Gohmert, to explain the bill.

[The bill, H.R. 1751, follows:]

I

109TH CONGRESS
1ST SESSION

# H. R. 1751

To amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 2005

Mr. GOHMERT (for himself and Mr. WEINER) introduced the following bill; which was referred to the Committee on the Judiciary

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# A BILL

To amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes.

*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 "Secure Access to Justice and Court Protection Act of 2005".

**SEC. 2. PENALTIES FOR INFLUENCING, IMPEDING, OR RETALIATING AGAINST JUDGES AND OTHER OFFICIALS BY THREATENING OR INJURING A FAMILY MEMBER.**

Section 115 of title 18, United States Code, is amended—

(1) in subsection (a)(1)(B), by inserting ''assaults, kidnaps, or murders, or attempts or conspires to kidnap or murder, or'' after ''(B)''; and

(2) so that subsection (b) reads as follows:

''(b)(1) The punishment for an assault in violation of this section is a fine under this title and—

''(A) if the assault consists of a simple assault, a term of imprisonment for not more than one year, or both;

''(B) if the assault resulted in bodily injury (as defined in section 1365), a term of imprisonment for not less than 5 nor more than 20 years;

''(C) if the assault resulted in serious bodily injury (as defined in section 1365), a term of imprisonment for any term of years not less than 10 or life;

''(D) if a dangerous weapon was used or possessed during and in relation to the offense, a term of imprisonment for any term of years not less than 15 nor life; and

"(E) in any other case, not less than 2 nor more than 10 years.

"(2) The punishment for a kidnaping, attempted kidnapping, or conspiracy to kidnap in violation of this section is a fine under this title and imprisonment for any term of years not less than 30, or for life.

"(3) The punishment for a murder, attempted murder, or conspiracy to murder in violation of this section is a fine under this title and imprisonment for any term of years not less than 30, or for life, or the death penalty.

"(4) A threat made in violation of this section shall be punished by a fine under this title and imprisonment for a term of not less than 5 years nor more than 20 years.

"(5) Each punishment for criminal conduct under this section shall be in addition to any other punishment, whether imposed for a conviction under this section or otherwise, for other criminal conduct during the same criminal episode.".

**SEC. 3. PROTECTION OF FEDERALLY FUNDED PUBLIC SAFETY OFFICERS.**

(a) OFFENSE.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following:

**"§ 1123. Killing of federally funded public safety officers**

"(a) OFFENSE.—Whoever kills, or attempts or conspires to kill, a federally funded public safety officer while that officer is engaged in official duties, or arising out of the performance of official duties, or kills a former federally funded public safety officer arising out of the performance of official duties, shall be punished as is provided in this chapter for the like offense against a person designated in section 1114. Any other killing or attempted killing or conspiracy to kill that occurs in the same criminal episode shall also be subject to the punishment provided in this chapter for the like offense against a person designated in section 1114.

"(b) DEFINITION.—As used in this section—

"(1) the term 'federally funded public safety officer' means a public safety officer for a public agency (including a court system) that receives Federal financial assistance, of an entity that is a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States, an Indian tribe, or a unit of local government of that entity;

"(2) the term 'public safety officer' means an individual serving a public agency in an official capacity, with or without compensation, as a judicial officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew;

"(3) the term 'judicial officer' means a judge or other officer or employee of a court, including prosecutors, court security, and corrections, probation, and parole officers; and

"(4) the term 'firefighter' includes an individual serving as an official recognized or designated member of a legally organized volunteer fire department and an officially recognized or designated public employee member of a rescue squad or ambulance crew.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1123. Killing of federally public safety officers.".

**SEC. 4. GENERAL MODIFICATIONS OF FEDERAL MURDER CRIME AND RELATED CRIMES.**

(a) MURDER AMENDMENTS.—Section 1111 of title 18, United States Code, is amended—

(1) in subsection (b), by inserting "not less than 30" after "any term of years"; and

(2) in subsection (c), by striking paragraph (4).

(b) MANSLAUGHTER AMENDMENTS.—Section 1112(b) of title 18, United States Code, is amended—

(1) by striking ''ten years'' and inserting ''20 years''; and

(2) by striking ''six years'' and inserting ''10 years''.

(c) ATTEMPT AMENDMENT.—Section 1113 of title 18, United States Code, is amended by striking ''shall, for an attempt to commit murder'' and all that follows through the period at the end of the section and inserting ''shall be punished as is provided for a completed offense.''

(d) CONSPIRACY AMENDMENT.—Section 1117 of title 18, United States Code, is amended by striking ''by imprisonment for any term of years or for life'' and inserting ''as is provided for the violation which is the object of the conspiracy''.

**SEC. 5. MODIFICATION OF DEFINITION OF OFFENSE AND OF THE PENALTIES FOR, INFLUENCING OR INJURING OFFICER OR JUROR GENERALLY.**

Section 1503 of title 18, United States Code, is amended—

(1) so that subsection (a) reads as follows:

''(a)(1) Whoever—

"(A) corruptly, or by threats of force or force, endeavors to influence, intimidate, or impede a juror or officer in a judicial proceeding in the discharge of that juror or officer's duty;

"(B) injures a juror or an officer in a judicial proceeding arising out of the performance of official duties as such juror or officer; or

"(C) corruptly, or by threats of force or force, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice; or attempts to do so, shall be punished as provided in subsection (b).

"(2) As used in this section, the term 'juror or officer in a judicial proceeding' means a grand or petit juror, or other officer in or of any court of the United States, or an officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate.";

(2) in subsection (b)—

(A) in paragraph (2)—

(i) by striking "class A or B"; and

(ii) by striking "not more than 20 years, a fine under this title, or both" and inserting "for any term of years not less

than 20, or for life, and a fine under this title''; and

(B) so that paragraph (3) reads as follows:

''(3) in any other case, a fine under this title and imprisonment for not less than 10 years nor more than 30 years.''.

**SEC. 6. MODIFICATION OF TAMPERING WITH A WITNESS, VICTIM, OR AN INFORMANT OFFENSE.**

(a) CHANGES IN PENALTIES.—Section 1512 of title 18, United States Code, is amended—

(1) in subsection (a)(3)—

(A) by striking subparagraph (B); and

(B) in subparagraph (C), by striking ''not more than 10 years'' and inserting ''not less than 5 years nor more than 20 years'';

(2) in subsection (b), by striking ''or imprisoned not more than ten years, or both'' and inserting ''not less than 5 years nor more than 20 years'';

(3) in subsection (c), by striking ''or imprisoned not more than twenty years, or both'' and inserting ''and imprisoned not less than 5 years nor more than 20 years'';

(4) in subsection (d), by striking ''or imprisoned not more than one year, or both'' and inserting

"and imprisoned not less than 5 years nor more than 20 years"; and

(5) in subsection (k)—

(A) by inserting "attempts or" before "conspires"; and

(B) by inserting "attempted or" before "the commission".

**SEC. 7. MODIFICATION OF RETALIATION OFFENSE.**

Section 1513 of title 18, United States Code, is amended—

(1) in subsection (a)(1)(B)—

(A) by inserting a comma after "probation"; and

(B) by striking the comma which immediately follows another comma;

(2) in subsection (a)(2), by striking subparagraph (B);

(3) in subsection (b), by striking "or imprisoned not more than ten years, or both" and inserting "and imprisoned not less than 10 years nor more than 30 years";

(4) in the first subsection (e), by striking "or imprisoned not more than 10 years, or both" and inserting "and imprisoned not less than 10 years nor more than 30 years";

(5) by redesignating the second subsection (e) as subsection (f); and

(6) in subsection (f) as so redesignated by paragraph (5)—

(A) by inserting ''attempts or'' before ''conspires''; and

(B) by inserting ''attempted or'' before ''the commission''.

**SEC. 8. INCLUSION OF INTIMIDATION AND RETALIATION AGAINST WITNESSES IN STATE PROSECUTIONS AS BASIS FOR FEDERAL PROSECUTION.**

Section 1952 of title 18, United States Code, is amended in subsection (b)(2), by inserting ''intimidation of, or retaliation against, a witness, victim, juror, or informant,'' after ''extortion, bribery,''.

**SEC. 9. CLARIFICATION OF VENUE FOR RETALIATION AGAINST A WITNESS.**

Section 1513 of title 18, United States Code, is amended by adding at the end the following:

''(g) A prosecution under this section may be brought in the district in which the official proceeding (whether or not pending, about to be instituted or was completed) was intended to be affected or was completed, or in which the conduct constituting the alleged offense occurred.''.

**SEC. 10. ENSURING FAIR AND EXPEDITIOUS FEDERAL COLLATERAL REVIEW OF CONVICTIONS FOR KILLING A STATE JUDGE OR OTHER PUBLIC SAFETY OFFICER.**

(a) LIMITS ON CASES.—Section 2254 of title 28, United States Code, is amended by adding at the end the following:

''(j)(1) A court, justice, or judge shall not have jurisdiction to consider any claim relating to the judgment or sentence in an application described under paragraph (2), unless the applicant shows that the claim qualifies for consideration on the grounds described in subsection (e)(2). Any such application that is presented to a court, justice, or judge other than a district court shall be transferred to the appropriate district court for consideration or dismissal in conformity with this subsection, except that a court of appeals panel must authorize any second or successive application in conformity with section 2244 before any consideration by the district court.

''(2) This subsection applies to an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court for a crime that involved the killing of a public safety officer while the public safety officer was engaged in the performance of official duties, or arising out of the public safety offi-

cer's performance of official duties or status as a public safety officer.

"(3) For an application described in paragraph (2), the following requirements shall apply in the district court:

"(A) Any motion by either party for an evidentiary hearing shall be filed and served not later than 90 days after the State files its answer or, if no timely answer is filed, the date on which such answer is due.

"(B) Any motion for an evidentiary hearing shall be granted or denied not later than 30 days after the date on which the party opposing such motion files a pleading in opposition to such motion or, if no timely pleading in opposition is filed, the date on which such pleading in opposition is due.

"(C) Any evidentiary hearing shall be—

"(i) convened not less than 60 days after the order granting such hearing; and

"(ii) completed not more than 150 days after the order granting such hearing.

"(D) A district court shall enter a final order, granting or denying the application for a writ of habeas corpus, not later than 15 months after the date on which the State files its answer or, if no timely answer is filed, the date on which such answer is

1 due, or not later than 60 days after the case is sub-
2 mitted for decision, whichever is earlier.
3 "(E) If the district court fails to comply with
4 the requirements of this paragraph, the State may
5 petition the court of appeals for a writ of mandamus
6 to enforce the requirements. The court of appeals
7 shall grant or deny the petition for a writ of man-
8 damus not later than 30 days after such petition is
9 filed with the court.
10 "(4) For an application described in paragraph (2),
11 the following requirements shall apply in the court of ap-
12 peals:
13 "(A) A timely filed notice of appeal from an
14 order issuing a writ of habeas corpus shall operate
15 as a stay of that order pending final disposition of
16 the appeal.
17 "(B) The court of appeals shall decide the ap-
18 peal from an order granting or denying a writ of ha-
19 beas corpus—
20 "(i) not later than 120 days after the date
21 on which the brief of the appellee is filed or, if
22 no timely brief is filed, the date on which such
23 brief is due; or
24 "(ii) if a cross-appeal is filed, not later
25 than 120 days after the date on which the ap-

pellant files a brief in response to the issues presented by the cross-appeal or, if no timely brief is filed, the date on which such brief is due.

"(C)(i) Following a decision by a panel of the court of appeals under subparagraph (B), a petition for panel rehearing is not allowed, but rehearing by the court of appeals en banc may be requested. The court of appeals shall decide whether to grant a petition for rehearing en banc not later than 30 days after the date on which the petition is filed, unless a response 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 response is filed or, if no timely response is filed, the date on which the response is due.

"(ii) If rehearing en banc is granted, the court of appeals shall make a final determination of the appeal not later than 120 days after the date on which the order granting rehearing en banc is entered.

"(D) If the court of appeals fails to comply with the requirements of this paragraph, the State may petition the Supreme Court or a justice thereof for a writ of mandamus to enforce the requirements.

1 "(5)(A) The time limitations under paragraphs (3)
2 and (4) shall apply to an initial application described in
3 paragraph (2), any second or successive application de-
4 scribed in paragraph (2), and any redetermination of an
5 application described in paragraph (2) or related appeal
6 following a remand by the court of appeals or the Supreme
7 Court for further proceedings.

8 "(B) In proceedings following remand in the district
9 court, time limits running from the time the State files
10 its answer under paragraph (3) shall run from the date
11 the remand is ordered if further briefing is not required
12 in the district court. If there is further briefing following
13 remand in the district court, such time limits shall run
14 from the date on which a responsive brief is filed or, if
15 no timely responsive brief is filed, the date on which such
16 brief is due.

17 "(C) In proceedings following remand in the court of
18 appeals, the time limit specified in paragraph (4)(B) shall
19 run from the date the remand is ordered if further briefing
20 is not required in the court of appeals. If there is further
21 briefing in the court of appeals, the time limit specified
22 in paragraph (4)(B) shall run from the date on which a
23 responsive brief is filed or, if no timely responsive brief
24 is filed, from the date on which such brief is due.

"(6) The failure of a court to meet or comply with a time limitation under this subsection shall not be a ground for granting relief from a judgment of conviction or sentence, nor shall the time limitations under this subsection be construed to entitle a capital applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

"(7) In this subsection—

"(A) the term 'public safety officer' has the meaning given such term in section 1123 of title 18 and also includes a law enforcement officer; and

"(B) the term 'law enforcement officer' means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws, including police, prosecutors, corrections, probation, parole, and judicial officers.".

(b) APPLICATION TO PENDING CASES.—

(1) IN GENERAL.—The amendment made by subsection (a) applies to cases pending on the date of the enactment of this Act as well as to cases commenced on and after that date.

(2) SPECIAL RULE FOR TIME LIMITS.—In a case pending on the date of the enactment of this Act, if the amendment made by subsection (a) pro-

vides that a time limit runs from an event or time that has occurred before that date, the time limit shall instead run from that date.

**SEC. 11. WITNESS PROTECTION GRANT PROGRAM.**

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting after part BB (42 U.S.C. 3797j et seq.) the following new part:

**"PART CC—WITNESS PROTECTION GRANTS**

**"SEC. 2811. PROGRAM AUTHORIZED.**

"(a) IN GENERAL.—From amounts made available to carry out this part, the Attorney General may make grants to States, units of local government, and Indian tribes to create and expand witness protection programs in order to prevent threats, intimidation, and retaliation against victims of, and witnesses to, crimes.

"(b) USES OF FUNDS.—Grants awarded under this part shall be—

"(1) distributed directly to the State, unit of local government, or Indian tribe; and

"(2) used for the creation and expansion of witness protection programs in the jurisdiction of the grantee.

"(c) PREFERENTIAL CONSIDERATION.—In awarding grants under this part, the Attorney General may give

preferential consideration, if feasible, to an application from a jurisdiction that—

"(1) has the greatest need for witness and victim protection programs;

"(2) has a serious violent crime problem in the jurisdiction; and

"(3) has had, or is likely to have, instances of threats, intimidation, and retaliation against victims of, and witnesses to, crimes.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2006 through 2010.".

**SEC. 12. GRANTS TO STATES TO PROTECT WITNESSES AND VICTIMS OF CRIMES.**

(a) IN GENERAL.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended—

(1) in paragraph (3), by striking "and" at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(5) to create and expand witness and victim protection programs to prevent threats, intimidation,

and retaliation against victims of, and witnesses to, violent crimes.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

**''SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated $20,000,000 for each of the fiscal years 2006 through 2010 to carry out this subtitle.''.

**SEC. 13. JUDICIAL BRANCH SECURITY REQUIREMENTS.**

(a) ENSURING CONSULTATION AND COORDINATION WITH THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Section 566 of title 28, United States Code, is amended by adding at the end the following:

''(i) The United States Marshals Service shall consult and coordinate with the Administrative Office of the United States Courts on a continuing basis regarding the security requirements for the Judicial Branch.''.

(b) CONFORMING AMENDMENT.—Section 604(a) of title 28, United States Code, is amended—

(1) by redesignating existing paragraph (24) as paragraph (25);

(2) by striking ''and'' at the end of paragraph (23); and

(3) by inserting after paragraph (23) the following:

"(24) Consult and coordinate with the United States Marshals Service on a continuing basis regarding the security requirements for the Judicial Branch; and".

**SEC. 14. PROTECTIONS AGAINST MALICIOUS RECORDING OF FICTITIOUS LIENS AGAINST FEDERAL JUDGES AND ATTORNEYS.**

(a) OFFENSE.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

**"§ 1521. Retaliating against a federal judge or attorney by false claim or slander of title**

"(a) Whoever files or attempts to file, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of a Federal judge, Federal attorney, or a public safety officer, shall be fined under this title or imprisoned for not more than 10 years, or both.

"(b) As used in this section—

"(1) the term 'Federal judge' means a justice or judge of the United States as defined in 28 U.S.C. § 451, a judge of the United States Court of Federal Claims, a United States bankruptcy judge, a United States magistrate judge, and a judge of the

United States Court of Appeals for the Armed Forces, United States Court of Appeals for Veterans Claims, United States Tax Court, District Court of Guam, District Court of the Northern Mariana Islands, or District Court of the Virgin Islands;

"(2) the term 'Federal attorney' means an attorney who is an officer or employee of the United States in the executive branch of the Government;

"(3) the term 'public safety officer' has the meaning given that term in section 1123 of title 18 and also includes a law enforcement officer; and

"(4) the term 'law enforcement officer' means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws, including police, prosecutors, corrections, probation, parole, and judicial officers.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new item:

"1521. Retaliating against a federal judge or attorney by false claim or slander of title.".

**SEC. 15. EMERGENCY AUTHORITY TO CONDUCT COURT PROCEEDINGS OUTSIDE THE TERRITORIAL JURISDICTION OF THE COURT.**

(a) CIRCUIT COURTS.—Section 48 of title 28, United States Code, is amended by adding at the end the following:

''(e) Each court of appeals may hold special sessions at any place outside the circuit as the nature of the business may require and upon such notice as the court orders, upon a finding by either the chief judge of the court of appeals (or, if the chief judge is unavailable, the most senior available active judge of the court of appeals) or the judicial council of the circuit that, because of emergency conditions, no location within the circuit is reasonably available where such special sessions could he held. The court may transact any business at a special session outside the circuit which it might transact at a regular session.''.

(b) DISTRICT COURTS.—Section 141 of title 28, United States Code, is amended—

(1) by inserting ''(a)(1)'' before ''Special'';

(2) by inserting ''(2)'' before ''Any''; and

(3) by adding at the end the following:

''(b) Special sessions of the district court may be held at such places outside the district as the nature of the business may require and upon such notice as the court

1 orders, upon a finding by either the chief judge of the dis-
2 trict court (or, if the chief judge is unavailable, the most
3 senior available active judge of the district court) or the
4 judicial council of the circuit that, because of emergency
5 conditions, no location within the district is reasonably
6 available where such special sessions could be held. Any
7 business may be transacted at a special session outside
8 the district which might be transacted at a regular session.
9 The district court may summon jurors from within the dis-
10 trict to serve in any case in which special sessions are con-
11 ducted outside the district pursuant to the provisions of
12 this section.''.

13 (c) BANKRUPTCY COURTS.—Section 152(c) of title
14 28, United States Code, is amended—

15 (1) by inserting ''(1)'' after ''(c)'';

16 (2) by adding at the end the following:

17 ''(2) Bankruptcy judges may hold court at such
18 places outside the judicial district as the nature of
19 the business of the court may require, and upon
20 such notice as the court orders, upon a finding by
21 either the chief judge of the bankruptcy court (or,
22 if the chief judge is unavailable, the most senior
23 available bankruptcy judge) or by the judicial council
24 of the circuit that, because of emergency conditions,
25 no location within the district is reasonably available

where the bankruptcy judges could hold court. Bankruptcy judges may transact any business at special sessions of court held outside the district that might be transacted at a regular session.''.

**SEC. 16. PROHIBITION OF POSSESSION OF DANGEROUS WEAPONS IN FEDERAL COURT FACILITIES.**

Section 930(e) of title 18, United States Code, is amended by inserting ''or other dangerous weapon'' after ''firearm''.

**SEC. 17. REPEAL OF SUNSET PROVISION.**

Section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App) is amended by striking subparagraph (E).

**SEC. 18. PROTECTION OF INDIVIDUALS PERFORMING CERTAIN FEDERAL AND FEDERALLY ASSISTED FUNCTIONS.**

(a) OFFENSE.—Chapter 7 of title 18, United States Code, is amended by adding at the end the following:

**''§ 117. Protection of individuals performing certain Federal and federally assisted functions**

''(a) Whoever knowingly makes restricted personal information about a covered official publicly available through the Internet shall be fined under this title and imprisoned not more than 5 years, or both.

"(b) It is a defense to a prosecution under this section that—

"(1) the defendant is a provider of Internet services and did not knowingly participate in the offense; or

"(2) the covered official gave permission to make the restricted personal information publicly available.

"(c) As used in this section—

"(1) the term 'restricted personal information' means, with respect to an individual, the Social Security number, the home address, home phone number, mobile phone number, personal email, or home fax number of, and identifiable to, that individual; and

"(2) the term 'covered official' means—

"(A) an individual designated in section 1114;

"(B) a public safety officer (as that term is defined in section 1521); or

"(C) a grand or petit juror, witness, or other officer in or of, any court of the United States, or an officer who may be serving at any examination or other proceeding before any

United States magistrate judge or other committing magistrate.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of title 18, United States Code, is amended by adding at the end the following new item:

''117. Protection of individuals performing certain Federal and federally assisted functions.''.

**SEC. 19. ELIGIBILITY OF STATE COURTS FOR CERTAIN FEDERAL GRANTS.**

(a) PURPOSE OF GRANTS.—Section 510(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3760) is amended by inserting ''State courts,'' after ''institutions''.

(b) CORRECTIONAL OPTIONS GRANTS.—Section 515 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3760) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(4) grants to State courts to improve security for State and local court systems.''; and

(2) in subsection (b), by inserting after the period the following: ''Priority shall be given to State court applicants under subsection (a)(4) that have the greatest demonstrated need to provide security in order to administer justice.''.

(c) ALLOCATIONS.—Section 516(a) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(1) strike ''80'' and insert ''70'';

(2) strike ''and'' before ''10''; and

(3) by inserting before the period the following: '', and 10 percent for section 515(a)(4)''.

**SEC. 20. APPOINTMENTS OF UNITED STATES MARSHALS.**

(a) APPOINTMENTS OF MARSHALS.—

(1) IN GENERAL.—Chapter 37 of title 28, United States Code, is amended—

(A) in section 561(c)—

(i) by striking ''The President shall appoint, by and with the advice and consent of the Senate,'' and inserting ''The Attorney General shall appoint''; and

(ii) by inserting ''United States marshals shall be appointed subject to the provisions of title 5 governing appointments in the competitive civil service, and shall be paid in accordance with the provisions of

chapter 51 and subchapter III of chapter 53 of such title relating to classification and pay rates.'' after the first sentence;

(B) by striking subsection (d) of section 561;

(C) by redesignating subsections (e), (f), (g), (h), and (i) of section 561 as subsections (d), (e), (f), (g), and (h), respectively; and

(D) by striking section 562.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 37 of title 28, United States Code, is amended by striking the item relating to section 562.

(b) MARSHALS IN OFFICE BEFORE EFFECTIVE DATE.—Notwithstanding the amendments made by this Act, each marshal appointed under chapter 37 of title 28, United States Code, before the effective date of this Act shall, unless that marshal resigns or is removed by the President, continue to perform the duties of that office until the expiration of that marshal's term and the appointment of a successor.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on January

1 20, 2005, and shall apply to appointments made on and
2 after that date.

○

Mr. GOHMERT. Thank you, Mr. Chairman.

First of all, let me express what I know is everyone's heartfelt feeling, and that is the deepest and sincerest sympathy to Chairman Sensenbrenner's family in the loss of his sister-in-law so tragically and untimely. We do appreciate the opportunity to go forward with this today and thank you for this opportunity.

I have some general statements to make and then I'll explain exactly what the manager's amendment does here today. To start with, I would like to thank not only Chairman Sensenbrenner but also Chairman Coble for bringing H.R. 1751 up for markup, as we did at Subcommittee. Additionally, I want to thank the Committee counsels, who worked tirelessly on this bill. They've done a superb job. I want to thank Mr. Lungren and his staff, who consulted with my staff on this bill, and also thank Mr. Weiner and the other cosponsors. Your support is greatly appreciated.

This legislation is a culmination of many individuals' proposals. It's a good, strong bill that addresses some real weaknesses in our criminal code and the way we protect our court personnel. Already this year we have seen tragedies in Chicago, Atlanta, my hometown in Tyler, Texas, that involved judges, their families and other individuals around the courts.

It should also be noted that Senator Kyl has introduced a similar bill across the way, S. 1605, the "Law Enforcement Officers Protection Act." So I'm hopeful that we will see some movement, kind of like we're seeing up and down the aisle here, some movement on these important issues. We really need to get this bill to the House floor, the Senate should get it to the Senate floor, and then hopefully on to the President's desk this year. That is that important.

We worked with Mr. Lungren and his staff to ensure that our law enforcement officers were taken care of and properly protected in this bill and that we had strong yet proportional punishments for individuals who harm our law enforcement officers. We worked with Chairman Dreier and his staff to ensure that criminals who harm our public safety officers and flee the United States get what they deserve when they're extradited. And finally, we incorporated Mr. Mica's idea to ensure that our National Guardsmen are covered by Federal criminal laws when they are acting in either their State or Federal capacity.

Many of us are always concerned with preserving principles of federalism. Be reassured, there is a Federal nexus here. It is also very important that the legislative history attached to this bill reflect that it is not Congress' intent that the U.S. Attorneys prosecute every killing of every federally funded public safety officer, but rather, those killings in States that lack the death penalty or where, for various reasons, the local prosecutors really want and need the Federal prosecutors to pursue the prosecution.

Regarding mandatory minimums, we lowered some, took some out completely, and instead raised the maximum penalties, all in an effort to make this bill more palatable for our friends across the aisle. I appreciate Mr. Scott's suggestions in that regard. However, the mandatory minimums that still remain in the bill after the adjustments are for the worst of the worst crimes, crimes that are inherently evil or, in other words, malum prohibitum crimes.

Now to get down to what the bill actually does. The bill will protect immediate family members of federally funded public safety of-

ficers and judges at all levels. It provides enhanced criminal penalties where the victim is a U.S. judge, Federal law enforcement officer, or federally funded public safety officer. It raises maximum punishments for crimes against victims, witnesses, jurors, and informants. It adds a new Federal crime prohibiting recording of fictitious liens by covering officers or employees of the U.S., including Federal judiciary and its employees. It provides a 30-year mandatory minimum to life in prison or the death penalty for the killing of a federally funded public safety officer. Of course, for the defendant to get the death penalty, a death must have resulted.

The manager's amendment adds provisions from Representative Mica's bill, 3833, to include killing of members of the National Guard when authorized by the States as protected public safety officers. The amendment adds a new section to the bill, section 20, requiring a report to the House and Senate Judiciary Committees on the security of Federal prosecutors and measures taken to protect assistant U.S. attorneys and other Federal attorneys. These folks are on the front lines prosecuting drug dealers, gang members, white collar criminals, so they need protection.

Witnesses, including Judge Jane Roth, Third Circuit Court of Appeals and chair on the Committee on Security and Facilities, testified before the Crime Subcommittee she supported section 14 requiring the U.S. marshals consult and coordinate with the Administrative Office of the U.S. Courts regarding security. Judge Roth also endorsed section 15, which makes it a Federal crime to file a false claim or slander of title in certain Federal officials. Other Federal judges have personally told Mr. Lungren and me the same thing.

Just to reiterate, the amendment includes Chairman Dreier's legislation. This security would create a new Federal criminal offense for flight to avoid prosecution for killing a peace officer. To deter, we must punish the perpetrators. We must also take preventative steps. This bill does that in two different ways. First——

Mr. COBLE. The gentleman's time has expired.

Mr. GOHMERT. All right. If I might in conclusion mention that I talked to Judge Joan Lefkow earlier this morning, a gracious woman. She supports the bill. She supports what it does to protect people. She appreciates the requirements to consult between U.S. marshals and the courts. She didn't support the writ provisions, but she is a very gracious woman and indicated her support as well.

Mr. COBLE. For what purpose does the gentleman from California seek recognition?

Mr. LUNGREN. To make a motion, Mr. Chairman.

Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill H.R. 1751, with a single amendment in the nature of a substitute, and moves its favorable recommendation to the full House.

Mr. COBLE. I thank the gentleman.

The distinguished gentleman from Virginia, the Ranking Member, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate you calling this meeting, but unfortunately I cannot support the bill in its present form. The bill still contains extraneous political sound bites which do nothing to pro-

tect or assist the courts, but will assist the campaigns of those who want to sound tough on crime. With several sensational incidents in recent years involving murders of judges, family members of judges, court personnel, witnesses, and others, we've come to see the consequences of insufficient security for our court operations and persons associated with them.

We all agree that enhancement of security for our courts and personnel is imperative, yet the proponents of H.R. 1751 have chosen to address those needs in a manner apparently calculated to prevent or undermine the prospects of broad bipartisan support. Unfortunately, H.R. 1751 is another effort to use appropriate use of concern for the Nation as a vehicle for extraneous, controversial, and general provisions of law that are unnecessary, costly, and counterproductive.

Yet here we go again considering the bill purports to address a serious concern, the concern for adequate protection and security of judges, when in essence the bill is merely a host of more draconian penalties aimed at ensuring that bit players and major players in a crime face the same consequences. Among several provisions of the bill, seven new death penalties, a speedy *habeas corpus* procedure to ensure that people are put to death quicker and increase the chances innocent people may be put to death, and to increase the number of death penalties by applying the provision ex post facto. You've got 22 new mandatory minimum sentences, provisions to punish attempts and conspiracies the same as completion of the offense.

The *habeas corpus* provision is particularly troubling, given that 119 death row inmates have been exonerated from death penalties in the past 12 years after languishing on death row for many years. The impact of this provision would be to ensure that such persons are executed before they have time enough to get exonerated. As we the Effective Death Penalty Act of 1996, the public rationale undergirding that provision is apparently that it's more important for us to administer executions efficiently than to administer them accurately.

The public is clearly rethinking the appropriateness of the death penalty in general due to the evidence that it is ineffective in deterring crime and it is especially racially discriminatory. In Illinois it was found to be more often erroneously applied than not. In the 23-year comprehensive study of the death penalty, one study found that 68 percent of the death penalties were erroneously applied, so it's not surprising that 119 people sentenced to death over the last 12 years have been exonerated from those crimes—and not only exonerated from those crimes, many others have had the death penalty removed.

Mr. Chairman, the mandatory minimum sentences clearly detract from the importance of the bill. Through rigorous study and analysis, they have been shown to be less effective and therefore wasteful when compared to effective and less costly approaches. They have been found to be racially discriminatory in application and been found to be violative of common sense.

Also, the way the bill is written is somewhat confusing. Under section 7 of the bill, for example, any—Mr. Chairman, we have heard from the Judicial Conference every time we have these man-

datory minimums, and we would just incorporate by reference what the Judicial Conference has said.

Mr. Chairman, in closing, the State court judges have considered the measure of security, and I want to ask unanimous consent to introduce their statement and resolution on court security and on *habeas corpus*. You will note, Mr. Chairman, that their desire is for grants to provide actual court security. There's no mention of *habeas corpus*. There's no mention of the death penalty, no mention of the need for mandatory minimums. Mr. Chairman, I think we can trust judges to apply appropriate sentences for people charged with assaulting judges.

Mr. COBLE. Without objection it will be received.

Mr. SCOTT. And we don't need the draconian provisions in the bill. I would hope we would defeat the bill and get back to a bill that would actually provide court security.

Thank you, Mr. Chairman.

Mr. COBLE. I thank the gentleman. Without objection the bill will be considered as read and open for amendment at any point.

And the Subcommittee amendment in the nature of a substitute which the Members have before them will be considered as read, considered as the original text for purposes of amendment, and open for amendment at any point.

[The amendment in the nature of a substitute follows:]

## MANAGER'S AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1751

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the ''Secure Access to Jus-
3 tice and Court Protection Act of 2005''.

4 **SEC. 2. PENALTIES FOR INFLUENCING, IMPEDING, OR RE-**
5 **TALIATING AGAINST JUDGES AND OTHER OF-**
6 **FICIALS BY THREATENING OR INJURING A**
7 **FAMILY MEMBER.**

8 Section 115 of title 18, United States Code, is
9 amended—

10 (1) in each of subparagraphs (A) and (B) of
11 subsection (a)(1), by inserting ''federally funded
12 public safety officer (as defined for the purposes of
13 section 1123)'' after ''Federal law enforcement offi-
14 cer,'';

15 (2) so that subsection (b) reads as follows:

16 ''(b)(1) Except as provided in paragraph (2), the
17 punishment for an offense under this section is as follows:

"(A) The punishment for an assault in violation of this section is the same as that provided for a like offense under section 111.

"(B) The punishment for a kidnapping, attempted kidnapping, or conspiracy to kidnap in violation of this section is the same as provided for a like violation in section 1201.

"(C) The punishment for a murder, attempted murder, or conspiracy to murder in violation of this section is the same as provided for a like offense under section 1111, 1113, and 1117.

"(D) A threat made in violation of this section shall be punished by a fine under this title or imprisonment for not more than 10 years, or both.

"(2) If the victim of the offense under this section is an immediate family member of a United States judge, a Federal law enforcement officer (as defined for the purposes of section 1114) or of a federally funded public safety officer (as defined for the purposes of section 1123), in lieu of the punishments otherwise provided by paragraph (1), the punishments shall be as follows:

"(A) The punishment for an assault in violation of this section is as follows:

"(i) If the assault is a simple assault, a fine under this title or a term of impris-

onment for not more than one year, or both.

''(ii) If the assault resulted in bodily injury (as defined in section 1365), a fine under this title and a term of imprisonment for not less than one year nor more than 10 years.

''(iii) If the assault resulted in substantial bodily injury (as defined in section 113), a fine under this title and a term of imprisonment for not less than 3 years nor more than 12 years.

''(iv) If the assault resulted in serious bodily injury (as defined in section 2119), a fine under this title and a term of imprisonment for not less than 10 years nor more than 30 years.

''(B) The punishment for a kidnapping, attempted kidnapping, or conspiracy to kidnap in violation of this section is a fine under this title and imprisonment for any term of years not less than 30, or for life.

''(C) The punishment for a murder, attempted murder, or conspiracy to murder in violation of this section is a fine under this title

and imprisonment for any term of years not less than 30, or for life, or, if death results, the offender may be sentenced to death.

"(D) A threat made in violation of this section shall be punished by a fine under this title and imprisonment for not less than one year nor more than 10 years.

"(E) If a dangerous weapon was used during and in relation to the offense, the punishment shall include a term of imprisonment of 5 years in addition to that otherwise imposed under this paragraph.".

**SEC. 3. PENALTIES FOR CERTAIN ASSAULTS.**

(a) INCLUSION OF FEDERALLY FUNDED PUBLIC SAFETY OFFICERS.—Section 111(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting "or a federally funded public safety officer (as defined in section 1123)" after "1114 of this title"; and

(2) in paragraph (2), by inserting "or a federally funded public safety officer (as defined in section 1123)" after "1114".

(b) ALTERNATE PENALTY WHERE VICTIM IS A UNITED STATES JUDGE, A FEDERAL LAW ENFORCEMENT OFFICER, OR FEDERALLY FUNDED PUBLIC SAFE-

TY OFFICER.—Section 111 of title 18, United States Code, is amended by adding at the end the following:

"(c) ALTERNATE PENALTY WHERE VICTIM IS A UNITED STATES JUDGE, A FEDERAL LAW ENFORCEMENT OFFICER, OR FEDERALLY FUNDED PUBLIC SAFETY OFFICER.—(1) Except as provided in paragraph (2), if the offense is an assault and the victim of the offense under this section is a United States judge, a Federal law enforcement officer (as defined for the purposes of section 1114) or of a federally funded public safety officer (as defined for the purposes of section 1123), in lieu of the penalties otherwise set forth in this section, the offender shall be subject to a fine under this title and—

"(A) If the assault is a simple assault, a fine under this title or a term of imprisonment for not more than one year, or both.

"(B) if the assault resulted in bodily injury (as defined in section 1365), shall be imprisoned not less than one nor more than 10 years;

"(C) if the assault resulted in substantial bodily injury (as defined in section 113), shall be imprisoned not less than 3 nor more than 12 years; and

"(D) if the assault resulted in serious bodily injury (as defined in section 2119), shall be imprisoned not less than 10 nor more than 30 years.

"(2) If a dangerous weapon was used during and in relation to the offense, the punishment shall include a term of imprisonment of 5 years in addition to that otherwise imposed under this subsection.".

**SEC. 4. PROTECTION OF FEDERALLY FUNDED PUBLIC SAFETY OFFICERS.**

(a) OFFENSE.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following:

**"§ 1123. Killing of federally funded public safety officers**

"(a) Whoever kills, or attempts or conspires to kill, a federally funded public safety officer while that officer is engaged in official duties, or arising out of the performance of official duties, or kills a former federally funded public safety officer arising out of the performance of official duties, shall be punished by a fine under this title and imprisonment for any term of years not less than 30, or for life, or, if death results, may be sentenced to death.

"(b) As used in this section—

"(1) the term 'federally funded public safety officer' means a public safety officer for a public agency (including a court system, the National Guard of a State to the extent the personnel of that National Guard are not in Federal service, and the defense forces of a State authorized by section 109 of title

32) that receives Federal financial assistance, of an entity that is a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States, an Indian tribe, or a unit of local government of that entity;

"(2) the term 'public safety officer' means an individual serving a public agency in an official capacity, as a judicial officer, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew;

"(3) the term 'judicial officer' means a judge or other officer or employee of a court, including prosecutors, court security, pretrial services officers, court reporters, and corrections, probation, and parole officers; and

"(4) the term 'firefighter' includes an individual serving as an official recognized or designated member of a legally organized volunteer fire department and an officially recognized or designated public employee member of a rescue squad or ambulance crew; and

"(5) the term 'law enforcement officer' means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1123. Killing of federally funded public safety officers.".

**SEC. 5. GENERAL MODIFICATIONS OF FEDERAL MURDER CRIME AND RELATED CRIMES.**

(a) MURDER AMENDMENTS.—Section 1111 of title 18, United States Code, is amended in subsection (b), by inserting "not less than 30" after "any term of years".

(b) MANSLAUGHTER AMENDMENTS.—Section 1112(b) of title 18, United States Code, is amended—

(1) by striking "ten years" and inserting "20 years"; and

(2) by striking "six years" and inserting "10 years".

**SEC. 6. MODIFICATION OF DEFINITION OF OFFENSE AND OF THE PENALTIES FOR, INFLUENCING OR INJURING OFFICER OR JUROR GENERALLY.**

Section 1503 of title 18, United States Code, is amended—

(1) so that subsection (a) reads as follows:

"(a)(1) Whoever—

"(A) corruptly, or by threats of force or force, endeavors to influence, intimidate, or impede a juror or officer in a judicial proceeding in the discharge of that juror or officer's duty;

"(B) injures a juror or an officer in a judicial proceeding arising out of the performance of official duties as such juror or officer; or

"(C) corruptly, or by threats of force or force, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice; or attempts or conspires to do so, shall be punished as provided in subsection (b).

"(2) As used in this section, the term 'juror or officer in a judicial proceeding' means a grand or petit juror, or other officer in or of any court of the United States, or an officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate."; and

(2) in subsection (b), by striking paragraphs (1) through (3) and inserting the following:

"(1) in the case of a killing, or an attempt or a conspiracy to kill, the punishment provided in section 1111, 1112, 1113, and 1117; and

"(2) in any other case, a fine under this title and imprisonment for not more than 30 years.".

**SEC. 7. MODIFICATION OF TAMPERING WITH A WITNESS, VICTIM, OR AN INFORMANT OFFENSE.**

(a) CHANGES IN PENALTIES.—Section 1512 of title 18, United States Code, is amended—

(1) in each of paragraphs (1) and (2) of subsection (a), insert "or conspires" after attempts;

(2) so that subparagraph (A) of subsection (a)(3) reads as follows:

"(A) in the case of a killing, the punishment provided in section 1111, and 1112; and";

(3) in subsection (a)(3)—

(A) in striking subparagraph (B)(ii) by striking "20 years" and inserting "30 years" ; and

(B) in subparagraph (C), by striking "10 years" and inserting "20 years";

(4) in subsection (b), by striking "ten years" and inserting "30 years"; and

(5) in subsection (d), by striking "one year" and inserting "20 years".

**SEC. 8. MODIFICATION OF RETALIATION OFFENSE.**

Section 1513 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by inserting ''or conspires'' after ''attempts'';

(2) in subsection (a)(1)(B)—

(A) by inserting a comma after ''probation''; and

(B) by striking the comma which immediately follows another comma;

(3) in subsection (a)(2)(B), by striking ''20 years'' and inserting ''30 years'';

(4) in subsection (b), by striking ''ten years'' and inserting ''30 years'';

(5) in the first subsection (e), by striking ''10 years'' and inserting ''30 years''; and

(6) by redesignating the second subsection (e) as subsection (f).

**SEC. 9. INCLUSION OF INTIMIDATION AND RETALIATION AGAINST WITNESSES IN STATE PROSECUTIONS AS BASIS FOR FEDERAL PROSECUTION.**

Section 1952 of title 18, United States Code, is amended in subsection (b)(2), by inserting ''intimidation of, or retaliation against, a witness, victim, juror, or informant,'' after ''extortion, bribery,''.

**SEC. 10. CLARIFICATION OF VENUE FOR RETALIATION AGAINST A WITNESS.**

Section 1513 of title 18, United States Code, is amended by adding at the end the following:

''(g) A prosecution under this section may be brought in the district in which the official proceeding (whether or not pending, about to be instituted or completed) was intended to be affected or was completed, or in which the conduct constituting the alleged offense occurred.''.

**SEC. 11. ENSURING FAIR AND EXPEDITIOUS FEDERAL COLLATERAL REVIEW OF CONVICTIONS FOR KILLING A STATE JUDGE OR OTHER PUBLIC SAFETY OFFICER.**

(a) LIMITS ON CASES.—Section 2254 of title 28, United States Code, is amended by adding at the end the following:

''(j)(1) A court, justice, or judge shall not have jurisdiction to consider any claim relating to the judgment or sentence in an application described under paragraph (2), unless the applicant shows that the claim qualifies for consideration on the grounds described in subsection (e)(2). Any such application that is presented to a court, justice, or judge other than a district court shall be transferred to the appropriate district court for consideration or dismissal in conformity with this subsection, except that a court of appeals panel must authorize any second or suc-

1 cessive application in conformity with section 2244 before
2 any consideration by the district court.
3 "(2) This subsection applies to an application for a
4 writ of habeas corpus on behalf of a person in custody
5 pursuant to the judgment of a State court for a crime
6 that involved the killing of a public safety officer while
7 the public safety officer was engaged in the performance
8 of official duties, or arising out of the public safety offi-
9 cer's performance of official duties or status as a public
10 safety officer.
11 "(3) For an application described in paragraph (2),
12 the following requirements shall apply in the district court:
13 "(A) Any motion by either party for an evi-
14 dentiary hearing shall be filed and served not later
15 than 90 days after the State files its answer or, if
16 no timely answer is filed, the date on which such an-
17 swer is due.
18 "(B) Any motion for an evidentiary hearing
19 shall be granted or denied not later than 30 days
20 after the date on which the party opposing such mo-
21 tion files a pleading in opposition to such motion or,
22 if no timely pleading in opposition is filed, the date
23 on which such pleading in opposition is due.
24 "(C) Any evidentiary hearing shall be—

"(i) convened not less than 60 days after the order granting such hearing; and

"(ii) completed not more than 150 days after the order granting such hearing.

"(D) A district court shall enter a final order, granting or denying the application for a writ of habeas corpus, not later than 15 months after the date on which the State files its answer or, if no timely answer is filed, the date on which such answer is due, or not later than 60 days after the case is submitted for decision, whichever is earlier.

"(E) If the district court fails to comply with the requirements of this paragraph, the State may petition the court of appeals for a writ of mandamus to enforce the requirements. The court of appeals shall grant or deny the petition for a writ of mandamus not later than 30 days after such petition is filed with the court.

"(4) For an application described in paragraph (2), the following requirements shall apply in the court of appeals:

"(A) A timely filed notice of appeal from an order issuing a writ of habeas corpus shall operate as a stay of that order pending final disposition of the appeal.

"(B) The court of appeals shall decide the appeal from an order granting or denying a writ of habeas corpus—

"(i) not later than 120 days after the date on which the brief of the appellee is filed or, if no timely brief is filed, the date on which such brief is due; or

"(ii) if a cross-appeal is filed, not later than 120 days after the date on which the appellant files a brief in response to the issues presented by the cross-appeal or, if no timely brief is filed, the date on which such brief is due.

"(C)(i) Following a decision by a panel of the court of appeals under subparagraph (B), a petition for panel rehearing is not allowed, but rehearing by the court of appeals en banc may be requested. The court of appeals shall decide whether to grant a petition for rehearing en banc not later than 30 days after the date on which the petition is filed, unless a response 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 response is filed or, if no timely response is filed, the date on which the response is due.

"(ii) If rehearing en banc is granted, the court of appeals shall make a final determination of the appeal not later than 120 days after the date on which the order granting rehearing en banc is entered.

"(D) If the court of appeals fails to comply with the requirements of this paragraph, the State may petition the Supreme Court or a justice thereof for a writ of mandamus to enforce the requirements.

"(5)(A) The time limitations under paragraphs (3) and (4) shall apply to an initial application described in paragraph (2), any second or successive application described in paragraph (2), and any redetermination of an application described in paragraph (2) or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings.

"(B) In proceedings following remand in the district court, time limits running from the time the State files its answer under paragraph (3) shall run from the date the remand is ordered if further briefing is not required in the district court. If there is further briefing following remand in the district court, such time limits shall run from the date on which a responsive brief is filed or, if no timely responsive brief is filed, the date on which such brief is due.

"(C) In proceedings following remand in the court of appeals, the time limit specified in paragraph (4)(B) shall run from the date the remand is ordered if further briefing is not required in the court of appeals. If there is further briefing in the court of appeals, the time limit specified in paragraph (4)(B) shall run from the date on which a responsive brief is filed or, if no timely responsive brief is filed, from the date on which such brief is due.

"(6) The failure of a court to meet or comply with a time limitation under this subsection shall not be a ground for granting relief from a judgment of conviction or sentence, nor shall the time limitations under this subsection be construed to entitle a capital applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

"(7) In this subsection—

"(A) the term 'public safety officer' has the meaning given such term in section 1123 of title 18 and also includes a law enforcement officer; and

"(B) the term 'law enforcement officer' means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws, including police, prosecutors, corrections, probation, parole, and judicial officers.".

(b) APPLICATION TO PENDING CASES.—

(1) IN GENERAL.—The amendment made by subsection (a) applies to cases pending on the date of the enactment of this Act as well as to cases commenced on and after that date.

(2) SPECIAL RULE FOR TIME LIMITS.—In a case pending on the date of the enactment of this Act, if the amendment made by subsection (a) provides that a time limit runs from an event or time that has occurred before that date, the time limit shall instead run from that date.

**SEC. 12. WITNESS PROTECTION GRANT PROGRAM.**

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting after part BB (42 U.S.C. 3797j et seq.) the following new part:

**"PART CC—WITNESS PROTECTION GRANTS**

**"SEC. 2811. PROGRAM AUTHORIZED.**

"(a) IN GENERAL.—From amounts made available to carry out this part, the Attorney General may make grants to States, units of local government, and Indian tribes to create and expand witness protection programs in order to prevent threats, intimidation, and retaliation against victims of, and witnesses to, crimes.

"(b) USES OF FUNDS.—Grants awarded under this part shall be—

"(1) distributed directly to the State, unit of local government, or Indian tribe; and

"(2) used for the creation and expansion of witness protection programs in the jurisdiction of the grantee.

"(c) PREFERENTIAL CONSIDERATION.—In awarding grants under this part, the Attorney General may give preferential consideration, if feasible, to an application from a jurisdiction that—

"(1) has the greatest need for witness and victim protection programs;

"(2) has a serious violent crime problem in the jurisdiction; and

"(3) has had, or is likely to have, instances of threats, intimidation, and retaliation against victims of, and witnesses to, crimes.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2006 through 2010.".

**SEC. 13. GRANTS TO STATES TO PROTECT WITNESSES AND VICTIMS OF CRIMES.**

(a) IN GENERAL.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) in paragraph (4), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(5) to create and expand witness and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

**''SEC. 31707. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated $20,000,000 for each of the fiscal years 2006 through 2010 to carry out this subtitle.''.

**SEC. 14. JUDICIAL BRANCH SECURITY REQUIREMENTS.**

(a) ENSURING CONSULTATION AND COORDINATION WITH THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Section 566 of title 28, United States Code, is amended by adding at the end the following:

''(i) The United States Marshals Service shall consult with the Administrative Office of the United States Courts on a continuing basis regarding the security requirements

for the Judicial Branch, and inform the Administrative Office of the measures the Marshals Service intends to take to meet those requirements.''.

(b) CONFORMING AMENDMENT.—Section 604(a) of title 28, United States Code, is amended—

(1) by redesignating existing paragraph (24) as paragraph (25);

(2) by striking ''and'' at the end of paragraph (23); and

(3) by inserting after paragraph (23) the following:

''(24) Consult with the United States Marshals Service on a continuing basis regarding the security requirements for the Judicial Branch, and inform the Administrative Office of the measures the Marshals Service intends to take to meet those requirements; and''.

**SEC. 15. PROTECTIONS AGAINST MALICIOUS RECORDING OF FICTITIOUS LIENS AGAINST A FEDERAL EMPLOYEE.**

(a) OFFENSE.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

**"§ 1521. Retaliating against a Federal employee by false claim or slander of title**

"Whoever, with the intent to harass a person designated in section 1114 on account of the performance of official duties, files, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of that person, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 10 years, or both.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new item:

"1521. Retaliating against a Federal employee by false claim or slander of title.".

**SEC. 16. PROHIBITION OF POSSESSION OF DANGEROUS WEAPONS IN FEDERAL COURT FACILITIES.**

Section 930(e) of title 18, United States Code, is amended by inserting "or other dangerous weapon" after "firearm".

**SEC. 17. REPEAL OF SUNSET PROVISION.**

Section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App) is amended by striking subparagraph (E).

**SEC. 18. PROTECTION OF INDIVIDUALS PERFORMING CERTAIN FEDERAL AND OTHER FUNCTIONS.**

(a) OFFENSE.—Chapter 7 of title 18, United States Code, is amended by adding at the end the following:

**"§ 117. Protection of individuals performing certain Federal and federally assisted functions**

"(a) Whoever knowingly, and with intent to harm, intimidate, or retaliate against a covered official makes restricted personal information about that covered official publicly available through the Internet shall be fined under this title and imprisoned not more than 5 years, or both.

"(b) It is a defense to a prosecution under this section that the defendant is a provider of Internet services and did not knowingly participate in the offense.

"(c) As used in this section—

"(1) the term 'restricted personal information' means, with respect to an individual, the Social Security number, the home address, home phone number, mobile phone number, personal email, or home fax number of, and identifiable to, that individual; and

"(2) the term 'covered official' means—

"(A) an individual designated in section 1114;

"(B) a public safety officer (as that term is defined in section 1204 of the Omnibus

1 Crime Control and Safe Streets Act of 1968);
2 or
3 "(C) a grand or petit juror, witness, or
4 other officer in or of, any court of the United
5 States, or an officer who may be serving at any
6 examination or other proceeding before any
7 United States magistrate judge or other com-
8 mitting magistrate.".
9 (b) CLERICAL AMENDMENT.—The table of sections
10 at the beginning of chapter 7 of title 18, United States
11 Code, is amended by adding at the end the following new
12 item:

"117. Protection of individuals performing certain Federal and federally assisted functions.".

13 **SEC. 19. ELIGIBILITY OF COURTS TO APPLY DIRECTLY FOR**
14 **LAW ENFORCEMENT DISCRETIONARY**
15 **GRANTS AND REQUIREMENT THAT STATE**
16 **AND LOCAL GOVERNMENTS CONSIDER**
17 **COURTS WHEN APPLYING FOR GRANT**
18 **FUNDS.**
19 (a) COURTS TREATED AS UNITS OF LOCAL GOVERN-
20 MENTS FOR PURPOSES OF DISCRETIONARY GRANTS.—
21 Section 901 of the Omnibus Crime Control and Safe
22 Streets Act of 1968 (42 U.S.C. 3791) is amended in sub-
23 section (a)(3)—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) the judicial branch of a State or of a unit of local government within the State for purposes of discretionary grants.".

(b) STATE AND LOCAL GOVERNMENTS TO CONSIDER COURTS.—The Attorney General shall ensure that whenever a State or local unit of government applies for a grant from the Department of Justice, the State or unit demonstrate that, in developing the application and distributing funds, the State or unit—

(1) considered the needs of the judicial branch of the State or unit, as the case may be; and

(2) consulted with the chief judicial officer of the highest court of the State or unit, as the case may be.

**SEC. 20. REPORT ON SECURITY OF FEDERAL PROSECUTORS.**

Not later than 90 days after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the security of assistant United States

1 attorneys and other Federal attorneys arising from the
2 prosecution of terrorists, violent criminal gangs, drug traf-
3 fickers, gun traffickers, white supremacists, and those who
4 commit fraud and other white-collar offenses. The report
5 shall describe each of the following:

6 (1) The number and nature of threats and as-
7 saults against attorneys handling those prosecutions
8 and the reporting requirements and methods.

9 (2) The security measures that are in place to
10 protect the attorneys who are handling those pros-
11 ecutions, including measures such as threat assess-
12 ments, response procedures, availability of security
13 systems and other devices, firearms licensing (depu-
14 tations), and other measures designed to protect the
15 attorneys and their families.

16 (3) The Department of Justice's firearms depu-
17 tation policies, including the number of attorneys
18 deputized and the time between receipt of threat and
19 completion of the deputation and training process.

20 (4) For each measure covered by paragraphs
21 (1) through (3), when the report or measure was de-
22 veloped and who was responsible for developing and
23 implementing the report or measure.

24 (5) The programs that are made available to
25 the attorneys for personal security training, includ-

1 ing training relating to limitations on public infor-
2 mation disclosure, basic home security, firearms
3 handling and safety, family safety, mail handling,
4 counter- surveillance, and self-defense tactics.
5 (6) The measures that are taken to provide the
6 attorneys with secure parking facilities, and how pri-
7 orities for such facilities are established—
8 (A) among Federal employees within the
9 facility;
10 (B) among Department of Justice employ-
11 ees within the facility; and
12 (C) among attorneys within the facility.
13 (7) The frequency such attorneys are called
14 upon to work beyond standard work hours and the
15 security measures provided to protect attorneys at
16 such times during travel between office and available
17 parking facilities.
18 (8) With respect to attorneys who are licensed
19 under State laws to carry firearms, the Department
20 of Justice's policy as to—
21 (A) carrying the firearm between available
22 parking and office buildings;
23 (B) securing the weapon at the office
24 buildings; and

(C) equipment and training provided to facilitate safe storage at Department of Justice facilities.

(9) The offices in the Department of Justice that are responsible for ensuring the security of the attorneys, the organization and staffing of the offices, and the manner in which the offices coordinate with offices in specific districts.

(10) The role, if any, that the United States Marshals Service or any other Department of Justice component plays in protecting, or providing security services or training for, the attorneys.

**SEC. 21. FLIGHT TO AVOID PROSECUTION FOR KILLING PEACE OFFICERS.**

(a) FLIGHT.—Chapter 49 of title 18, United States Code, is amended by adding at the end the following:

**"§ 1075. Flight to avoid prosecution for killing peace officers**

"Whoever moves or travels in interstate or foreign commerce with intent to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees or under section 1114 or 1123, for a crime consisting of the killing, an attempted killing, or a conspiracy to kill, an individual involved in crime and juvenile delinquency control or reduction, or enforcement

of the laws or for a crime punishable by section 1114 or 1123, shall be fined under this title and imprisoned, in addition to any other imprisonment for the underlying offense, for any term of years not less than 10.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 49 of title 18, United States Code, is amended by adding at the end the following new item:

''1075. Flight to avoid prosecution for killing peace officers.''.

**SEC. 22. SPECIAL PENALTIES FOR MURDER, KIDNAPPING, AND RELATED CRIMES AGAINST FEDERAL JUDGES AND FEDERAL LAW ENFORCEMENT OFFICERS.**

(a) MURDER.—Section 1114 of title 18, United States Code, is amended—

(1) by inserting ''(a)'' before ''Whoever''; and

(2) by adding at the end the following:

''(b) If the victim of a murder punishable under this section is a United States judge (as defined in section 115) or a Federal law enforcement officer (as defined in 115) the offender shall be punished by a fine under this title and imprisonment for any term of years not less than 30, or for life, or, if death results, may be sentenced to death.''.

(b) KIDNAPPING.—Section 1201(a) of title 18, United States Code, is amended by adding at the end the

1 following: ''If the victim of the offense punishable under
2 this subsection is a United States judge (as defined in sec-
3 tion 115) or a Federal law enforcement officer (as defined
4 in 115) the offender shall be punished by a fine under
5 this title and imprisonment for any term of years not less
6 than 30, or for life, or, if death results, may be sentenced
7 to death.''.

Mr. COBLE. Are there second degree amendments?

Mr. CHABOT. Mr. Chairman?

Mr. COBLE. The distinguished gentleman from Ohio. For what purpose do you seek recognition?

Mr. CHABOT. Mr. Chairman, I have an amendment at the desk.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, I reserve a point of order.

Mr. COBLE. The gentleman from North Carolina reserved a point of order.

Mr. WATT. Against this amendment.

The CLERK. Amendment to the amendment in the nature of a substitute.

Mr. COBLE. The second degree amendment will be considered as read. The gentleman from Ohio is recognized for 5 minutes.

[The amendment of Mr. Chabot follows:]

## AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1751 OFFERED BY MR. CHABOT OF OHIO AND MR. CONYERS OF MICHIGAN

Add at the end the following:

**SEC. 23. MEDIA COVERAGE OF COURT PROCEEDINGS.**

(a) FINDINGS.—The Congress makes the following findings:

(1) The right of the people of the United States to freedom of speech, particularly as it relates to comment on governmental activities, as protected by the first amendment to the Constitution, cannot be meaningfully exercised without the ability of the public to obtain facts and information about the Government upon which to base their judgments regarding important issues and events. As the United States Supreme Court articulated in *Craig v. Harney* , 331 U.S. 367 (1947), ''A trial is a public event. What transpires in the court room is public property.''.

(2) The right of the people of the United States to a free press, with the ability to report on all aspects of the conduct of the business of government,

as protected by the first amendment to the Constitution, cannot be meaningfully exercised without the ability of the news media to gather facts and information freely for dissemination to the public.

(3) The right of the people of the United States to petition the Government to redress grievances, particularly as it relates to the manner in which the Government exercises its legislative, executive, and judicial powers, as protected by the first amendment to the Constitution, cannot be meaningfully exercised without the availability to the public of information about how the affairs of government are being conducted. As the Supreme Court noted in Richmond Newspapers, Inc. v. Commonwealth of Virginia (1980), ''People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.''

(4) In the twenty-first century, the people of the United States obtain information regarding judicial matters involving the Constitution, civil rights, and other important legal subjects principally through the print and electronic media. Television, in particular, provides a degree of public access to courtroom proceedings that more closely approxi-

mates the ideal of actual physical presence than newspaper coverage or still photography.

(5) Providing statutory authority for the courts of the United States to exercise their discretion in permitting televised coverage of courtroom proceedings would enhance significantly the access of the people to the Federal judiciary.

(6) Inasmuch as the first amendment to the Constitution prevents Congress from abridging the ability of the people to exercise their inherent rights to freedom of speech, to freedom of the press, and to petition the Government for a redress of grievances, it is good public policy for the Congress affirmatively to facilitate the ability of the people to exercise those rights.

(7) The granting of such authority would assist in the implementation of the constitutional guarantee of public trials in criminal cases, as provided by the sixth amendment to the Constitution. As the Supreme Court stated in In re Oliver (1948), "Whatever other benefits the guarantee to an accused that his trial be conducted in public may confer upon our society, the guarantee has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution.

The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power.''.

(b) AUTHORITY OF PRESIDING JUDGE TO ALLOW MEDIA COVERAGE OF COURT PROCEEDINGS.—

(1) AUTHORITY OF APPELLATE COURTS.—Notwithstanding any other provision of law, the presiding judge of an appellate court of the United States may, in his or her discretion, permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides.

(2) AUTHORITY OF DISTRICT COURTS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, any presiding judge of a district court of the United States may, in his or her discretion, permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides.

(B) OBSCURING OF WITNESSES AND JURORS.—(i) Upon the request of any witness (other than a party) or a juror in a trial proceeding, the court shall order the face and voice

of the witness or juror (as the case may be) to be disguised or otherwise obscured in such manner as to render the witness or juror unrecognizable to the broadcast audience of the trial proceeding.

(ii) The presiding judge in a trial proceeding shall inform—

(I) each witness who is not a party that the witness has the right to request that his or her image and voice be obscured during the witness' testimony; and

(II) each juror that the juror has the right to request that his or her image be obscured during the trial proceeding.

(3) ADVISORY GUIDELINES.—The Judicial Conference of the United States is authorized to promulgate advisory guidelines to which a presiding judge, in his or her discretion, may refer in making decisions with respect to the management and administration of photographing, recording, broadcasting, or televising described in paragraphs (1) and (2).

(c) DEFINITIONS.—In this section:

(1) PRESIDING JUDGE.—The term ''presiding judge'' means the judge presiding over the court proceeding concerned. In proceedings in which more

than one judge participates, the presiding judge shall be the senior active judge so participating or, in the case of a circuit court of appeals, the senior active circuit judge so participating, except that—

(A) in en banc sittings of any United States circuit court of appeals, the presiding judge shall be the chief judge of the circuit whenever the chief judge participates; and

(B) in en banc sittings of the Supreme Court of the United States, the presiding judge shall be the Chief Justice whenever the Chief Justice participates.

(2) APPELLATE COURT OF THE UNITED STATES.—The term ''appellate court of the United States'' means any United States circuit court of appeals and the Supreme Court of the United States.

(d) SUNSET.—The authority under subsection (b)(2) shall terminate on the date that is 3 years after the date of the enactment of this Act.

Mr. CHABOT. I thank the gentleman for recognizing me. Move to strike the last word.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Mr. Chairman, I want to take this opportunity to say a few words about the amendment introduced concerning the use of cameras in the Federal courtrooms. We've debated and talked about this issue for a number of years. It's passed a number of times.

I want to first thank my friends across the aisle, who have always made this a bipartisan issue. There are many Republicans for it, against it, many Democrats for it and against it, so it is one of those rare issues around this place where it truly is bipartisan.

Mr. Delahunt has been a leading cosponsor of this in the past. Mr. Conyers, I believe, is the leading cosponsor this year, and I understand they both will participate in the debate.

I also want to thank Mr. Nadler, my Ranking Member in the past. He's been helpful in that he offered an amendment in the past to obscure the identity of witnesses who might be considered to be in danger if it were a mob-related type case or whatever, and I appreciated that helpful amendment that he had offered in the past.

I've advocated televised coverage of Federal court proceedings really since my early days in Congress, and even prior to that. When I was a member of Cincinnati City Council I had pushed to get Council on cable TV access so the public had access to them. When I moved over to the Hamilton County Commission, did the same thing here. And when I came to Congress, this has always been one of the things that I felt was important as well. I mean Congress wasn't on television early on as well, and we now—I mean how can you imagine being without CSPAN? I know the public is just glued to around the country.

The cameras in the courtroom amendment would give Federal judges the discretion—I want to emphasize the discretion, they don't have to do it, but it's discretion—to allow media coverage of courtroom proceedings.

Currently the Judicial Conference guidelines prohibit cameras in these courtrooms, reflecting the previous philosophy of the late Chief Justice Rehnquist. However, every State except for the District of Columbia allows for cameras in the courtroom in some form, either at the appellate level or at the trial level or both. The principle of open Government is embodied in this amendment. The American people deserve greater access to the Federal court system. It is good public policy for Congress to facilitate through media access to the courtroom. The ability of people to exercise their right to freedom of speech, freedom of the press, and to petition the Government for redress of grievances.

The Supreme Court has also acknowledged these rights in the case of *Craig v. Harney*. Quote, "A trial is a public event. What transpires in the courtroom is public property," unquote.

The amendment also recognizes the special concerns that surround televising trials, and includes language to disguise the voice and image of non-party witnesses and jurors upon their request. And again I want to recognize Mr. Nadler for his contribution in including that in the amendment.

A sunset provision, again, was someone's suggestion, I believe, and that was also included to review the status of cameras in the courtroom after 3 years so we can always come back at this. If we find there have been problems, we can modify it or do away with it all together. I don't anticipate that we would do that because I think it will be fine, just as the State courts have found around this country. There were all kinds of complaints about they put State courts on camera, what would happen? And the States have consistently kept that in the law as well.

The nomination hearings of Justice Roberts brought the issue of cameras in the courtroom to light once again, and both Senator Grassley and Senator Specter and Senator Schumer and Senator Leahy, and many others, have authored legislation addressing this issue. There's considerable support in the other body. I would ask House Members to consider supporting this regardless of that fact.

When Judge Roberts was asked by several Senators about the use of cameras in the courtroom, the new Chief Justice stated, and I quote, "Well, you know, my new best friend, Senator Thompson, assures me that television cameras are nothing to be afraid of, but I don't have a set view on that," unquote.

Passage of this amendment would send a strong signal to the Chief Justice, I believe, that coverage of Supreme Court proceedings is long overdue.

The chambers of Congress are open to all citizens through the CSPAN, as I mentioned before, allowing the American people to stay apprised of the actions of the Legislative Branch of Government. Why should the Judicial Branch be any different? Lifetime tenure for unelected officials conveys a tremendous amount of power. When the Supreme Court is in session, you can walk by and see hundreds of people waiting for their opportunity to observe the judicial process. Why should our constituents not be allowed to observe this process, and why should people be forced to rely on the new media to interpret and filter the proceedings when cameras would allow citizens to watch for themselves?

Mr. Chairman, I'd ask for another 10 seconds. I'm almost done.

Mr. COBLE. Without objection.

Mr. CHABOT. Thank you.

I'd urge my colleagues to support this, and as I say, this has been a bipartisan measure in the past, and I would invite suggestions from my colleagues as to how to improve this legislation, either here or on the floor. And I yield.

Mr. COBLE. The gentleman's time has expired.

Does the gentleman from North Carolina insist upon his point of order?

Mr. WATT. Yes, Mr. Chairman. I make a point of order that while this may be important, it is not germane to this bill. The underlying purpose of the bill is securing witnesses, and there is no connection between this amendment and the underlying purpose of this bill. So I would insist on my point of order.

Mr. CHABOT. Mr. Chairman, if I could be heard?

Mr. COBLE. Does the proponent wish to be heard in response?

Mr. CHABOT. Yes. I'll be very brief.

Mr. COBLE. The gentleman is recognized.

Mr. CHABOT. I thank the gentleman. I believe it's clearly germane. It also has to do with security. For example, if a person does

wish to do harm and is in the crowd, if people have—if cameras are in the courtroom there's a better chance they may be identified either ahead of time and be able to avoid something from happening, or if something does happen it would enable us to be able to prosecute that individual that's been responsible for that. And clearly I think it's relevant to this particular bill.

And section 19, I've been informed also, clearly would make it germane and open it up for germaneness.

Mr. COBLE. The gentleman will suspend for just a moment.

[Pause.]

Mr. COBLE. Mr. Watt, I am advised by the Parliamentarian that this is a close call, but House Rule XVI requires amendments to be related to the underlying bill in the amendment, and the amendment is germane in that it does apply to security of the courtroom, I am told by the Parliamentarian.

Mr. WATT. In what way does it apply to security in the courtroom? There's nothing in this amendment that relates to any security in the courtroom.

Mr. CHABOT. Mr. Chairman, I think the statement that I made clearly indicates how it would do that. If you have cameras in the courtroom, clearly ahead of time there's a possibility of being able to——

Mr. WATT. Increased insecurity in the courtroom by exposing witnesses maybe, but that's a stretch.

Mr. CHABOT. I don't think it's a stretch at all. I mean that's one of the reasons you have cameras in buildings is for security purposes.

Mr. NADLER. Would the gentleman yield?

Mr. WATT. This is not about security in the courtroom. This is about——

Mr. NADLER. If there were cameras in the courtroom, you might spot—yes, but if there are cameras in the courtroom, Mr. Chabot, might you not spot extraneous objects and be able to afford appropriate protection that way?

Mr. CHABOT. Absolutely——

Mr. WATT. A security camera, not television cameras.

Mr. CHABOT. That's what I just indicated, the individuals, and the gentleman has indicated spotting objects as well.

Mr. SCHIFF. Mr. Chairman, may I make a question, parliamentary inquiry?

Mr. COBLE. The Chair will—reclaiming my time, the Chair has ruled the that amendment, that the—that this is germane to the subject matter.

Mr. SCHIFF. Mr. Chairman, may I have a parliamentary inquiry?

Mr. COBLE. Parliamentary inquiry from whom? The gentleman from California.

Mr. SCHIFF. Mr. Chairman, I may support the amendment, but I am concerned about some of the parliamentary procedures in the Committee because it seems like the germaneness rule is applied with great inconsistency and great flexibility, which the only consistency I can find is it's employed to the disadvantage of the minority.

When we offered amendments to the PATRIOT bill, for example, a great many of which were directly relevant and germane to the subject matter, far more germane I think than this amendment—

which I may support—is—to a court security bill, they were held to be non-germane. And I don't know how the same germaneness standard that precluded things that were clearly within the PATRIOT bill were non-germane and somehow this is germane. I would like an explanation for what the contours are of this germaneness rule that seems so adaptable, depending on the will of the majority.

Mr. COBLE. Well, I say to my friend from California the Chair has ruled, and in the Chair's defense, I have not been inconsistent but this is my debut. I'm the rookie in the chair today. [Laughter.]

Mr. Berman says I'm like the Twelfth Circuit.

Are there additional amendments?

Mr. WATT. Mr. Chairman?

Mr. COBLE. Gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. WATT. And I won't take 5 minutes. I just—I know there's substantial difference of opinion. I don't think this has anything to do with the underlying bill, not that it's not important, and shouldn't be the subject of a debate at some point. We've had the debate before, some Republicans and Democrats on opposite sides.

I happen to feel like while the access of the public and the press is an important thing—and I have been a very, very strong supporter of it—the access to justice is more important. And this amendment I think is going to—has the prospect of jeopardizing the more important ingredient of providing justice in the courtroom. And I've said that before. That's been my consistent position.

There are some things that take precedence even over free speech and access to the press, and the one thing that I think is absolutely critically important to our courts is that they be able to operate in a way that assures a just outcome that is not influenced by public opinion, and I think the effect of this amendment would be to jeopardize that.

I will yield back.

Mr. CHABOT. Would the gentleman yield?

Mr. WATT. I'm happy to yield to the gentleman, although I'm prepared to yield my time back, but I'm——

Mr. CHABOT. I will be very brief. I understand. I appreciate the gentleman's concern because I know he has always in the past been outspoken in trying to assure that justice does prevail in the courts. I would just point out that the State courts have had cameras in the courtroom, virtually all the States, mostly at the trial level, I think 40 out of 50 at the trial level, and others at the appellate level, and most both. And there hasn't, to my—able to be determined at my level that there has been a diminution of justice at the State level as a result of this. And why would we expect the Federal courts not to be able to——

Mr. WATT. I just reclaim my time long enough to say that you all seem to have a lot of confidence in the State courts when it's convenient for you to have a lot of confidence in the State court, but, you know, maybe that's one of the reasons you all are trying to reverse the State courts so often. Maybe you're not getting the level of justice that you want out of State court.

Mr. CHABOT. Would the gentleman yield? This is a convenient argument that you're making. You use it to your advantage of disadvantage.

Mr. COBLE. The gentleman's time expired. The question occurs on——

Mr. WATT. Mr. Chairman, my time hadn't expired. You all never even started the clock.

Mr. COBLE. It was well over, Mel.

Mr. WATT. You didn't even start the clock on this time.

Mr. COBLE. Yeah, we did. You want another additional minute, Mr. Watt?

Mr. WATT. I don't want another additional minute. People were asking me to yield. I didn't want the extra time that Mr. Chabot took.

Mr. COBLE. Gentleman from New York.

Mr. WATT. I was prepared to yield back a long time ago, but I'm also prepared to respond if people want me to respond to whatever they want to respond to.

Mr. COBLE. The gentleman from New York, Mr. Nadler. For what purpose do you seek recognition, Mr. Nadler?

Mr. NADLER. To strike the last word.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

I am delighted to be able to agree with the distinguished Chairman of the Constitution Subcommittee, which we usually don't, on this amendment. I led the opposition in the State legislature in New York, and I was opposed here for years to cameras in the courtroom because I was concerned about, not just about, about the intimidation of witnesses, not just in mob cases, as Mr. Chabot mentioned. I was concerned about the fact that—I never had a problem with cameras in the courtroom in an appellate case. In fact, I would go further, I would mandate it in appellate cases in Federal courts. But in the——

Mr. GOHMERT. Will the gentleman yield? I'll work with you on that.

Mr. NADLER. Okay, I appreciate that.

But in the trial courts I was concerned that very often you're seeking witnesses who observed the accident, who observed the murder, whatever, and it's intimidating enough on witnesses to come forward without worrying not only that they might be the subject of a mob hit if they're a witness in the wrong trial, but just worrying about appearing in public on television in front of their friends and neighbors, and having to undergo cross-examination by some lawyer whose job it is to make them look not like the most accomplished, intelligent person, and that you might, therefore, lose witnesses.

The amendment that's in this bill that at the request of the witness or the jury you can obscure his or her identity, I think satisfies that concern. And with that concern of losing potential witnesses taken care of, I see no reason whatsoever why——

Mr. SCOTT. Will the gentleman yield?

Mr. NADLER. In one moment. Why you shouldn't have cameras in the courtroom in any case in which you allow the press in the courtroom. There are some cases where a trial must be held behind closed doors—rare, but it does happen, and in that case obviously

we're not going to have cameras in the courtroom. But that aside, wherever the public is allowed in the courtroom, I see no reason—now that we've taken care of the witness problem—not to allow cameras, so I am delighted to support this amendment. and I'll yield.

Mr. SCOTT. Where do you find the right——

Mr. COBLE. The gentleman yields back?

Mr. SCOTT. No, he yielded to me.

Mr. NADLER. I yielded to the gentleman from——

Mr. COBLE. I stand corrected. Gentleman from——

Mr. SCOTT. Where do you find the witness having a right to have his image obscured? Page 5, line 9, page 5, line 9 says that the witness has a right to request, doesn't say he has a right to have his image or voice obscured, he has a right to——

Mr. NADLER. Reclaiming my time. Page 4, starting line 23, "Upon the request of any witness other than a party or a juror in a trial proceeding, the court shall order"—shall order—"the face and voice of the witness or juror, as the case may be, to be disguised or otherwise obscured," et cetera.

Mr. SCOTT. And is the presiding judge bound by any Judicial Conference advisory guidelines in making his decisions?

Mr. NADLER. Reclaiming my time, I don't think he has a decision to make. The language is preemptory. It says "The court shall order" upon the request.

Mr. SCOTT. This is another question. Never mind. I'll just get my own time.

Mr. NADLER. Thank you.

Mr. Chairman, this is a good amendment. I urge its passage and I yield back.

Mr. COBLE. The gentleman yields back.

The gentleman from Massachusetts, Mr. Delahunt, for what purpose do you seek recognition?

Mr. DELAHUNT. I move to strike the last word.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. And I rise in support of the Chabot amendment. In the past I've filed legislation similar to the language that's embraced in the amendment. I think this is really long overdue.

And while I can respect my colleagues on my side, Mr. Schiff and Mr. Watt for raising a point of order, but I think it's a good time to at least revisit what we're trying to accomplish with this amendment.

I am one who has advocated, as many of my colleagues on this side of the aisle, for discretion in trial justices. I have consistently opposed legislation that incorporate mandatory minimum sentences because I believe it erodes that discretion in judges. And yet, ironically, now I hear my colleagues on this side of the aisle inferring that we can't trust judges to make decisions regarding witnesses and regarding whether cameras in the courtroom are appropriate or not. I say to my friends on this side, you can't have it both ways. Yeah, they do. But we can't, okay? [Laughter.]

And they're in the majority. But the reality is, if you are a practitioner, if you are either a prosecutor or counsel for a criminal defendant, you know that I can't even imagine in an egregious case, where at the request of either the State or the Federal Government or a counsel for a criminal defendant, or in civil litigation by either

one of the parties, that a court would listen diligently to the rationale for the request, and if it made minimal sense, common sense, that it would not be respected by a jurist who had discretion. I mean, let's talk about the real world other than some hypothetical case, because the benefits of having cameras in a courtroom, I would submit, are enormous in terms of educating the American people as to the judicial system.

We hear many, again on the other side of the aisle, speak about activist judges, about the courts doing things that are not reflective of sound public policy. Well, let the public decide by seeing unfiltered what's happening in our courtrooms. This is putting CSPAN——

Mr. WATT. Would the gentleman yield at some point, whenever you finish that thought?

Mr. DELAHUNT. I'll yield to my friend, sure.

Mr. WATT. I guess my concern is all of this is public policy stuff you're talking about, and the public has some right to participate at some level, but I was always taught that the courts are for the benefit of the litigants to get a fair trial. This bill says nothing about giving the litigants the right to decide whether their case is tried or not on television, so——

Mr. DELAHUNT. Reclaiming my time.

Mr. WATT. I just want to be clear that the basic underlying problem I have is different than what you're talking about. This is not a political body. This is——

Mr. DELAHUNT. Reclaiming my time.

Mr. WATT. This is a judicial body.

Mr. DELAHUNT. Reclaiming my time. You know, the courts are a public institution. You know, the courts are there fundamentally for the benefit, not just of the litigants, but for our democratic order, and that there is an overriding concern on the part of the American people about what is transpiring in terms of the judiciary. It's not like it's a controversy that we hear frequently in the halls of Congress.

Mr. CONYERS. Would the gentleman yield?

Mr. DELAHUNT. I'll yield to Mr. Conyers.

Mr. CONYERS. I merely want to observe that all of my criticism about unfairness in the courts would have been taken care of had we had cameras there. There are more things that go wrong in courts that are not seen or heard or made public, than I am worried about anything else. I think throwing a light—continuing to throw a light on court proceedings is a very important step forward in the dispensation of justice in the court.

Mr. DELAHUNT. Reclaiming my time, I think that when we say that—when we oppose this legislation by suggesting that there are not enough safeguards to protect the interests of private litigants, that by inference what we say is that we can't trust judges.

Mr. COBLE. The gentleman's time has expired.

Mr. DELAHUNT. And I think that's a mistake.

Mr. COBLE. The question occurs on the second——

Mr. LUNGREN. Mr. Chairman?

Mr. COBLE. The gentleman from California.

Mr. LUNGREN. I rise to strike the requisite number of words?

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. LUNGREN. Mr. Chairman, just on a couple points. One, yes, trials are for the litigants. But they're more than that, they're for the public, and the Supreme Court has spoken on that specifically in the *Craig v. Harney* case, where the Supreme Court said this: "A trial is a public event. What transpires in the courtroom is public property."

It is strange that we limit the public nature of it by the number of seats that are in the courtroom. And I would agree with the gentlemen on both sides of the aisle who suggest that all the Federal Appellate Courts have no excuse for not televising their proceedings, starting with the U.S. Supreme Court. I mean the idea——

Mr. WATT. Would the gentleman yield?

Mr. LUNGREN.—that the U.S. Supreme Court would be such a small, physical body, that you have to rotate people in during important arguments, and that they barely allow us to have recordings of the arguments, is, I think, the essence of arrogance.

But in this particular case I thought it important for us to note, as we've gone through in this debate, that this does not mandate televising proceedings in Federal District Court. This allows, in the language of the bill, that any presiding judge of a District Court in the United States may, in his or her discretion, permit the photographing, electronic recording, broadcasting or televising to the public of court proceedings over which that judge presides.

So again, we are giving it to the judges to make that decision. There are instances, in my judgment, where it would be inappropriate. There are instance where I think it has been inappropriate. My State had a very publicly broadcast trial, the O.J. Simpson, trial, and I think in fact the presence of cameras in that courtroom did influence that jury. There are some other cases I could think of where it did. This allows——

Mr. WATT. And that's okay, I guess?

Mr. LUNGREN. No, no. This allows the judge to make the determination as to whether or not that would be the case. Judges don't always get it right, but I think in most cases they would get it right. And then we also have the protection built in as a result of the incorporation of the Nadler amendment with respect to the concerns of witnesses. That is something we don't have in California law. That is something I wish we did have in California law, and that I think is a vast improvement over the laws if several jurisdictions that I've reviewed.

So I think the gentleman, the Chairman of the Constitution Law Subcommittee has done a good job of reaching out to the other side and incorporating a number of the concerns that have been expressed, and all in all, I think this does give us the change to put into practice what the Supreme Court has said, that is, that the trial is a public event, and that what transpires in the courtroom is public property. In this time, in this place in our society, televising of events is the most efficient way of allowing the public to participate in those events by observation.

I thank the——

Mr. WATT. Would the gentleman yield?

Mr. LUNGREN. I will be happy to yield, yes.

Mr. WATT. I just wanted to thank the gentleman for taking up for the Supreme Court in this ruling about whether a trial is pub-

lic. I hope he'll try to take up for them when we do the next markup.

Mr. LUNGREN. I appreciate it, and the Supreme Court does get it right.

Mr. COBLE. The gentleman yields back the—I was going to call the question, but I think——

Mr. GOHMERT. Mr. Chairman?

Mr. COBLE. Mr. Watt, did you want to be recognized earlier? I guess his question.

The gentleman from Texas, for what purpose do you seek recognition?

Mr. GOHMERT. To strike the last word, Mr. Chairman.

Mr. COBLE. The gentleman is recognized for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

As a judge I was supportive of having a camera in the courtroom. I had a rather lengthy protective order that allowed me to dictate not only what happened in the courtroom with the media, but outside it gave me great leverage.

I would be supportive of this in some other setting, rather than as part of the court security bill.

I did have a provision in my protective order to address one of the things that was said earlier, that any litigant could object to the proceedings being televised, and that would be given deference. But as part of the court security bill, it seems that by the amount of public policy arguments being waged here, that it's clear that, you know—step back a moment.

What we're trying to do here today is to provide additional help and security to the courts, and although it was said earlier that, let's see, that this court security bill does nothing to address adequate protection of judges, that it just provides a bunch of sound bites to our side of the aisle, I really am deeply offended by that comment. It would seem that rather that's more like a case of the kettle calling the pot copper here, because this does do some good in the court security bill. If it did not, then I would assume the gentleman that made that statement would be in favor of dropping the penalty to 1 day in jail for killing a Congressman, and seeing if there isn't some deterrent effect to having longer, more profound sentences.

There is a deterrent effect. This bill does provide that, but it appears that the story of the day will not be that our Committee did a very good thing to protect the judiciary. The story will be that we rammed cameras into their courtroom in some setting.

I would be open, as I said earlier, to be cosponsoring a bill to put them in the Supreme Court so that people can see what goes on.

Mr. CHABOT. Would the gentleman yield?

Mr. GOHMERT. But anyway——

Mr. CHABOT. Would the gentleman yield?

Mr. GOHMERT. I am concerned about we're losing focus and this will completely blur the intent of providing security. I called out the name of Judge Lefkow, whose husband and mother were tragically and horribly killed because of her position as a Federal judge. She is an eminent jurist, and it was just in visiting with her this morning—I should say she and other Federal judges have indicated to me they'd rather that provision that they had heard might happen sometime, regarding cameras in the courtroom, not be allowed.

I think that allowing them the discretion to make that determination addresses that, but I'm concerned about this public policy debate being a part of the court security rather than stand alone.

And, yes, I will be glad to yield.

Mr. CHABOT. Very briefly, as far as ramming it, this is clearly—you indicated—it's discretion. In addition to that, we can't write the story.

We had a hearing the other day, our first hearing on the Voting Rights Act, and as a side issue it was raised relative to allowing felons to vote, and that was the story that the press in that instance picked up that got more play than the whole hearing. You really can't affect how the press plays this. Of course, relative to this bill, if you have cameras in the courtroom it's ultimately the public that can see firsthand and not be filtered through the press.

Yield back.

Mr. GOHMERT. Thank the gentleman.

Mr. COBLE. Gentleman yields back.

Mr. GOHMERT. But the goal today is to provide additional security to the judiciary. I think this bill does it, and I am required, though I like the concept and would support it in any other setting, to oppose it to this.

Mr. COBLE. Prior to recognizing Mr. Scott, let me remind everybody again, we've got to get these three bills reported out today, and we're going to try to work for another 30 minutes here, and then we will recess for lunch for about 30 minutes. And when the bill on the floor, Mr. Smith, that you will be managing, we will suspend for that. But then after that, the Legal Abuse Bill is resolved or disposed of, then we'll all come back here.

Now, I am pleased to recognize the distinguished gentleman from Virginia, Mr. Scott, who will strike the last word.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, if you wanted to expedite the proceedings, you should have ruled the other way on this amendment. We haven't even started the debate for today.

Mr. Chairman, I join the gentleman from Texas. I'm offended that we've hijacked the court security bill and converted it into the cameras in the courtroom bill, and we're talking about camera—the idea that this is a security measure. You could have security cameras. That is not what this bill is all about. We're talking about broadcast. And this would be a good idea or bad idea. We talked about the State courts. Sure, some of the State courts have done it, but they haven't stuck it on the back of somebody else's bill and tried to make the policy that way. They've had hearings and discussed it, and had input from everybody to figure out what's going on.

Mr. Chairman, we're supposed to be discussing whether or not you're going to have the *habeas corpus* reform and the death penalty and the mandatory minimums, whether there's going to be a grant program in the court security bill. All of that's going to get lost. As the gentleman from Texas has indicated, that's lost. By the ruling of the Chair and getting this on here, now we're going to discuss cameras in the courtroom, and, you know, that's the rest of the bill.

We don't know whether the—we don't have anything before us that would suggest what effect this is going to have on litigants,

whether or not witnesses are intimidated or may change their testimony by virtue of the fact that they're going to be on television, what effect it has on a trial. Obviously, there's a difference in the effect of cameras in the courtroom with the Supreme Court, the appellate courts and the trial level.

All of that, Mr. Chairman, we're not putting two cents worth of thought into. You have down here that—the gentleman from New York has pointed out that a witness other than a party or a juror can request the name—excuse me—that the court shall order the face and voice of the witness or juror be disguised or otherwise obscured. It doesn't say anything about the name.

Mr. NADLER. Would the gentleman yield for a second?

Mr. SCOTT. I yield.

Mr. NADLER. I would simply point out that without cameras in the courtroom, the name is available to the press under present law. That's why this amendment doesn't say that.

Mr. SCOTT. Well, I would just say that when people see what's going on and all of this is now publicly broadcast, the name is not protected, the party can't decide whether they want the trial broadcast.

Broadcasting it makes a difference, may be good, may be bad, but it makes a difference, and I would hope that we would consider this not as stuck onto the back of a bill, but would give appropriate deliberation to this, and that all kinds of implications and whether you're going to get a fair trial or not, what kinds of trials, what kinds of discretion. The bill says that the advisory guidelines, the presiding judge may refer to them if he feels like it. Basically, some judges are going to allow it, some judges aren't. There's no guidance there.

I'd yield to the gentleman from North Carolina.

Mr. WATT. I just want to reiterate the point that Representative Scott made. This is a great debate, and our Judiciary Committee needs to have it, but it needs to have it in the context of hearings because there obviously is a strong difference of opinion among a number of people on this Committee about what benefit the courts play and how it fits into our whole system. Some people apparently think it's about the public's benefit. The courts in our system were not for the public's benefit. The first line of the basis for a court is to resolve disputes between litigants, so that they don't go out in the street and duel like we used to.

So I mean this is an important debate, but we have——

Mr. DELAHUNT. Would the gentleman yield?

Mr. WATT. We need to have hearings about it. We need to——

Mr. DELAHUNT. Would the gentleman yield?

Mr. WATT.—to give it the kind of dignity that it really deserves, and not put it on the back of a bill that it really has nothing to do with, regardless of what the technical germaneness requirement may say. This amendment has nothing to do with the underlying purpose of this bill, and we all know it, and now we spent a whole hour here talking about something that——

Mr. DELAHUNT. Would the gentleman yield?

Mr. WATT.—really should have had hearings and could have had hearings if you just drop the bill separately and let it go through the process.

Mr. DELAHUNT. Would the gentleman from Virginia yield?

Mr. COBLE. The gentleman from Virginia has the time.

Mr. DELAHUNT. Would the gentleman from Virginia yield?

Mr. SCOTT. I'm sorry. Yes, the gentleman from Massachusetts.

Mr. DELAHUNT. You know, every State in the Nation permits in some fashion or another cameras in the courtroom, and I hear these questions, and I have heard them before, and they are legitimate questions: Well, what's the impact on litigants? What's the impact on this—I can never remember in any of the multiple hearings that we've had on this issue a single piece of data indicating that there has been a problem. We just can't go making up——

Mr. WATT. We had hearings about it.

Mr. DELAHUNT. I have the time. I mean, let's not just create problems where they don't exist. Let's rely on the discretion of judges, because that's how the system best operates, whether it's cameras in the courtroom or whether it's sentencing.

Mr. COBLE. The time has expired. The question occurs on the second degree amendment of the gentleman from Ohio. All in favor say aye? All opposed, nay?

It appears the noes have it.

Mr. CHABOT. Mr. Chairman, I ask for a record——

Mr. COBLE. The gentleman from Ohio, a rollcall has been requested. When your names are called, if you favor the amendment in the nature of a substitute, you will vote aye, if you oppose, you will vote nay. The clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Lungren?

[No response.]

The CLERK. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

[No response.]

The CLERK. Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?

[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Pass.
The CLERK. Mr. Weiner, pass. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Mr. COBLE. Aye.
The CLERK. Mr. Chairman, aye.
Mr. COBLE. Are there Members in the assembly who wish to vote—change or—vote or change their vote? The gentleman from Massachusetts.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Mr. COBLE. The gentleman from South Carolina.
Mr. INGLIS. Aye.

The CLERK. Mr. Inglis, aye.

Mr. COBLE. Are there other Members who wish to—the gentleman from New York.

Mr. WEINER. Aye.

The CLERK. Mr. Weiner, aye.

Mr. COBLE. Are there other Members who wish to vote or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 20 ayes and 12 noes.

Mr. COBLE. And the second degree amendment is approved.

Are there additional second degree amendments?

Mr. SCHIFF. Mr. Chairman?

Mr. COBLE. The distinguished gentleman from California.

Mr. SCHIFF. Mr. Chairman, I have two amendments I'd like to offer en bloc, 104 and 108.

Mr. COBLE. The gentleman is recognized.

Mr. SCHIFF. Mr. Chairman, before I get to the amendments, I want to thank my colleague for his work on this bill, and also——

Mr. COBLE. The Committee will come to order, and, Mr. Schiff, I will say to you in the interest of time, you may identify your amendments. But the Chair will accept those amendments. You may identify them, however.

Mr. SCHIFF. Thank you, Mr. Chairman.

[The amendments offered by Mr. Schiff follow:]

**AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1751**

**OFFERED BY MR. SCHIFF OF CALIFORNIA**
& Mr. Weiner

At the end of the matter proposed by the amendment, insert the following new section:

1 **SEC. ___. FUNDING FOR STATE COURTS TO ASSESS AND**
2 **ENHANCE COURT SECURITY AND EMER-**
3 **GENCY PREPAREDNESS.**

4 (a) IN GENERAL.—The Attorney General, through
5 the Office of Justice Programs, shall make grants under
6 this section to the highest State courts in States partici-
7 pating in the program, for the purpose of enabling such
8 courts—

9 (1) to conduct assessments focused on the es-
10 sential elements for effective courtroom safety and
11 security planning; and

12 (2) to implement changes deemed necessary as
13 a result of the assessments.

14 (b) ESSENTIAL ELEMENTS.—As used in subsection
15 (a)(1), the essential elements include, but are not limited
16 to—

17 (1) operational security and standard operating
18 procedures;

1 (2) facility security planning and self-audit sur-
2 veys of court facilities;
3 (3) emergency preparedness and response and
4 continuity of operations;
5 (4) disaster recovery and the essential elements
6 of a plan;
7 (5) threat assessment;
8 (6) incident reporting;
9 (7) security equipment;
10 (8) developing resources and building partner-
11 ships; and
12 (9) new courthouse design.
13 (c) APPLICATIONS.—To be eligible for a grant under
14 this section, a highest State court shall submit to the At-
15 torney General an application at such time, in such form,
16 and including such information and assurances as the At-
17 torney General shall require.
18 (d) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to carry out this section
20 $20,000,000 for each of fiscal years 2006 through 2010.

## AMENDMENT TO MANAGERS AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H. R. 1751 OFFERED BY MR. SCHIFF OF CALIFORNIA

Add at the end the following:

1 **SEC. 23. ADDITIONAL AMOUNTS FOR UNITED STATES MAR-**
2 **SHALS SERVICE TO PROTECT THE JUDICI-**
3 **ARY.**

4 In addition to any other amounts authorized to be
5 appropriated for the United States Marshals Service,
6 there are authorized to be appropriated for the United
7 States Marshals Service to protect the judiciary,
8 $20,000,000 for each of fiscal years 2006 through 2010
9 for—

10 (1) hiring entry-level deputy marshals for pro-
11 viding judicial security;

12 (2) hiring senior-level deputy marshals for in-
13 vestigating threats to the judiciary and providing
14 protective details to members of the judiciary and
15 Assistant United States Attorneys; and

16 (3) for the Office of Protective Intelligence, for
17 hiring senior-level deputy marshals, hiring program
18 analysts, and providing secure computer systems.

Mr. SCHIFF. Thank you, Mr. Chairman.

Briefly, for the purpose of identification, the first amendment provides a grant program for the State courts so that courts can improve their security and can apply directly for Federal funding to make those needed improvements. We had a meeting this morning with chief justices from around the country who talked about the importance of a funding stream that would go directly to them to improve courthouse security.

The second also authorizes some additional resources for the U.S. Marshals Service and particularly their Protective Intelligence Division to help them, currently only staffed by three people and underresourced.

I thank the gentleman for accepting the amendments. Before I conclude, I just want to also thank Mr. Gohmert and other Members for incorporating provisions that Congressman Dreier have authored that allow Federal prosecutors to go after cop killers as well as penalize those who flee the country after killing a cop.

Mr. COBLE. We will accept both amendments, I say to Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. And I have a statement from Mr. Dreier I would like to offer for the record.

Mr. COBLE. Without objection.

[The prepared statement of Mr. Dreier follows:]

DAVID DREIER
CALIFORNIA

CHAIRMAN
COMMITTEE ON
RULES

233 CANNON HOUSE OFFICE BUILDING
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(202) 225-2305

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http://dreier.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515

**Statement of the Honorable David Dreier**
**October 27, 2005**

**H.R. 1751, the Secure Access to Justice and Court Protection Act**

Mr. Chairman, Ranking Member Conyers and Members of the Committee, thank you for allowing me the opportunity to comment on H.R. 1751, the Secure Access to Justice and Court Protection Act, authored by Congressman Gohmert. Like you, I believe that we must do everything we can to ensure that criminals who harm or threaten those who uphold the rule of law are punished by penalties that match the seriousness of the crime.

This is especially true for law enforcement officers. As you know, on April 29, 2002, Los Angeles County Sheriff's Deputy David March was brutally slain execution-style during a routine traffic stop. Suspect Armando Garcia fled to Mexico within hours of Deputy March's death and has eluded prosecution by U.S. authorities. Tragically, Mexico's refusal to extradite individuals who may face the death penalty or life imprisonment has complicated efforts to bring Armando Garcia back to the U.S. to face prosecution for his crime.

Earlier this year, I, along with my friend from Pasadena, Mr. Schiff, introduced, H.R. 2363, the Peace Officer Justice Act, with the strong support of Los Angeles County Sheriff Lee Baca, to make it a federal crime to kill a peace officer and flee the country. As you may know, this week Mr. Schiff and I introduced H.R. 3900, the Justice for Peace Officers Act, to build on the provisions of H.R. 2363. Specifically, the bill enhances the punishment for cop-killers and those who aid them, gives state/local prosecutors the opportunity to take the lead in such cases, makes clear that the bill does not supersede state/local jurisdiction and urges the renegotiation of the U.S.-Mexico Extradition Treaty to resolve the death penalty/life imprisonment roadblock. I believe that passage of H.R. 3900 will signal to Mexico and any other country that refuses to extradite a fugitive cop-killer that the Congress of the United States considers this a crime against America and will use the full resources of the federal government to seek justice.

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

I am especially pleased that Mr. Gohmert is including language in H.R. 1751 that shares the goal of the Justice for Peace Officers Act: making it a federal crime to kill a law enforcement officer. Specifically, Mr. Gohmert's amendment adds law enforcement officers to the definition of "federally funded public safety officers." In addition, the substitute adds an additional mandatory minimum 10 year penalty on top of the punishment of killing a "federally funded public safety officer," if the suspect flees the country to avoid prosecution.

Mr. Chairman, I strongly support Mr. Gohmert's amendment and the underlying bill, and look forward to its consideration on the House floor.

Mr. COBLE. Are there further second degree amendments?

Mr. SCOTT. Mr. Chairman?

Mr. COBLE. Hearing——

Mr. SCOTT. Mr. Chairman? I'm sorry.

Mr. COBLE. The gentleman from Virginia, Mr. Scott, is recognized.

Mr. SCOTT. I have an amendment at the desk, the one that strikes Section 11, Scott 053.

Mr. SMITH. [Presiding.] The clerk will read the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1751, offered by Mr. Scott of Virginia. Strike——

Mr. SMITH. Without objection, the amendment will be considered as read.

[The amendment offered by Mr. Scott of Virginia follows:]

## AMENDMENT TO THE MANAGER'S AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1751 OFFERED BY MR. SCOTT OF VIRGINIA

Strike section 11.

Mr. SMITH. The gentleman from Virginia is recognized to explain it.

Mr. SCOTT. Mr. Chairman, this strikes the *habeas* provisions in the bill. We have heard from the State court representatives, and *habeas* was not part of anything that they requested. This is very controversial. People will not be getting their appropriate due process within the death penalty. We already know we make mistakes, and people have gone many years before those mistakes have been rectified. So I would hope that we would not complicate the bill that has been vastly improved by the amendments that have just been adopted, which will actually provide some security, security for grants to the courts so that they can provide security, and grants for additional personnel to provide security so the——

Mr. LUNGREN. Will the gentleman——

Mr. SMITH. Will the gentleman from Virginia yield?

Mr. SCOTT. I yield.

Mr. SMITH. We are prepared to accept that amendment, but I know the gentleman from California, Mr. Lungren, would like to speak on it as well. So if you will yield to the gentleman from California, we'll be able to expedite the process.

Mr. SCOTT. I yield.

Mr. GOHMERT.

Mr. LUNGREN. If you would yield to the gentleman from Texas first, and then——

Mr. SCOTT. To whom it may concern. [Laughter.]

Mr. GOHMERT. Thank you. I do believe these are good provisions that have been placed in here regarding speeding up of the application for writ process. But we have discussed this and are willing to accept that and take this out of the bill, once again to focus on court security and have this as a stand-alone provision.

I would like to yield also to my friend from—the gentleman from California.

Mr. SMITH. Actually, the gentleman from Virginia has the time, and I'm sure he'll be happy to yield to the gentleman from California.

Mr. SCOTT. I yield.

Mr. LUNGREN. The gentleman knows I am very, very interested in this provision, as I have the *habeas corpus* reform bill that we have been discussing in our Subcommittee, and hopefully we'll mark it up at some time.

This would have applied only in one set of circumstances where there's been a killing of a public safety officer while that person was in the performance of his or her official duties. I think it does make sense for us to deal with the *habeas corpus* reform in a single bill. But I just want to say that this is an important issue.

In my home State of California, there are 26 cop killers who have been sentenced to death. Not a single one has had the sentence carried out. Every time a California cop killer's death sentence has been affirmed by the State courts, the Ninth Circuit—remember that circuit we were talking about a little earlier?—has either reversed the sentence or ordered additional hearings in the case. I could give you chapter and verse of the cases. One of them that I'm very familiar with is Police Officer Kenneth Reidy, who was murdered in 1983. There's no question about the guilt of the party involved, but here we are this many years thereafter, and the Ninth

Circuit is still—still considering this particular case. And the damage done to the family of that police officer is incalculable.

So by this side agreeing to your amendment, we in no way mean to signal that we don't think this is a serious issue that ought to be addressed, but we hope to address it in a comprehensive fashion in another stand-alone bill.

I thank the gentleman.

Mr. SCOTT. Thank you. I yield to the gentleman from North Carolina.

Mr. WATT. I understand that we're striking the entire provision, but I just wanted to make sure I understand the underlying provision. Would the underlying provision that you're agreeing to strike set up a different *habeas* review standard for some people than other people? Is that—would that be the effect of what the underlying bill——

Mr. SCOTT. It would have—it would be a separate standard, and, furthermore, it would be a complicated standard. So, Mr. Chairman, I think if we're going to have *habeas corpus* reform, it seems to me to have—to make much more sense to do it as the gentleman—as it's been explained, in a separate piece of legislation where all these questions can be answered.

I yield back.

Mr. WATT. Would the gentleman yield one more—can we agree to put the camera provision over into that category, too, so——

Mr. SMITH. The gentleman yields back, and as I say, the Chair has accepted the amendment.

Are there any other amendments?

Mr. NADLER. Mr. Chairman, on the same amendment.

Mr. SMITH. The gentleman from New York is recognized.

Mr. NADLER. Thank you. I'll be very brief.

I support the amendment. I just have to comment on the gentleman from California's comment. Getting it right is more important when you're dealing with the death penalty or any other serious crime than getting it fast. We very much tightened up, in my judgment, far too much on *habeas corpus* in the Antiterrorism and More Effective Death Penalty Act of 1996. I think we—innocent people will be executed because of the—because of not being afforded *habeas corpus.* To go further is to wreak more injustice.

Taking it out of this bill enables me to vote for this bill in Committee. And it is certainly preferable to consider any further refinements to the *habeas corpus* statutes in a full discussion in a bill standing by itself. I expect not to agree with the gentleman at that time, but at least it will get, I presume, a full discussion rather than being passed as part of a different bill without proper consideration, I simply wanted to say. So I'm glad it's being taken out of this bill. It will enable me to vote for this bill in Committee, but I'm glad—but I just couldn't let those remarks pass unremarked upon. I think we've gone too far in restricting *habeas*—not having gone far——

Mr. LUNGREN. Would the gentleman yield?

Mr. SMITH. The gentleman from Virginia's time has expired.

Mr. NADLER. I had the time.

Mr. SMITH. I'm sorry. The gentleman from New York.

Mr. NADLER. And I would yield to the gentleman.

Mr. LUNGREN. Would the gentleman yield?

Mr. NADLER. Yes.

Mr. LUNGREN. I understand the gentleman's concern, but I hope that we won't continue to hear this when we attempt to try and look at reform of *habeas corpus* that somehow we're acting too fast. The case I specifically mentioned, Police Officer Kenneth Reidy was killed 22 years ago. He was sentenced to death by a California court in 1984. That was affirmed by the California Supreme Court in 1989. I would defy anyone to suggest that that is a rush to judgment.

Mr. NADLER. I will—I will—reclaiming my time, that's obviously not a rush to judgment in that case, and I don't know anything about that case so I can't comment on it. But I will say that when we look at *habeas* statutes, we have to be very careful because we know of cases where people have been executed or—and we also know of cases, frankly—we know of cases, frankly, where time goes by not because they're litigating new evidence as to the guilt or innocence of the accused, but because they are litigating for years and years whether technical requirements for *habeas corpus* that were imposed in 1996 are met before you ever get to those cases. But this is a discussion that should be held for when we get to that bill.

So I'll yield back at this time.

Mr. SMITH. I was just going to say the gentleman's time has expired. He yields back.

The question occurs on the second degree amendment offered by Mr. Scott. All in favor, say aye? All opposed, nay?

The ayes have it. The agreement is—the amendment is agreed to.

And are there any further amendments? The gentleman from Virginia, Mr. Scott, for the purpose of offering an amendment.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk offered by me and the gentlelady from California, Ms. Waters.

Mr. SMITH. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1751——

Mr. SCOTT. Mr. Chairman, I ask unanimous consent—Mr. Chairman, I ask unanimous consent that the amendment, which is fairly lengthy, be considered as read.

Mr. SMITH. Without objection.

[The amendment offered by Mr. Scott of Virginia follows:]

**AMENDMENT TO THE MANAGER'S AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1751 OFFERED BY MR. SCOTT OF VIRGINIA AND MS. WATERS OF CALIFORNIA**

Page 3, beginning in line 5, strike ''and a term'' and all that follows through ''years'' in line 7 and insert the following: ''and imprisonment for not more than 10 years''.

Page 3, beginning in line 10, strike ''and a term'' and all that follows through ''years'' in line 12 and insert the following: ''and imprisonment for not more than 12 years''.

Page 3, beginning in line 15, strike ''and a term'' and all that follows through ''years'' in line 17 and insert the following: ''and imprisonment for not more than 30 years''.

On page 3, line 18, strike "a kidnapping" and beginning in line 21, strike "not" and all that follows through the comma on line 22.

On page 3, line 23, strike "a murder" and beginning on page 4, line 1, strike "not" and all that follows through "death" on line 3 and insert "or for life".

Page 4, beginning in line 6, strike "imprisonment" and all that follows through "years" on line 7 and insert "a term of imprisonment for not more than 10 years"

Page 4, beginning in line 10, strike "of" and all that follows through "years" on line 11 and insert "for not more than 10 years"

Page 5, beginning in line 18, strike "not" and all that follows through "years" on line 19 and insert "for not more than 10 years."

On page 5, line 22, strike "not less than 3 nor more than 12 years" and insert "for not more than 12 years"

On page 5, line 25, strike "not less than 10 nor more than 30 years" and insert "for not more than 30 years"

On page 6, line 3, strike "of 5 years" and insert "for not more than 10 years".

Strike subsection (a) of section 5.

Page 29, line 4, strike ''not less than 10'' and insert ''not more than 30''.

Strike subsection (a) of section 22.

Page 30, beginning in line 5, strike ''and imprisonment'' and all that follows through ''or for life'' in line 6 and insert ''or imprisonment for any term of years or for life''.

Mr. SMITH. The gentleman is recognized to explain the amendment.

Mr. SCOTT. Mr. Chairman, although it's a long amendment, it has—it's fairly straightforward. It just eliminates all the mandatory minimums in the legislation. Mr. Chairman, we know that mandatory minimums have been shown to be ineffective in preventing crime. They distort the sentencing process, and they've been studied and been shown to waste the taxpayers' money, and they're discriminatory in application.

The Rand Commission studied it and titled their study "Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money," concluding that mandatory sentences were not cost-effective, indeed much less effective than ordinary discretionary sentencing.

Mr. Chairman, every time we consider one of these—I haven't seen the letter yet, but I'm sure there's one that we can enter into the record at this point from the Judicial Conference of the United States, which has reminded us that mandatory minimums violate common sense. The idea is that if the sentence makes sense, it can be applied; if it doesn't make sense, mandatory minimums make you apply it anyway.

The late Chief Justice Rehnquist, who was not generally known to be soft on crime, stated that, and I quote, "Mandatory minimums are frequently the result of floor amendments that demonstrate emphatically that legislators want to 'get tough on crime.'"

Just as frequently, they do not involve any careful consideration of the effect they might have on the Sentencing Guidelines as a whole. Even former President Bush, while still a Member of Congress, spoke in support of a bill that would repeal mandatory minimums, declaring that, and I quote, "Contrary to what one might imagine, the bill repealing Federal mandatory minimums will result in better justice and more appropriate sentences."

Furthermore, and finally, Mr. Chairman, in this context, mandatory minimums are absolutely ridiculous. If there is anywhere we can trust judges to apply the appropriate sentence, it's when the charge is assaulting judges. I don't think they need mandatory minimum guidance to do the right thing on those kinds of charges. So I would hope that we would eliminate all of the mandatory minimums in the bill.

I yield back.

Mr. SMITH. Okay. Would the gentleman from Virginia yield?

Mr. SCOTT. I yield back.

Mr. SMITH. First of all, without objection, the letter that you mentioned from the Judicial Conference will be made a part of the record.

[The information follows:]

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
*Presiding*

LEONIDAS RALPH MECHAM
*Secretary*

September 26, 2005

Honorable F. James Sensenbrenner, Jr.
Chairman, Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

Dear Mr. Chairman:

I write to transmit the views recently adopted by the Judicial Conference of the United States regarding H.R. 3035, the "Streamlined Procedures Act of 2005" (109th Cong.). Some of these views are applicable to S. 1088, as amended by the Senate Judiciary Committee on July 28, 2005. This letter supplements the information provided to you in my letter dated July 22, 2005, in which we explained the Conference's opposition (based on previously adopted positions) to particular provisions within sections 8, 9, and 11 of H.R. 3035.

On September 20, 2005, the Judicial Conference determined to:

a. Express support for the elimination of any unwarranted delay in the fair resolution of habeas corpus petitions filed by state prisoners in the federal courts;

b. Urge that, before Congress considers additional amendments to habeas corpus procedures, analysis be undertaken to evaluate whether there is any unwarranted delay occurring in the application of current law in resolving habeas corpus petitions filed in federal courts by state prisoners and, if so, the causes for such delay;

c. Express opposition to legislation regarding federal habeas corpus petitions filed by state prisoners that has the potential to: (1) undermine the traditional role of the federal courts to hear and

decide the merits of claims arising under the Constitution; (2) impede the ability of the federal and state courts to conduct an orderly review of constitutional claims, with appropriate deference to state-court proceedings; and (3) prevent the federal courts from reaching the merits of habeas corpus petitions by adding procedural requirements that may complicate the resolution of these cases and lead to protracted litigation, including the following sections of the proposed "Streamlined Procedures Act of 2005" in the 109th Congress (H.R. 3035 as introduced and S. 1088 as amended in July 2005):

Section 2 of H.R. 3035 and S. 1088 (mixed petitions);
Section 4 of H.R. 3035 and S. 1088 (procedurally defaulted claims);
Section 5 of H.R. 3035 and S. 1088 (tolling of limitation period);
Section 6 of H.R. 3035 (harmless errors in sentencing); and
Section 9(a) of H.R. 3035 (federal review of capital cases under chapter 154 of title 28, United States Code);

d. Express opposition to section 3 (amendments to petitions) of H.R. 3035 and S. 1088 that would prohibit the federal courts from considering modifications to existing claims or the addition of new claims that meet the requirements of current law;

e. Express opposition to section 7 of H.R. 3035 and section 6 of S. 1088 that would make the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) applicable to cases pending prior to its enactment, and section 14 of H.R. 3035 and S. 1088 that would make the proposed Streamlined Procedures Act applicable to pending cases; and

f. Express opposition to the provision in section 11 of H.R. 3035 and section 10 of S. 1088 that would amend 21 U.S.C. § 848(q) to require an application for investigative, expert, or other services in connection with challenges to a capital sentence involving state or federal prisoners to be decided by a judge other than the judge presiding over the habeas corpus proceeding.

These views, which are explained in the attachment, reflect the judiciary's long-standing concern with the fair and efficient consideration of the constitutional issues that

arise in federal habeas corpus litigation. In general, the existing jurisdictional framework establishes a role for the federal courts in reviewing the constitutionality of state court criminal processes. The Conference has consistently supported providing competent counsel to habeas petitioners at all stages of post-conviction review in capital cases, and it has opposed legislation that would deprive the federal courts of their traditional role in reviewing federal constitutional claims arising originally in state criminal or post-conviction proceedings. The goal should be, as the Powell Committee Report[1] noted, to secure a meaningful presentation of the issues to the state and federal courts and then to avoid further repetitive litigation.

Over the past ten years the federal judiciary has addressed and resolved issues related to the implementation of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). That body of law, though not entirely settled, now provides guidance to the courts in resolving habeas corpus claims and attempts to strike an appropriate balance between providing a forum in which the rights of individuals with meritorious claims can be heard and the need to ensure that the criminal justice system can function without unreasonable delay in bringing finality to the process.

Proponents of the Streamlined Procedures Act have referred to particular habeas corpus capital cases initiated by state prisoners that were pending in federal courts for a lengthy period. The Judicial Conference Committee on Federal-State Jurisdiction has conducted a preliminary review of statistical data related to the handling of non-capital and capital cases in the federal courts, which is outlined in the attachment. The Conference does not believe that the data as a whole supports the need for a comprehensive overhaul of federal habeas jurisprudence. The Conference would urge Congress to undertake further analysis to evaluate whether there is any unwarranted delay and if so, the causes for such delay. The Judicial Conference is available to work with the Congress to attempt to gather such information to be used in a methodical review of the handling of such cases. The Judicial Conference remains supportive of efforts to eliminate any unwarranted delay in the fair resolution of habeas corpus petitions filed by state prisoners in the federal courts.

Much of the law related to habeas corpus (including the exhaustion and procedural default rules) seeks to ensure that the state courts will have an opportunity to consider all the federal claims in the first instance. Only after state avenues have been exhausted do the federal courts consider the federal claim, and only when the state courts have

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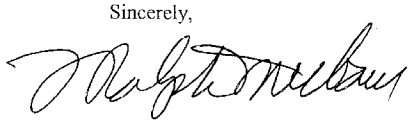
[1] 1989 Report of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases (Powell Committee Report).

committed errors in the application of federal law, or made an unreasonable determination of the facts in light of the evidence, will any relief be granted.

The proposed Streamlined Procedures Act would take a substantially different approach to federal habeas review. It attempts to expedite the processing of habeas corpus petitions by creating a stringent system of forfeitures for federal constitutional claims. Not only could it create unreasonable obstacles to resolution of such claims, but it has the potential for complicating and protracting litigation in both state and federal courts. Furthermore, because there is no federal right to counsel in state post-conviction proceedings, except for capital cases under chapter 154, these procedural requirements may prove very difficult for applicants to meet.

The judiciary's review of H.R. 3035 and S. 1088 has centered around an examination of whether the legislation would afford defendants a meaningful opportunity to adjudicate their constitutional rights in the state and federal courts, and, at the same time, provide for expeditious consideration and disposition of the issues presented in their habeas petitions. The Conference has expressed opposition to provisions it believes would interfere with those goals. Thank you for your consideration of the Judicial Conference's position regarding the Streamlined Procedures Act of 2005. If you have any questions, please feel free to contact me at 202-273-3000, or, if you prefer, you may have your staff contact Karen Kremer in the Office of Legislative Affairs at 202-502-1700.

Sincerely,



Leonidas Ralph Mecham
Secretary

Attachment: Explanation of Views

cc: Honorable John Conyers, Jr.,
Ranking Democrat, Committee on the Judiciary
Honorable Dan Lungren
Members of the Committee on the Judiciary

## EXPLANATION OF VIEWS

**Positions Adopted by the Judicial Conference of the United States[1] on September 20, 2005, Regarding the "Streamlined Procedures Act of 2005" (S. 1088, as amended by a Substitute Amendment on July 28, 2005, and H.R. 3035)**

a. **The Judicial Conference expresses support for the elimination of any unwarranted delay in the fair resolution of habeas corpus petitions filed by state prisoners in the federal courts.**

b. **The Judicial Conference urges that, before Congress considers additional amendments to habeas corpus procedures, analysis be undertaken to evaluate whether there is any unwarranted delay occurring in the application of current law in resolving habeas corpus petitions filed in federal courts by state prisoners and, if so, the causes for such delay.**

The federal judiciary supports the goal of expediting review of habeas corpus cases in the federal courts and believes that handling cases efficiently and effectively benefits litigants, victims of crime, the public, and the judicial system. It has consistently encouraged Congress to provide for procedures that will facilitate a fair resolution of claims brought by state prisoners in federal court. Such fair resolution encompasses the notion that petitioners will be provided a meaningful opportunity to adjudicate their constitutional rights in the state, as well as federal courts.

To examine recent assertions that there are widespread delays in the processing of habeas corpus petitions in the federal courts, the judiciary reviewed information compiled by the Statistics Division of the Administrative Office of the U.S. Courts (AO). In fiscal year 2004,[2] there were 18,432 non-capital habeas corpus petitions filed by state prisoners in U.S. district courts, and 6,774 in the U.S. courts of appeals. The total number of terminations for 2004 revealed that the federal courts are terminating nearly as many non-capital habeas corpus petitions from state prisoners as are filed annually.

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[1]On July 13, 2005, the Judicial Conference sent a letter to members of the Senate Judiciary Committee stating its opposition to certain provisions in sections 8, 9, and 11 of S. 1088, as introduced, based on previously adopted Conference positions. On July 22, 2005, the Judicial Conference sent a similar letter to members of the House Judiciary Committee on H.R. 3035.

[2]Statistical records of the Administrative Office of the U.S. Courts are based on a fiscal year ending September 30 of each year.

The median time from filing to disposition for state non-capital habeas corpus cases in the district courts has remained relatively constant since 1998, and in 2004 was six months. In the courts of appeals, the median time from filing of notice of the appeal to disposition of state non-capital habeas corpus appeals also remained relatively stable between 1998 to 2004, ranging from 10 to 12 months. Thus, the statistics appear to indicate that the district and appellate courts are handling non-capital habeas corpus petitions originating from state prisoners expeditiously.

With respect to capital habeas corpus petitions originating from state prisoners, the statistics indicate that the number of these cases pending in the federal district courts has been growing. From 1998 to 2002, more state capital habeas corpus cases were filed in the district courts than were concluded. As a result, the number of state capital habeas corpus cases pending increased from 466 at the end of 1998 to 721 at the end of 2002. In 2003 and 2004, the number of state capital habeas corpus cases terminated by district courts nearly equaled the number of cases filed, so the growth in the pending caseload has slowed and was 732 at the end of 2004.

In addition to increases in the number of pending state capital habeas corpus cases in the district courts, the pending and disposition times for these cases have increased. The percentage of state capital habeas corpus cases pending more than three years rose from 20.2 percent at the end of 1998 to 46.2 percent at the end of 2004. The median time from filing to disposition for state capital habeas corpus cases was 13 months in 1998, rose to 24.5 months in 2001, fell to 20 months in 2003, and rose again in 2004 to 25.3 months.

Looking at the entire civil docket, 12.6 percent of all civil cases in 2004 were pending in the federal district courts three years or more. Even though state prisoner habeas corpus proceedings comprised 6.6 percent of all civil cases filed in 2004, they amounted to only approximately 3 percent of civil cases pending for three years or more. Capital habeas corpus cases filed by state prisoners comprised slightly less than one percent (0.97) of civil cases pending three years or more.

In the courts of appeals, the number of terminations of state capital habeas corpus cases generally kept pace with the number of filings of these cases between 1998 and 2000. Beginning in 2001, however, the number of state capital habeas corpus cases terminated in the courts of appeals was generally lower than the number filed, resulting in increases in the number of these cases that are pending. From the end of 1998 to the end of 2004, pending state capital habeas corpus cases rose from 185 to 284.

The median time from filing of notice of the appeal to disposition for state capital habeas corpus appeals ranged from 10 to 13 months between 1998 and 2000. The median time from filing of notice to disposition for these cases increased to 15.5 months in 2001, dropped to 13 months in 2003, and rose in 2004 to 15 months. In addition, state capital habeas corpus appeals that were pending in the courts of appeals three years or more increased from 5 (2.7 percent of all pending state capital habeas corpus cases) at the end of 1998 to 36 (12.7 percent of all pending state capital habeas corpus cases ) at the end of 2004.

The statistical information currently available from the AO does not support a finding of undue delay overall with respect to the processing of non-capital cases. With respect to capital cases, the statistics indicate that the median time from filing to disposition has increased in both the federal trial and appellate courts, and that the number of capital cases pending for three years or more has also increased. However, without further information, the judiciary is unable to draw a definitive conclusion as to the causes for these increases or to reach the conclusion that these time frames are unreasonable in light of the complexity of capital federal habeas corpus jurisprudence.

Additional study on this point should be undertaken before legislation is pursued that would further alter habeas corpus practice and procedure. The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) at their joint annual meeting held July 30-August 3, 2005, adopted a resolution similarly urging that additional study and analysis be undertaken to evaluate the impact of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) to date and the causes of unwarranted delay, if any. The CCJ and COSCA also supported delaying further action on amending AEDPA or otherwise changing the existing statutes affecting the filing and processing of habeas corpus petitions in the federal courts as contemplated in H.R. 3035 and S. 1088.

Thus, before Congress moves forward, analysis should first be conducted regarding the impact of AEDPA on the handling of habeas corpus cases, particularly capital habeas corpus cases, and the factors that may affect the length of time required to process a habeas corpus case in the federal courts. Such analysis could be undertaken by Congress, the federal judiciary, or a combination thereof. Should systemic problems be identified, the judiciary would be willing to work with Congress in seeking solutions to ensure the effective and expeditious administration of justice.

c. **The Judicial Conference expresses opposition to legislation regarding federal habeas corpus petitions filed by state prisoners that has the potential to: (1) undermine the traditional role of the federal courts to hear and decide the merits of claims arising under the Constitution; (2) impede the ability of the federal and state courts to conduct an orderly review of constitutional claims, with appropriate deference to state-court proceedings; and (3) prevent the federal courts from reaching the merits of habeas corpus petitions by adding procedural requirements that may complicate the resolution of these cases and lead to protracted litigation, including the following sections of the proposed "Streamlined Procedures Act of 2005" in the 109th Congress (H.R. 3035 as introduced and S. 1088 as amended in July 2005):**

**Section 2 of H.R. 3035 and S. 1088 (mixed petitions);**
**Section 4 of H.R. 3035 and S. 1088 (procedurally defaulted claims);**
**Section 5 of H.R. 3035 and S. 1088 (tolling of limitation period);**
**Section 6 of H.R. 3035 (harmless errors in sentencing); and**
**Section 9(a) of H.R. 3035 (federal review of capital cases under chapter 154 of title 28, United States Code).**
**[*Note: each section is discussed infra.*]**

**Section 2 of H.R. 3035 and S. 1088 (mixed petitions)**
***Current Law***

Under current law, a petitioner is required to exhaust specific federal claims in the state courts, either on direct review or in the state post-conviction proceedings.[3] A failure to comply with this requirement generally would preclude federal review of the claim. Failure to exhaust a claim in state court may be excused, however, in cases where the state offers no corrective process or where that process would not provide an effective remedy for the petitioner's claim. *See* 28 U.S.C. § 2254(b)(1)(B)(i) and (ii).[4]

In addition, current law provides a procedure for judicial consideration of mixed petitions, meaning petitions that include claims that have been fully presented to the state courts (exhausted claims) and those that have not (unexhausted claims). The mixed-petition issue first arose before AEDPA was enacted, when the Supreme Court adopted

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[3]*See* Baldwin v. Reese, 541 U.S. 27 (2004) (requiring the habeas corpus petitioner to specifically identify the federal law underpinning a claim of ineffective assistance of appellate counsel).

[4]*See also* Lynce v. Mathis, 519 U.S. 433, 436 n.4 (1997) (excusing the failure to exhaust an *ex post facto* claim, noting that the state supreme court had previously rejected such claims and there was no reason for the petitioner to expect that the court would decide petitioner's claim differently).

the complete-exhaustion rule of *Rose v. Lundy*, 455 U.S. 509 (1982). Under that rule, federal courts dismissed mixed petitions without prejudice. The decision assumed that, following dismissal, the state prisoner would return to state court to exhaust available state remedies and then refile his or her federal habeas corpus petition containing only exhausted claims.

AEDPA amended the federal habeas corpus process in significant ways, notably by imposing a statute of limitations for all habeas corpus petitioners. Under AEDPA, state prisoners are given one year to file their federal habeas corpus petitions following the completion of direct review. *See* 28 U.S.C. § 2244(d). This period is tolled once the petition for state post-conviction relief is properly filed and while it remains pending. *See* 28 U.S.C. § 2244(d)(2).

The adoption of the time limits in AEDPA and the complete-exhaustion rule of *Rose v. Lundy* interacted to present a problem for habeas corpus petitioners. If the federal courts dismissed a mixed petition, as required by *Rose,* then the state prisoner could exhaust claims by submitting them to state court. But the dismissal meant that the federal habeas corpus prisoner could no longer rely upon his earlier federal habeas corpus filing date to satisfy the one-year limitation period. Instead, the federal petitioner would have to refile in federal court following exhaustion, which in some cases could present a timeliness issue for petitioners.

The lower federal courts developed a variety of approaches to the resulting problems of potential unfairness, prompting the Supreme Court to resolve the issue as recently as the last term. In *Rhines v. Weber*, 125 S. Ct. 1528 (2005), the Court ruled that the district court may, in appropriate cases, stay proceedings on a mixed petition in order to preserve the petitioner's filing date. Such a stay would enable the petitioner to exhaust state remedies in state court and return, if necessary, to federal court to pursue the now fully exhausted petition. But while it recognized the importance of a stay option, the Court also required some scrutiny of the unexhausted claims. Only where the petitioner could show good cause for the failure to exhaust, where the unexhausted claims met a standard of "potentially meritorious," and where the petitioner had not engaged in any intentionally dilatory litigation tactics would the Court permit the stay to issue. *See id.* at 1535.

***Proposed Changes***

Section 2 of H.R. 3035 and S. 1088 would amend 28 U.S.C. § 2254 in three respects. First, it would require petitioners to fairly present and argue the specific basis for each claim in state court and describe in the federal habeas corpus petition how each claim was exhausted in state court.

Second, it would require the dismissal with prejudice of any unexhausted claim, unless that claim would qualify for consideration on the grounds set forth in existing provisions of 28 U.S.C. § 2254(e)(2). That provision establishes standards that limit the authority of federal courts to hold evidentiary hearings on claims the petitioner failed to develop factually in state court. Thus, section 2254(e)(2) now applies to a narrow subset of habeas claims. The Streamlined Procedures Act would apply these standards to a much broader range of habeas claims. The apparent goal of the Streamlined Procedures Act is to enable the district court to determine the merits of the petition consisting of exhausted claims immediately, without the possibility of a stay during which the petitioner could return to state court to litigate unexhausted claims.

The standards set forth in section 2254(e)(2) are as follows:

- As to legal claims, section 2254(e)(2) requires the petitioner to show that the constitutional right at issue is a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court. This defines a very small universe of possible legal claims. The Supreme Court has only rarely concluded that new rules of substantive constitutional law apply retroactively to habeas corpus petitioners (such as the Court's decision barring the execution of juvenile offenders), and it is extremely unlikely to make any procedural rule retroactively applicable to habeas corpus petitioners. By adopting the standard of "new rules" made retroactively applicable, the Streamlined Procedures Act would eliminate review of virtually all unexhausted legal claims.

- As to factual claims, section 2254(e)(2) requires the petitioner to show that he or she could not have discovered the predicate for the factual claim in the exercise of reasonable diligence, and show, by clear and convincing evidence, that no reasonable fact finder would have found the petitioner guilty of the underlying offense, before he could secure review of unexhausted claims. Absent DNA evidence, this standard will likely foreclose many unexhausted claims.

The Streamlined Procedures Act adds an additional requirement as to both legal and factual claims that the denial of relief in the habeas corpus proceeding would be contrary to or involve an unreasonable application of clearly established federal law as determined by the Supreme Court.

Third, section 2 of both bills makes a significant change in the legal standard for exhaustion of state remedies by deleting the language in current law that excuses a failure to exhaust in circumstances where the state offers no corrective process or where that process would not actually provide an effective remedy for the petitioner's claims.

*Commentary*

Because the Supreme Court has recently addressed this issue, section 2 of the Streamlined Procedures Act is unnecessary. Instead of facilitating submission of unexhausted claims for consideration by the state courts, section 2 would severely restrict federal review of such claims. This approach differs significantly from that adopted by the Supreme Court in *Rhines*, which would permit a court to stay a mixed petition if the petitioner shows good cause for the failure to exhaust, where the unexhausted claim is potentially meritorious, and where the petitioner has not engaged in any dilatory tactics. The legislation would undermine a system that currently respects state court processes by permitting the states to correct any errors, while at the same time preserving a federal forum for the review of meritorious constitutional claims. The federal courts may also be prevented from providing relief even in situations where the state offers no corrective process.

If the legislation were enacted, petitioners would run the risk of forfeiture if they failed to assert claims that had little prospect of success in state court but had not yet been considered in federal court. Apart from the risk of forfeiture, this more demanding exhaustion standard would likely broaden the range of claims presented to state courts, and make the process more difficult for petitioners, particularly those without counsel, as they attempt to comply with the rigorous pleading requirements.

**Section 4 of H.R. 3035 and S. 1088 (procedurally defaulted claims)**

***Current Law***

In general, procedural defaults occur when the state prisoner or his or her lawyer fail to raise and properly argue defenses to the imposition of criminal liability. When defaults occur, the state will argue that the petitioner has procedurally defaulted the claim (including any federal constitutional claim) and that the state court should, therefore, decline to review the claim.

State courts take a variety of approaches to the problem of procedural defaults, depending on the importance of the procedural rule and the nature and strength of the federal claim. In some cases, state courts may require strict adherence to the procedural rule and foreclose consideration of a federal claim. In other cases, where the state perceives the procedural rule to be of somewhat less significance and where the federal claim may have some merit, the state court may couple its consideration of the procedural issue with some consideration of the federal claim. States might, for example, enforce a default and then consider the federal claim only for the purpose of preventing a miscarriage of justice or to address potentially serious constitutional claims. In some cases, the state might forgive the default altogether.

Under current law, a federal court cannot reach the merits of a claim if the petitioner failed to comply with a state procedural rule that is "adequate and independent,"[5] unless the petitioner can show "cause and prejudice" for the default, or make a showing of actual innocence. *See Wainwright v. Sykes,* 433 U.S. 72 (1977); *see also Murray v. Carrier,* 477 U.S. 478 (1986). Under the cause-and-prejudice standard, a petitioner must show a valid reason for the failure to comply with the state rule, and must show that the resulting prejudice was substantial. Thus, the exceptions that would permit federal courts to review a claim that was procedurally defaulted at the state level are already very narrow.

The Supreme Court has treated ineffective assistance of counsel as "cause" for relief from the default of claims at an earlier stage of the process. State defendants have a right under the Sixth Amendment to constitutionally effective lawyers at trial and on direct review; if the state fails to provide such lawyers, it has violated the defendant's constitutional rights. Such failures, in turn, relieve the state prisoner from the procedural defaults that the ineffective lawyer may have committed during the course of the proceeding. Ineffective assistance of counsel claims frequently appear in federal habeas corpus petitions because they provide a basis for reopening any procedural defaults that may have occurred at earlier stages.[6]

***Proposed Changes***

Section 4 of H.R. 3035 and S. 1088 would amend 28 U.S.C. § 2254 to add a new subsection 2254(h)(1)-(5) to:

- Prohibit federal courts from considering a claim that a state court previously refused to consider on the basis of some procedural error committed by the prisoner or his lawyer in state court, unless the defaulted claim would qualify for

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[5]In order for a procedural default in state court to bar federal court review, that state rule must be "adequate," meaning that it is sufficient to uphold the judgment of the state court, and it must be "independent,"which means that the rule must not depend on the court's view of the merits of the federal claim.

[6]The Supreme Court has long held that the right to counsel attaches at trial and to the first appeal as of right. *See* Gideon v. Wainwright, 372 U.S. 335 (1963) (trial); Murray v. Giarrantano, 492 U.S. 1, 7 (1989) (first appeal of right in state court). While the Court has not extended the right to counsel to state post-conviction proceedings, *see* Coleman v. Thompson, 501 U.S. 722 (1991), it has specifically reserved the question whether counsel may be required in circumstances where state post-conviction proceedings provide the first realistic opportunity to challenge a conviction. *Id.* at 755. The most clear-cut example of such a first-opportunity claim would be in a case involving a claim that counsel at trial and on direct appeal were constitutionally ineffective.

consideration under section 2254(e)(2).[7] This is the same standard that would govern federal court review of unexhausted claims under the Streamlined Procedures Act.

- Prohibit federal courts from considering a claim when the state court both reached the merits of the claim and treated it as barred under a procedural rule, unless the claim would qualify for consideration under section 2254(e)(2). Today, such alternative grounds of decision may not necessarily bar federal review of the merits because the state court did not actually treat the default as a bar to review.[8]

- Prohibit federal courts from considering a claim when the state court found a procedural default but also reviewed the merits of the claim for plain or fundamental error, unless the claim meets the standards of 2254(e)(2). S. 1088 substitutes the term "miscarriage of justice" for "plain error." Today, federal courts might treat the determination of the merits as forgiving the procedural default, and might themselves reach the merits.

In addition, a federal court would not be permitted to grant relief unless it also found that denial of relief would be contrary to, or would involve an unreasonable application of, clearly established federal law as determined by the Supreme Court. Section 4 of H.R. 3035 would also prohibit federal court review of ineffective assistance of counsel claims related to the procedurally defaulted claims, unless the ineffective assistance of counsel claim also met the standards of section 2254(e)(2). S. 1088 does not include similar language.[9]

Section 4 of H.R. 3035 and S. 1088 would also amend subsection 2244(d)(2), which provides that the one-year filing period shall be tolled during the time a state post-

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[7]Section 4 would also permit federal courts to hear a procedurally defaulted claim if the state, through counsel, expressly waives the provisions of proposed new subsection 2254(h)(1).

[8]In the Ninth Circuit, for example, if the alternative state and federal grounds are "interwoven" in the state-court ruling, the federal court may reach the merits. *See* Siripongs v. Calderon, 35 F.3d 1308, 1317 (9th Cir. 1994), *cert. denied*, 513 U.S. 1183 (1995). If, on the other hand, the state and federal grounds are clearly independent and represent alternative bases for the ruling, the federal court is barred from reaching the merits. *See* Loveland v. Hatcher, 231 F.3d 640, 643-44 (9th Cir. 2000).

[9]S. 1088 as introduced was identical to H.R. 3035 in this respect. The Substitute Amendment deleted the language "or any claim of ineffective assistance of counsel related to such claim," from proposed new subsections 2254(h)(1) and 2254(h)(2)(A).

conviction petition is "properly filed."[10] Section 4 would add language to this subsection providing that an application that was otherwise improperly filed in state court shall not be deemed to have been properly filed because the state court exercised discretion in applying a rule or recognized exceptions to that rule. Although the full effect of this provision is unclear, concerns have been raised that this section would tighten the standard under which a federal court could consider a state petition as having been properly filed for purposes of tolling the one-year period.

*Commentary*

Section 4 of both H.R. 3035 and S. 1088 would substitute a new-rule-of-constitutional-law or actual-innocence standard for the carefully crafted standard of cause and prejudice established by the Supreme Court in *Wainwright*, the standard which currently serves as an effective gatekeeper to limit federal court review of constitutional claims that were treated by the state courts as procedurally defaulted. Federal courts would even be precluded from reviewing claims that the state court itself had reviewed on the merits for plain error (H.R. 3035) or a miscarriage of justice (S. 1088), though such claims could have been barred by state procedural rules. H.R. 3035 goes even further, prohibiting the federal courts from considering ineffective-assistance-of-counsel claims arising in connection with the procedurally defaulted claim, unless they also met the new-rule or actual-innocence standards. The current version of S. 1088 would not preclude a petitioner from raising an ineffective assistance of counsel claim in the federal habeas corpus petition that is related to a constitutional claim that has itself been procedurally defaulted. Nevertheless, the provisions of section 4 in both bills may undermine the ability of the federal courts to consider meritorious constitutional claims.

**Section 5 of H.R. 3035 and S. 1088 (tolling of limitation period)**

*Current Law*

Current law (28 U.S.C. § 2244) tolls the one-year period for filing a federal habeas corpus petition while a properly filed application for state post-conviction relief is pending (the one-year period does not begin to run until the conclusion of direct review). Today, petitioners often present some federal claims to state courts on direct review and a different set of federal claims on state post-conviction review. Both sets of claims will be viewed as exhausted and as ripe for presentation to a federal habeas corpus court when state post-conviction review ends, and the limitation period for filing the federal habeas

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[10] *See* Artuz v. Bennett, 531 U.S. 4 (2000) (treating state petition, even one that contained some procedurally defaulted claims, as properly filed for tolling purposes if directed to the right court at the right time) *see also* Pace v. DiGuglielmo, 125 S. Ct. 1807 (2005) (ruling that an untimely state post-conviction petition did not qualify as properly filed for purposes of tolling the federal limitations period).

corpus petition would be satisfied as to all federal claims, including both those that were exhausted on direct review and those that were exhausted in state collateral proceedings.

The Supreme Court in *Carey v. Saffold*, 536 U.S. 214 (2002), held that tolling should apply to the entire time the petitioner pursues state-court post-conviction relief, from the date of the initial filing in a trial court to the date of the final disposition by the final appellate body. If there are any gaps in the time that a petition is pending before a state court, those gaps are not counted against the one-year period, as long as the petitioner meets the state filing deadlines. Thus, if the state prisoner waits 30 days between the dismissal of his claims at trial and the submission of his timely state appeal, that period would not be counted against the prisoner's one-year deadline for filing a federal habeas claim.

In addition, 28 U.S.C. § 2244(d)(2) provides for the tolling of the limitation period during the pendency of state post-conviction proceedings that seek review of the "pertinent judgment or claim." In *Tillema v. Long*, 253 F.3d 494 (9th Cir. 2001), the Ninth Circuit ruled that this language entitled a federal habeas corpus petitioner to the benefit of the tolling provision by filing state post-conviction claims that challenged the state court's judgment of conviction. Such tolling was made available even where the petitioner did not present any federal claims to the state post-conviction court. The Ninth Circuit reasoned that an attack on the state "judgment" of conviction was sufficient to trigger the tolling provision, even though no federal claims were presented to the state post-conviction court. Thus, a prisoner who has already challenged his conviction as part of direct review, thereby exhausting this claim, does not run the risk that the one-year period will expire while he submits additional claims as part of the state post-conviction proceeding. Since *Tillema*, all the federal circuits that have addressed this issue have expressed agreement with its interpretation.[11]

Finally, current statutory law provides for the reopening of the limitation period to take account of a narrow range of changes in circumstances that might require habeas corpus review. *See* 28 U.S.C. § 2244(d)(1)(C), (D). Such an example might be if the petitioner discovers new evidence that would entitle him to relief or gains the benefit of a newly recognized constitutional right that the Supreme Court has made retroactively applicable to prisoners in the petitioner's situation. Current law also reopens the limitation period upon the removal of any unconstitutional impediment to the petitioner's ability to file a federal habeas corpus petition. *See* 28 U.S.C. § 2244(d)(1)(B). In

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[11] *See* Cowherd v. Million, 380 F.3d 909 (6th Cir. 2004) (collecting cases).

addition, the courts have developed a range of non-statutory bases for tolling the one-year limit based on general equitable principles.[12]

***Proposed Changes***

Section 5 of H.R. 3035 and S. 1088 would tighten the existing time limits for filing in three respects. First, it would charge the petitioner with any time that runs when no proceeding is actually pending in state court. Second, it would strike the words "judgment or" from section 2244(d)(2) so that tolling would apply only on a claim-by-claim basis to the claims actually presented in the state post-conviction proceeding. Third, section 5 would bar the federal courts from developing alternative bases for the equitable tolling of the one-year limitation period.

***Commentary***

Section 5 in both bills would overturn *Saffold* by charging the petitioner with any time that runs when no proceeding is actually pending in state court.[13] The provision striking the reference to "judgment" in section 2244(d)(2) apparently seeks to prevent a habeas corpus petitioner from gaining the benefit of tolling in cases where no federal claims have been presented to the state post-conviction court. Yet the amendment could have a much more far-reaching impact on the process of state and federal post-conviction review. Following the change in law that would occur if section 5 were enacted, tolling would no longer be available except as to "claims" that were actually presented to the state post-conviction court. This would result in significant collateral litigation on whether the claims had been properly raised, and the section would have the effect of barring claims from federal review that were not raised in the state post-conviction proceeding.

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[12]*See* Calderon v. U.S. District Court, 163 F.3d 530 (9th Cir. 1998) (tolling the limitation period on the ground that mental incapacity may have prevented the petitioner from participating in the preparation of a habeas corpus petition); *see generally* Randy Hertz & James S. Liebman, Vol. I *Federal Habeas Corpus Practice and Procedure* 239-46 (4th ed. 2001) (collecting cases in which the federal courts have expressed willingness to consider equitable tolling in cases involving judicial delay, government interference, omissions by prisoner's counsel, mental incompetence, a lack of notice of filing deadlines, and in cases of actual innocence). *Cf.* Pace v. DiGugliemo, 125 S. Ct. 1807, 1814 n.8 (2005) (leaving open the question of whether equitable exceptions apply under AEDPA).

[13]As was explained in *Saffold,* there are differences among the post-conviction procedures in various states. For example, in most states, a petitioner unsuccessful in a lower state court appeals to a higher state appellate court, while in California, an unsuccessful state petitioner files a new petition in a higher state court. It is not completely clear from the language of section 5 exactly which state systems would be affected and what the effects would be. In this respect, section 5 would add uncertainty to the functioning of the AEDPA statute of limitations.

Some petitioners might be prohibited from raising substantial claims, previously exhausted on direct review, as a result of the change of the tolling rules. Others might seek to avoid the time bar by submitting all of their federal habeas claims to the state post-conviction court, even though many such claims would have been previously (and quite recently) presented to and rejected by the state court on direct review.[14] State courts might justifiably be concerned that the alteration of federal timeliness rules would have the effect of requiring petitioners to file a series of duplicative federal claims in state court, thereby overburdening the state post-conviction review systems. Moreover, if states have strict rules as to the form and substance of post-conviction petitions, prisoners may be forced to eliminate valid claims in order to comply with these rules. For example, some states place strict page limitations on petitions filed in the state post-conviction proceeding.

Finally, by abrogating all equitable tolling by the federal courts, section 5 would limit tolling to the narrow list of considerations that appears in AEDPA. As discussed earlier, the statute reopens the limitation period only for a narrow range of cases, including a change in circumstances or where the state took action to create an impediment to the timely filing of the claim but only if it rose to the level of a constitutional violation. Although the apparent goal of this change is to encourage petitioners to act promptly in presenting their claims, petitioners may not have counsel or may suffer from mental or physical disabilities and face other constraints that make timely filing impossible. Equitable tolling now provides a framework for determining issues of fundamental fairness that avoids unnecessary and time-consuming constitutional litigation. As narrowly tailored in recent decisions of the Supreme Court, the doctrine protects the process from strategic behavior and dilatory tactics. *See, e.g., Pace v. DiGugliemo*, 125 S. Ct. 1807 (2005) (even if applicable, the doctrine of equitable tolling would apply only where petitioner diligently pursued claims).

The strict tolling rules in section 5 could result in a forfeiture of constitutional claims. Section 5 would also burden and complicate state post-conviction proceedings. Moreover, the proposed amendment could prompt petitioners to file federal petitions while still pursuing state habeas corpus appeals in order to avoid the one-year limitations period. It could also increase the number of federal petitions and require the federal court

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[14]One might argue that federal habeas corpus petitioners could avoid the temporal problems caused by the proposed change by splitting their habeas corpus cause of action in order to present their previously exhausted direct review claims to a federal court while they pursue their other federal claims in a state post-conviction proceeding. But such splitting will not work under current law, which bars the submission of a second or successive petition except in exceptional circumstances. *See* 28 U.S.C. § 2244(b)(2).

either to rule without the benefit of the decision of the highest state court or to dismiss the petition because the petitioner had not fully exhausted state remedies.

**Section 6 of H.R. 3035 (harmless errors in sentencing)**
***Current Law***

At present, federal courts in habeas corpus cases conduct harmless error analysis under the guidance of the Supreme Court's decision in *Brecht v. Abrahamson*, 507 U.S. 619 (1993), which requires the federal court to examine the trial of the case and determine whether the constitutional error "had substantial and injurious effect or influence in determining the jury's verdict." This harmless error inquiry comes after the federal court has found a constitutional error was committed and assesses whether that error affected the decision at trial. AEDPA did not include any provisions dealing with harmless error, thereby apparently leaving the *Brecht* standard in place as the measure of harmless error.

The Supreme Court in *Arizona v. Fulminante*, 499 U.S. 279 (1991), distinguished structural errors from "trial type" errors. Under *Fulminante*, a structural error was defined as one "affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." *Id.* at 310. As to structural errors, no harmless error analysis is required. The Supreme Court has recognized the following errors as structural: deprivation of the right to counsel at trial; a judge who was not impartial; unlawful exclusion of members of the defendant's race from a grand jury; the right to self-representation at trial; and the right to a public trial.[15] The Supreme Court has also determined that denial of the right to a jury verdict of guilt beyond a reasonable doubt is a structural error. *See Sullivan v. Louisiana*, 508 U.S. 275 (1993).

***Proposed Changes***

Section 6 of H.R. 3035 would add a new subsection (k) to 28 U.S.C. § 2254 that would prohibit a federal court from considering an application with respect to an error related to the applicant's sentence or sentencing that was found to be harmless or not prejudicial in the state-court proceedings. The federal court could grant relief only if the error were "structural," as determined by the Supreme Court. Although S. 1088, as introduced, included an identical section, the Substitute Amendment deleted this section.

Under current law, federal courts must weigh errors in the sentencing phase of a state capital proceeding to determine whether the error had a substantial injurious impact on the decision of the judge or jury. Wrongful admission of prejudicial evidence or argument by the prosecutor may raise such impact issues, as may the failure of defense

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[15] *See* Arizona v. Fulminante, 499 U.S. at 310. *See also* Campbell v. Rice, 408 F.3d 1166 (9th Cir. 2005).

counsel to introduce mitigating evidence. Under the new standard proposed in section 6, a state-court determination of the harmlessness of such an error would foreclose federal judicial review entirely.

*Commentary*

While AEDPA put in place a structure that provides deference to state-court processes by requiring claims to be exhausted and giving deference to state factual and legal determinations, the federal courts nonetheless retain jurisdiction in the habeas corpus proceeding to ensure that federal constitutional rights are protected. Section 6 of H.R. 3035 would effectively eliminate federal jurisdiction to examine many non-structural claims directed toward the constitutionality of a sentence, when the state court finds harmless error. If the state court determines that the constitutional sentencing error appeared "harmless" or "not prejudicial," the federal courts could not review the sentence, even to examine whether or not the conclusion reached by the state was manifestly incorrect. The only exception would be for errors deemed "structural" by the Supreme Court. It is important for the federal courts to be available to review possible errors in sentencing, particularly in capital cases where sentencing errors take on greater significance.

**Section 9(a) of H.R. 3035 (federal review of capital cases under chapter 154 of title 28, United States Code)**

***Current Law***

Chapter 154 of title 28, United States Code, establishes special expedited habeas corpus procedures for capital cases (sections 2261-2266). This chapter was added by AEDPA, and in part, is based on the recommendations of the 1989 *Report of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases* (Powell Committee Report). States may "opt-in" and take advantage of certain features of AEDPA by establishing a system for providing competent counsel to indigent defendants in capital cases in state post-conviction proceedings. Those special procedures would: (1) require a federal court to issue a final judgment on a habeas corpus petition not later than 180 days after the date on which the application is filed; (2) limit federal review of claims in such cases; (3) prohibit amendments to an application for habeas corpus relief after the filing of an answer to the application unless the amendment meets the grounds for claims under section 2244(b), which provides standards for the filing of a second or successive petition; and (4) provide certain tolling rules. Under current law, federal courts have the responsibility for determining whether a state has established a qualifying system for

providing competent counsel in state post-conviction proceedings, thereby permitting that state to "opt-in" to the special procedures.

With respect to federal court review of claims in capital cases qualifying for the special procedures under chapter 154, a federal court may consider only a claim or claims that have been raised and decided on the merits in the state court and must apply to those claims the same standards that govern habeas corpus cases generally under section 2254. If the petitioner raises a new claim not previously heard by the state court, section 2264 imposes restrictions on the availability of review. A federal court may review such a claim only if the failure to raise the claim was the result of state action in violation of the Constitution, the result of the Supreme Court's recognition of a new federal right that is made retroactively applicable, or based on a factual predicate that could not have been discovered by due diligence in time to raise the claim in state or federal post-conviction review. The provisions thus offer states an opportunity to streamline the habeas corpus review process if the quality of legal representation is improved at the state post-conviction stage of the process.

***Proposed Changes***

Section 9 of H.R. 3035 would shift the authority for determining whether a state has established a qualifying mechanism for providing competent counsel to the U.S. Attorney General, with limited review of the Attorney General's determination in the U.S. Court of Appeals for the District of Columbia Circuit.[16] In addition, it would replace existing section 2264 (related to the scope of federal review of such capital cases) with a new standard of review. Subsection (a) would prohibit federal courts from reviewing claims in capital cases falling within chapter 154 unless the petitioner shows that the claim relies on a new rule of constitutional law that the Supreme Court has made retroactively available to cases on collateral review, or a claim of factual innocence that would clearly convince a reasonable fact finder that the prisoner was not guilty of the underlying offense. It would also require a federal court to find that denial of relief would be contrary to, or involve an unreasonable application of, clearly established federal law as determined by the Supreme Court.

Section 8(a) of S. 1088, as amended, provides that any claim brought under section 2264 must meet the standards relating to such actions under chapter 153 of title 28.

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[16]Section 9 of H.R. 3035, as well as section 8 of S. 1088, would amend 28 U.S.C. § 2266(b)(1)(A) added by AEDPA to extend the time for a federal district court to decide a capital case under chapter 154, discussed *supra*, from the existing requirement of 180 days (6 months) after the application is filed to a requirement of 450 days (15 months) after filing, or 60 days after the date on which the case is submitted for decision, whichever is earlier. The reference to 60 days from submission may limit the actual decision time available to district court judges.

These include the standards relating to deference to state court legal and factual determinations, the review of unexhausted or procedurally defaulted claims, the holding of evidentiary hearings, and the ordering of DNA testing (as provided in section 13 of S. 1088 adding a new subsection 2254(e)(3) related to DNA testing). S. 1088 also includes the requirement that relief may not be granted unless the denial of such relief would be contrary to, or result in an unreasonable application of, clearly established federal law as determined by the Supreme Court.

*Commentary*

In contrast to current law, H.R. 3035 would make no provision for the regular review of the constitutional claims that the petitioner presented to a qualifying state-court system in a capital case. Rather, it would deprive the federal courts of jurisdiction to pass on any such claim, so long as the state system had been certified as one that provides competent counsel. The only exception would be for claims that would qualify for consideration under a very demanding actual-innocence standard or claims that rely on a new rule of constitutional law made retroactively applicable by the Supreme Court. Thus, even if the petitioner fully exhausts the claim at the state level and the claim is not procedurally barred, a federal court could not ordinarily consider the claim. Section 9(a) of H.R. 3035 goes well beyond current law in narrowing the availability of habeas corpus review in capital cases under chapter 154, thereby causing a severe restriction on federal court review of claims in capital cases.

S. 1088 would provide for federal court review of capital cases under chapter 154 in accordance with the standards of chapter 153. It should be noted, however, that other provisions of S. 1088 would substantially amend those chapter 153 standards. Because the Conference has already commented on those proposed amendments to chapter 153, it did not take a position on section 8(a) of S. 1088.

**d. The Judicial Conference expresses opposition to section 3 (amendments to petitions) of H.R. 3035 and S. 1088 that would prohibit the federal courts from considering modifications to existing claims or the addition of new claims that meet the requirements of current law.**

*Current Law*

In *Mayle v. Felix*, 125 S. Ct. 2562 (2005), the Supreme Court determined that in habeas corpus proceedings timeliness rules require a more particularized conception of what constitutes an "occurrence" for purposes of permitting new or modified claims to "relate back" to the date of the original pleading in order to comply with the one-year time deadline. In *Mayle*, the habeas corpus petitioner in a timely filed petition set forth a claim (under the Confrontation Clause of the Sixth Amendment) relating to the admission

of videotaped statements of witnesses against him. After the one-year time limit expired and after the district court appointed counsel to represent the petitioner, the petitioner sought to amend the complaint to raise an additional challenge (under the Fifth Amendment's rule against self-incrimination) to the admission of his own pre-trial statements. The petitioner argued that the new claim (self-incrimination) related back under Federal Rule of Civil Procedure 15(c) to the timely filing date of the old claim (confrontation).

The Court rejected the argument, adopting a fairly narrow construction of when a habeas claim will be viewed as arising from the same transaction or occurrence within the meaning of Rule 15(c) for relation-back purposes. The Court ruled that the relevant transaction or occurrence was the specific confrontation-clause claim that appeared in the initial petition. Only where the additional claim arose from that specific occurrence would relation-back be appropriate. New claims, such as the petitioner's self-incrimination claim, that rest upon facts that differ "both in time and type" from the initial claim, would not be entitled to relation-back treatment. The Court's decision in *Mayle* requires petitioners to state all of their claims in their initial habeas corpus petition; new claims added by amendment after the one-year period would be barred unless they meet the same "time and type" test for relation back.

***Proposed Changes***

Section 3 of H.R. 3035 and S. 1088 would extend this rule of timeliness by further narrowing the right of habeas corpus petitioners to amend their petitions. It would amend 28 U.S.C. § 2244 to add a new subsection (c) to permit an applicant to amend a habeas corpus petition "once as a matter of course" before the state files a responsive pleading to the petition or the one-year statute of limitations expires, whichever is earlier.[17] After that time, the Streamlined Procedures Act would treat new claims or modifications to existing claims added by way of amendment as second or successive claims, and would allow the amendment only if it met the more demanding standard that applies to such claims. The standards for second or successive petitions are essentially the same standards as those set forth in section 2254(e)(2).[18]

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[17]Section 3 would also amend 28 U.S.C. § 2242 to delete the language "in the rules of procedure applicable to civil actions," substituting the procedure outlined in proposed new subsection 2244(e).

[18]28 U.S.C. § 2244(b) provides that a claim presented in a second or successive petition that was not presented in a prior application must be dismissed unless the applicant shows that the claim (1) relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, or (2) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence and 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,

*Commentary*

The Streamlined Procedures Act thus raises the hurdle for amending habeas corpus claims. Under *Mayle*, petitioners can still argue that their new claims meet the "time and type" test and qualify for relation-back. Such arguments, however, would be foreclosed by the broad prohibition against amendment specified in section 3. Section 3 would bar both amendments that present additional claims and amendments that propose to "modify existing claims." Section 3's bar to modification would appear to prevent any reformulation or extension of the claims set forth in the initial petition from qualifying as timely under the relation-back rules. It would thus establish a rule of pleading specificity distinct from the general practice in the federal courts, and it would apply that rule of specificity to claims asserted by habeas corpus petitioners who often appear pro se. It is also worth noting that by filing an early response to the petition, the state could control whether or not the petitioner would have the benefit of the full one-year period in which to amend the habeas corpus petition.

Thus, the Conference opposes section 3 to the extent it would prohibit the federal courts from considering modifications to existing claims or the addition of new claims that meet the requirements of current law. Because claims often evolve during the course of litigation, it would be particularly unfair to prevent a petitioner from modifying an existing claim unless that claim met the higher standards required by section 3. Similar restrictions on adding new claims to the petition could also foreclose meritorious claims in circumstances that might warrant federal court review.

e. **The Judicial Conference expresses opposition to section 7 of H.R. 3035 and section 6 of S. 1088 that would make the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) applicable to cases pending prior to its enactment, and section 14 of H.R. 3035 and S. 1088 that would make the proposed Streamlined Procedures Act applicable to pending cases.**

*Current Law*

In general, the Supreme Court has adopted a presumption that new legislation should apply prospectively and thus attempts to construe legislation so as to avoid retrospective changes in the legal rules. In 1997, the Supreme Court held that the amendments to chapter 153 enacted as part of AEDPA's reforms would only apply to

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no reasonable fact finder would have found the applicant guilty of the underlying offense. AEDPA established a similar requirement for amendments in cases involving indigent prisoners under sentence of death, but only in cases from states that provided indigent prisoners competent counsel in state post-conviction proceedings.

petitions filed after the effective date of the Act, April 24, 1996. *See Lindh v. Murphy*, 521 U.S. 320 (1997).

***Proposed Changes***

Section 7 of H.R. 3035 and section 6 of S. 1088 would amend section 107(c) of AEDPA by striking the reference to "Chapter 154 of title 28, United States Code (as amended by subsection (a))" and inserting "This title and the amendment made by this title". These sections appear to be intended to apply all of the provisions of AEDPA to pending habeas corpus cases, even cases that were pending prior to the passage of ADEPA in April of 1996.

Section 14 of H.R. 3035 would make the changes included in the Streamlined Procedures Act applicable to federal habeas corpus petitions already pending in the federal courts. The section would also provide that if any time limit established by the Act would run from an event that preceded the Act's enactment, the time limit would begin to run from the date of enactment.

Section 14 of S. 1088 would also make the provisions of the Streamlined Procedures Act applicable to cases pending on and after the date of enactment, *except as otherwise provided in the Act*. Section 2 of S. 1088, relating to mixed petitions, provides that the changes made by that section would apply only to *claims* filed after the date of enactment. Section 3, relating to amendments to petitions, provides that changes made by that section would apply only to *amendments* filed after the date of enactment. Section 4, relating to procedurally defaulted claims, provides that the changes made by that section would not apply to *claims on which relief was granted by a district court* prior to the date of enactment. Finally, section 5, relating to the tolling of the limitation period, provides that the changes made by that section would apply only to *applications* filed after the date of enactment. (The Senate bill also includes language similar to that included in H.R. 3035 defining the beginning date of the time limits imposed by the bill.)

***Commentary***

Both the House and Senate bills would appear to make the provisions of AEDPA applicable to habeas corpus petitions predating AEDPA's passage. Although this has been described as a relatively small universe of cases, retroactively applying AEDPA to cases that have been in the court system since before 1996 may generate additional legal challenges in these cases, thereby delaying, instead of expediting, their consideration.

In addition, section 14 of H.R. 3035 would make the provisions of the Streamlined Procedures Act applicable to pending habeas corpus petitions. This would include all of the limitations on federal court review of claims and the tolling provisions. As noted

above, section 14 of S. 1088 appears to make some of its provisions prospective only. However, because these sections would impose consequences on the petitioner for actions or omissions in cases currently pending in state court, as well as affect the rights of petitioners who have already filed a habeas corpus petition in federal court, the Senate bill still raises concerns about the application of its provisions to pending cases.

The Act's sections providing for the retroactive application of AEDPA and the provisions of the Streamlined Procedures Act to pending cases raise questions of fairness and judicial administration, and they threaten to undermine the stated goal of the legislation, which is to streamline the processing of federal habeas corpus petitions. At the end of 2004, there were 16,952 habeas corpus petitions, capital and non-capital, pending in the federal district courts. Applying the provisions of the Act to these habeas corpus petitions as proposed by H.R. 3035 and S. 1088 will only add to the burden of processing these cases through the federal courts.[19]

f. **The Judicial Conference expresses opposition to the provision in section 11 of H.R. 3035 and section 10 of S. 1088 that would amend 21 U.S.C. § 848(q) to require an application for investigative, expert, or other services in connection with challenges to a capital sentence involving state or federal prisoners to be decided by a judge other than the judge presiding over the habeas corpus proceeding.**

*Current Law*

Under 21 U.S.C.§ 848(q)(9), upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, "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." Pursuant to this provision, the judge presiding over the merits of the case may also consider the authorization of and payment for these services. The Guidelines approved by the Judicial Conference of the U.S. implementing this section indicate that these are duties of the presiding judicial officer. *See* paragraph 6.03A of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume 7, *Guide to Judiciary Policies and Procedures*.

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[19]Section 14 provides that, for time limits "establish[ed]" in the law, the relevant period shall run from the date of enactment. That prevents new time limits from applying retroactively. But the legislation's restrictions on the tolling of existing limitation periods establish no new time limits and would seemingly apply retroactively.

*Proposed Changes*

Section 11 of H.R. 3035 and section 10 of S. 1088 would amend section 408(q)(9) of the Controlled Substances Act, 21 U.S.C. § 848(q)(9), to require that an application for services other than counsel in a capital habeas corpus case be heard by a judge other than the judge presiding over the habeas corpus litigation.

*Commentary*

Although this provision may be intended, in part, to respond to concerns of government attorneys who believe that permitting defense attorneys to submit *ex parte* applications for investigative or other services potentially gives the defense an unfair advantage, it does not appear that requiring transfer of these decisions to another judge would serve the interest of sound case management. Such a requirement may prolong resolution of the case and may impede the ability of the presiding judge to move the case forward. This would be particularly true in those districts with a small number of district judges and in districts where judges are separated geographically. Thus, the provision unnecessarily restricts the discretion of the federal judge to manage his or her case, and is an unwarranted intrusion into case-management decisions of the federal courts.

**Comments on Section 12 of H.R. 3035 and Section 11 of S. 1088**

Although the Judicial Conference did not take a position with respect to section 12 of H.R. 3035 and section 11 of S. 1088, relating to the rights of crime victims, the following comments may be helpful as Members of Congress undertake further consideration of the legislation.

Section 12 of H.R. 3035 and section 11 of S. 1088 would amend 18 U.S.C. § 3771 to extend to crime victims in federal habeas proceedings certain rights made available to victims in federal prosecutions. H.R. 3035 does not specify which rights set forth in the current statute would apply to crime victims in federal habeas proceedings. S. 1088, however, provides that the following rights would be afforded to victims in a federal habeas proceeding: the right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceedings; the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; the right to proceedings free from unreasonable delay; and the right to be treated with fairness and with respect for the victim's dignity and privacy.

While the judiciary strongly supports the goal of providing victims of crime certain rights to participate in the criminal justice process, the current provisions of the

legislation, without further clarification, could create administrative problems. Neither S. 1088 or H.R. 3035 indicate which entity would be responsible for finding and notifying the victim of the underlying crime that federal habeas corpus proceedings will be undertaken.

The Department of Justice is currently required to make its best efforts to ensure that crime victims in federal cases are notified of, and afforded, certain rights. But the Department of Justice would not be a party to habeas proceedings involving state prisoners. (In fact, S. 1088 specifically provides that the legislation does not give rise to any obligation or requirement applicable to personnel of any agency of the executive branch of the federal government.) In addition, implementation of the provisions of this section may be complicated by the requirement to notify victims of state crimes that may have been committed years ago. It should also be noted that often in a federal habeas proceeding, there is no formal hearing before a judge; the judge may decide the case after a review of the record.

***For further information, contact the Office of Legislative Affairs, Administrative Office of the United States Courts, at 202-502-1700***

Mr. SMITH. The second is that I understand that the gentleman has had—second of all, I understand that the gentleman has had discussions with the Chairman of the Committee, Mr. Sensenbrenner, and we intend to work with the gentleman from Virginia between now and the next step in the process to try to address some of his concerns, and if that's the case, would the gentleman like to have—ask unanimous consent to withdraw his amendment?

Mr. SCOTT. I think this is better known as the faith-based initiative. [Laughter.]

I withdraw the amendment, Mr. Chairman.

Mr. SMITH. All right. Without objection, the amendment is withdrawn.

Are there any other amendments?

Ms. JACKSON LEE. Mr. Chairman?

Mr. SMITH. The gentlewoman from Texas is recognized.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I have two amendments at the desk, and I'd like to take them en bloc.

Mr. SMITH. Okay. Without objection, the clerk will report the amendments.

The CLERK. Amendments to the amendment in the nature of a substitute offered by Ms. Jackson Lee of Texas. At the end of the matter proposed to be inserted by the amendment, add the following new section: Sec.—Grants to States for threat assessment databases. A. In general, from amounts made available to carry out this section, the Attorney General shall carry out a program under which the Attorney General makes grants to States for use by the State to establish and maintain a threat assessment database——

Ms. JACKSON LEE. Mr. Chairman?

The CLERK.—described in subsection (b).

Ms. JACKSON LEE. I'd like the amendments be considered as read.

Mr. SMITH. Okay.

[The amendments offered by Ms. Jackson Lee follow:]

## AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1751 OFFERED BY MS. JACKSON-LEE OF TEXAS

At the end of the matter proposed to be inserted by the amendment, add the following new section:

1 **SECTION ___. GRANTS TO STATES FOR THREAT ASSESS-**
2 **MENT DATABASES.**
3 (a) IN GENERAL.—From amounts made available to
4 carry out this section, the Attorney General shall carry
5 out a program under which the Attorney General makes
6 grants to States for use by the State to establish and
7 maintain a threat assessment database described in sub-
8 section (b).
9 (b) DATABASE.—For purposes of subsection (a), a
10 threat assessment database is a database through which
11 a State can—
12 (1) analyze trends and patterns in domestic ter-
13 rorism and crime;
14 (2) project the probabilities that specific acts of
15 domestic terrorism or crime will occur; and
16 (3) develop measures and procedures that can
17 effectively reduce the probabilities that those acts
18 will occur.

(c) CORE ELEMENTS.—The Attorney General shall define a core set of data elements to be used by each database funded by this section so that the information in the database can be effectively shared with other States and with the Department of Justice.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2006 through 2009.

## AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1751 OFFERED BY MS. JACKSON-LEE OF TEXAS

At the end of the matter proposed to be inserted by the amendment, add the following new section:

1 **SECTION ___. GRANTS FOR YOUNG WITNESS ASSISTANCE.**

2 (a) DEFINITIONS.—For purposes of this section:

3 (1) DIRECTOR.—The term ''Director'' means
4 the Director of the Bureau of Justice Assistance.

5 (2) JUVENILE.—The term ''juvenile'' means an
6 individual who is 17 years of age or younger.

7 (3) YOUNG ADULT.—The term ''young adult''
8 means an individual who is between the ages of 18
9 and 21.

10 (4) STATE.—The term ''State'' means any
11 State of the United States, the District of Columbia,
12 the Commonwealth of Puerto Rico, the Virgin Is-
13 lands, American Samoa, Guam, and the Northern
14 Mariana Islands.

15 (b) PROGRAM AUTHORIZATION.—The Director may
16 make grants to State and local prosecutors and law en-
17 forcement agencies in support of juvenile and young adult
18 witness assistance programs, including State and local

1 prosecutors and law enforcement agencies that have exist-
2 ing juvenile and adult witness assistance programs.
3 (c) ELIGIBILITY.—To be eligible to receive a grant
4 under this section, State and local prosecutors and law
5 enforcement officials shall—
6 (1) submit an application to the Director in
7 such form and containing such information as the
8 Director may reasonably require; and
9 (2) give assurances that each applicant has de-
10 veloped, or is in the process of developing, a witness
11 assistance program that specifically targets the
12 unique needs of juvenile and young adult witnesses
13 and their families.
14 (d) USE OF FUNDS.—Grants made available under
15 this section may be used—
16 (1) to assess the needs of juvenile and young
17 adult witnesses;
18 (2) to develop appropriate program goals and
19 objectives; and
20 (3) to develop and administer a variety of wit-
21 ness assistance services, which includes—
22 (A) counseling services to young witnesses
23 dealing with trauma associated in witnessing a
24 violent crime;

(B) pre- and post-trial assistance for the youth and their family;

(C) providing education services if the child is removed from or changes their school for safety concerns;

(D) protective services for young witnesses and their families when a serious threat of harm from the perpetrators or their associates is made; and

(E) community outreach and school-based initiatives that stimulate and maintain public awareness and support.

(e) REPORTS.—

(1) REPORT.—State and local prosecutors and law enforcement agencies that receive funds under this section shall submit to the Director a report not later than May 1st of each year in which grants are made available under this section. Reports shall describe progress achieved in carrying out the purpose of this section.

(2) REPORT TO CONGRESS.—The Director shall submit to Congress a report by July 1st of each year which contains a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants,

and an evaluation of programs established under this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2006, 2007, and 2008.

Mr. SMITH. The gentlelady from Texas is recognized, but let me say before she begins the explanation of the amendments that the Chair is prepared to accept her amendments, if that might persuade her to limit her remarks.

Ms. JACKSON LEE. It certainly will, Mr. Chairman, and so I thank you very much. Let me just simply say that amendment number 174 is dealing with a threat assessment provision for the courts. The U.S. Marshals Service has such a threat assessment, but the courts do not have access to such. With the various endangerment that we've seen I our courts, we know that this would be a vital service. So I ask my colleagues to accept it.

I thank the Chairman. That is amendment number 174.

Number 175 is an amendment that simply would give the Attorney General the authority to make grants to State and local prosecutors and law enforcement agencies to help protect young witnesses who are witnesses to crimes such as armed robbery, assault, murder, sexual abuse, and domestic violence. We recognize that with the number of kidnappings that we have seen of very young victims who ultimately may be witnesses or witnesses to other horrific acts, the protection of these witnesses and the guiding of these witnesses is crucial to making the case against a violent predator or violent perpetrator of a crime.

I ask my colleagues to support it, and I ask that both amendments be supported. I yield back to the Chairman.

Mr. SMITH. Thank you. The question occurs on the amendment offered by the gentlewoman from Texas. All in favor, say aye? Opposed, nay?

The ayes have it. The agreement—I mean, the amendment is agreed to.

Are there any further amendments?

Mr. NADLER. Mr. Chairman?

Mr. SMITH. The gentleman from New York, Mr. Nadler, is recognized for the purpose of offering an amendment.

Mr. NADLER. Thank you. Mr. Speaker—Mr. Chairman, I have an amendment at the desk.

Mr. SMITH. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R. 1751, offered by Mr. Nadler. Add at the end the following: SEC.—Incitement——

Mr. NADLER. Mr. Chairman, I ask unanimous consent——

Mr. SMITH. Without objection, the amendment will be considered as read.

[The amendment offered by Mr. Nadler follows:]

# Amendment to the Manager's Amendment
# In the nature of a Substitute
# to H.R. 1751
# Offered by Mr. Nadler

Add at the end the following:

**Sec. ___. Incitement.**

(a) Offense

Chapter 7 o Title 18, United States Code is amended, by adding at the end, the following:

1 "§ 117 Incitement.

2 "(a) Whoever travels in interstate or foreign commerce or uses any facility of

3 interstate or foreign commerce, including, but not limited to, the mail, telegraph,

4 telephone, radio, or television,

5 with intent -

6 "(1) to incite;

7 "(2) to organize, promote, encourage, participate in, or

8 carry on;

"(3) to commit any act of violence in furtherance of; or

2 "(4) to aid or abet any person

3 "to violate sections 111, 115,1123, 1111, 1503, 1512, 1513, or 1952
4 of this title, and who either during the course of any such travel or use
5 or thereafter performs or attempts to perform any other overt act for
6 any purpose specified in paragraph (1), (2), (3), or (4) of this
7 subsection shall be punished by a fine under this title, or imprisoned
8 not more than five years, or both.

9 "(b) In any prosecution under this section, proof that a defendant
10 engaged or attempted to engage in one or more of the overt acts
11 described in paragraph (1), (2), (3), or (4) of subsection (a) and

12 "(1) has traveled in interstate or foreign commerce, or

13 "(2) has use of or used any facility of interstate or foreign
14 commerce, including but not limited to, mail, telegraph,
15 telephone, radio, or television, to communicate with or

broadcast to any person or group of persons prior to such
2 overt acts, such travel or use shall be admissible proof to
3 establish that such defendant traveled in or used such
4 facility of interstate or foreign commerce.

5 "(c) A judgment of conviction or acquittal on the merits under the
6 laws of any State shall be a bar to any prosecution hereunder for the
7 same act or acts.

8 "(d) Nothing in this section shall be construed as indicating an intent
9 on the part of Congress to prevent any State, any possession or
10 Commonwealth of the United States, or the District of Columbia,
11 from exercising jurisdiction over any offense over which it would
12 have jurisdiction in the absence of this section; nor shall anything in
13 this section be construed as depriving State and local law enforcement
14 authorities of responsibility for prosecuting acts that may be violations
15 of this section and that are violations of State and local law.

16 "(e) As used in this section the term "to incite", or "to organize,

promote, encourage, participate in, a violation of this section",
2 includes, but is not limited to, urging or instigating other persons to
3 violate this section, but shall not be deemed to mean the mere oral or
4 written

5 "(1) advocacy of ideas or

6 "(2) expression of belief, not involving advocacy of any
7 act or acts of violence or assertion of the rightness of, or
8 the right to commit, any such act or acts."

9 (b) Clerical amendment

10 The table of sections at the beginning of ch. 7 of title 18, United States Code, Is
11 amended by adding at the end the following new item:

12 "117 Incitement".

Mr. SMITH. The gentleman from New York is recognized for the purposes of explaining his amendment.

Mr. NADLER. Thank you. Mr. Chairman, I commend you and the Committee for responding to the reign of terror being directed at some of our institutions of justice. A free society and Nation of laws must protect the rule of law. Plainly, that can never be accomplished if those entrusted with its administration and their families face violence or death simply because they are doing the public's business. We have seen countries where violence against court officials has destroyed the rule of law. We cannot allow that to happen here.

Unfortunately, there are some in our society who believe that they have the right to be a law unto themselves. They are convinced that courts that act in ways they do not approve of must be stopped by any means, legal or not. Sometimes demagogues have stirred individuals to commit heinous crimes or to attempt heinous crimes against judges and law enforcement officials. When that incitement goes beyond mere advocacy, it should be a crime.

The law has long recognized the difference between protected speech, even advocacy of violence and other wrongdoing, and incitement, which is not protected.

My amendment is drawn from existing law, making it a crime to incite others to riot. It requires overt acts and specifically excludes advocacy of ideas or expressions in support of violence. The incitement to riot statute has successfully withstood constitutional challenge. The amendment would make it a crime "to incite, to organize, promote, encourage, participate in, or carry on, to commit any act of violence in furtherance of, or to aid or abet any person" to commit the new crimes in the bill. In other words, it would make it a crime to incite violence against judges and judicial personnel.

There is no place in our society for violence. When someone steps over the line from protected speech and by inciting criminal violence against judges or other law enforcement officers creates a clear and present danger of violence or murder, that person should not be permitted to walk away from the consequences of their act.

I know that I have parted company with many of my colleagues in other bills restricting what the courts have held to be protected speech because I believe we should protect speech to a very great extent. I hope we can, at the very least, however, agree that incitement to violence and murder for the purpose of destroying our justice system, speech that has consistently been held to be outside the protection of the First Amendment cannot be tolerated. If we can have a crime of incitement to riot, we should have a crime to incitement to violence against court—against court personnel and judges.

I urge the adoption of this amendment and yield back the balance of my time.

Mr. GOHMERT. Mr. Chairman? Mr. Chairman?

Mr. SMITH. The gentleman yields back his time. Do any Members wish to be heard in opposition to the amendment? The gentleman from Texas, Mr. Gohmert, is recognized.

Mr. GOHMERT. Thank you, Mr. Chairman. I do stand in opposition to this amendment. I believe it is overly broad, that it is constitutionally suspect under the Brandenberg case. I get very concerned any time someone attempts to limit free speech, even

though sometimes the Supreme Court itself has trouble understanding what protected political free speech should be, as we saw in the McCain-Feingold debacle.

But, anyway, gee, by just making a sarcastic remark, I guess if someone ever did violence, they could say Gohmert aided and abetted and encouraged violence against the Supreme Court. And, folks, I'm telling you, there is a huge difference between protected free speech and violence. A huge difference.

This country is one in which, as the gentleman says, violence should not be tolerated, absolutely not, and that's why we have this court security bill coming here today. We need to protect the judiciary. We need to protect the participants in the process. And they deserve harsher penalties, all those who would attempt to do violence, who would attempt to do harm, would conspire or actually do violence or harm. And that's why this bill is here.

But heaven help us if we get to the point that we say we cannot criticize the Supreme Court, because when I took to the floor or I took to writing an editorial criticizing the ridiculous Supreme Court opinion saying that a city or a governmental entity could take someone's private property just because somebody else is going to pay more taxes, lo and behold, I could be——

Mr. NADLER. Would the gentleman yield for a question?

Mr. GOHMERT. Not right now. I'm on a roll. [Laughter.]

But I could be brought up and accused and taken before the grand jury because I incited somebody to get upset about a ridiculous Supreme Court decision.

I will never yield my right to free speech. You know, as Patrick Henry said, "is life so short and peace so sweet it could be purchased at the price of chains and slavery? Forbid it, Almighty God." I ought to have the right to free speech. I do not want to ever give that up, and I am concerned that anyone who seeks to criticize or does criticize an opinion of a wayward court, including the Ninth Circuit, something happens and some idiot out there does violence, then you come back on those who exercise their constitutional free speech and all under this kind of thing.

I am extremely opposed to this amendment. There is no place for violence in our society. I harshly sentenced people who thought there was. But there is no place in this country, I hope and pray, to limit free speech and criticism of government officials.

Mr. NADLER. Now would the gentleman yield?

Mr. GOHMERT. I will yield now.

Mr. NADLER. Thank you, Mr. Gohmert.

First of all, the language says "to incite, to organize, promote, encourage, participate in, or carry on, to commit any act of violence"—not to criticize a court. To incite an act of violence. And does the gentleman believe that the incitement to riot statute is unconstitutional?

Mr. GOHMERT. I don't, but I know where this is going. You're including it in—you're seeking to include it in a court bill, and the intent would be that—to protect criticism against a court——

Mr. NADLER. Well, would the——

Mr. GOHMERT. And I understand how this works. All you have to do is go in and say, Well, you know what? That speech he gave, you know, a Patrick Henry-style speech, incited people to violence,

and the next thing you go, you got some yay-hoo like Ronnie Earle out there trying to indict somebody for inciting violence.

Mr. NADLER. Would the gentleman yield again?

Mr. GOHMERT. Yes, I will.

Mr. NADLER. I don't know if the gentleman has read the amendment because it clearly says that this amendment shall not be deemed to mean the mere oral or written, one, advocacy of ideas or, two, expression of belief, not involving advocacy of an act of violence or assertion of the rightness of or the right to commit any such act. That is, act of violence. So—unquote. So everything you're talking about is expressly excluded from this amendment.

Mr. GOHMERT. It is broad enough, though, that it could allow a prosecutor to pursue somebody on political grounds, and so I am concerned about the broadness of the bill, and I do stand in opposition.

Thank you. I yield back.

Mr. LUNGREN. Mr. Speaker—or, Mr. Chairman?

Mr. SMITH. The gentleman yields back. Are there any other Members who wish to be heard on this side? If not, the gentleman from California, Mr. Lungren, is recognized for 5 minutes.

Mr. LUNGREN. Mr. Chairman, I ask to strike the requisite number of words.

This is an issue that's very, very important. I don't doubt the gentleman's intentions on this, but it recalls the difficult time that many States and the Federal Government had in coming up with the right formula to outlaw cross burning. As you may recall, the United States Supreme Court in one instance found the anti-cross-burning statutes to be unconstitutional, and then in a later decision found one to be constitutional. Very difficult in terms of the technical language that they utilized.

As I understand the Brandenberg case, the Court requires an element of immediacy. So it's more than just urging. And I suppose you can even urge or incite someone in a non-immediate manner and you wouldn't be allowed to be prosecuted under a reading of our free speech clause of the Constitution.

And so I would just tell the gentleman, I find a tension between his two sections where he talks about the fact that it shall not mean to—mere oral or written advocacy or expression, but before that, you include within the definition to incite or organize, that it includes but not limited to urging or—and that seems so broad. And if it is more broad than just urging, what is not contained in it. And, frankly, I would just say I would be happy to be—to work with the gentleman——

Mr. NADLER. Which language are you—which language are you referring to? What line?

Mr. LUNGREN. Well, I'm referring on page 4 as it continues over from subsection (e). The gentleman talks about the promotion—well, to promote, encourage, which are far different than participate in, a violation of the section, that includes but is not limited to an urging. And then you go into other words. That seems rather expansive to me.

Now, maybe the gentleman can show previous legislative history to prior—to other laws that are that broad, but that to me is——

Mr. NADLER. Would the gentleman yield?

Mr. LUNGREN.—in tension with what the Supreme Court has instructed——

Mr. NADLER. Would the gentleman yield?

Mr. LUNGREN. I'll be happy to yield.

Mr. NADLER. I would ask unanimous consent to amend the amendment to take out the words "but is not limited to."

Mr. LUNGREN. He's asked unanimous consent—I don't know if that's—that's on the table.

Mr. NADLER. I ask—well, because you—the gentleman just pointed out——

Mr. LUNGREN. No, I know. I understand that. But I'm talking about procedure where he has to consider your unanimous consent.

Mr. NADLER. Oh. Well, I would ask unanimous consent to delete the words in line 2 on page 4, "but is limited"—"but is not limited to." I think the point the gentleman makes may be well taken and I don't need those words.

Mr. SMITH. Okay. Is there an objection to the unanimous consent request?

[No response.]

Mr. SMITH. All right. If not, without objection, so ordered.

Mr. LUNGREN. So, reclaiming my time, Mr. Chairman, I think that improves it. I'm not sure it answers my questions entirely. What I was going to say to the gentleman is I'd be happy to work with you—others may as well—to try and see if we could come up with something perhaps in a stand-alone piece of legislation, because this really needs some delicate treatment, and I'm not prepared to support an amendment like this at this time without us working harder. And I——

Mr. NADLER. Mr. Chairman—if the gentleman would yield?

Mr. LUNGREN. I'd be happy to yield to the gentleman.

Mr. NADLER. Thank you. I appreciate the—what the gentleman says. I'll ask unanimous consent, with that view, to try to work this out, because I do think it is important. I'll withdraw the amendment at this time.

Mr. SMITH. Does the gentleman ask unanimous consent to withdraw the amendment?

Mr. NADLER. Yes. I just did.

Mr. SMITH. Without objection, so ordered.

Are there any other amendments? The gentleman from Virginia, Mr. Scott, is recognized for the purposes of offering an amendment.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk. It's the one that's handwritten.

Mr. SMITH. The clerk will report the handwritten amendment.

The CLERK. Amendment to the amendment in the nature of a substitute, offered by Mr. Scott of Virginia. Page 6, line 18, after "life," delete ", or, if death results, may be sentenced to death."

[The amendment offered by Mr. Scott of Virginia follows:]

SCOTT AMENDMENT 3 TO THE MANAGER'S AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1751

OFFERED BY MR. SCOTT OF VIRGINIA

~~Strike subsection (a) of Section 4.~~

Page 6, line 18

after life:

delete:

, or, if ~~death~~ death results,

may be sentenced to death

Mr. SMITH. Okay. The gentleman from Virginia is recognized for 5 minutes to explain the amendment.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I apologize for it being handwritten, but it was pointed out that the part we struck in the original amendment didn't—it struck too much so we had to amend it. This basically takes the death penalty out of the bill.

Mr. Chairman, what we know about the death penalty is, at best, there's a debate on whether it reduces crime or not. I think most of the evidence shows if it does anything, it increases crime. But it's debatable whether it does anything or not.

We know the death penalty is applied in an arbitrary manner, it's applied in a discriminatory manner, and it's applied with mistakes. Furthermore, Mr. Chairman, this has problems not only that apply to general death penalties, but the way it's applied in this bill, you have federalism problems. It gives the Federal Government authority to prosecute murders that are clearly State crimes. It imposes a Federal will on jurisdictions that do not have any death penalty. And it sets up a tenuous connection for the extension of Federal authority into what is traditionally State domain, which will probably induce turmoil and litigation as to whether it's even constitutional to do what we're doing.

It's, furthermore, Mr. Chairman, not really timely. We still make mistakes in the death penalty. The Innocence Protection Act has not done all it should have done. We're still working through the mistakes in the process. We have talked about *habeas corpus* and what—how that fits in. And we should not be creating new Federal death penalties when we haven't gotten the old death penalty straight yet.

Finally, Mr. Chairman, I previously asked unanimous consent to introduce into the record comments by the State Courts—National Conference of State Courts on this bill. They've asked for a lot to help court security. The death penalty wasn't one of them. I would remind the Members of that and yield back the balance of my time.

Mr. SMITH. The gentleman yields back. For what purpose does the gentleman from Texas seek recognition?

Mr. GOHMERT. Strike the last word.

Mr. SMITH. The gentleman is recognized for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

I do appreciate the motivation of the gentleman from Virginia, but with regard to striking the death penalty, that is one of the principal components of this. It makes the death penalty available for those who would seek to kill, murder—kidnap and kill, murder a Federal official and especially a Federal judge, a member of a Federal judge's family, providing those kinds of protection.

Now, there is—there are many constitutional protections involved in the death penalty as we've seen, not merely just protection of a jury of one's peers, but also the enormous appellate avenues available, the writ process.

Let me just mention some of the groups that are supporting this so that everyone understands. We've gotten indications of support, unsolicited, but some have just notified us they want to support this: the Federal Bar Association, the Federal Criminal Investigator Association, the Fraternal Order of Police. Those are—State entities. International Association of Campus Law Enforcement Administrators, International Union of Police Association, the AFL-CIO, Major County Sheriffs Association, National Association of Assistant U.S. Attorneys, National Law Enforcement Council, California State Sheriffs Association, National Sheriffs Association, National Troopers Coalition—those are State troopers—American Federation of State, County, and Municipal Employees, and the National Court Reporters Association.

As I said earlier, if tougher sentences do not help reduce crime, then the trend over the last 20 years of having tougher sentences and the crime rate going down, they may not seem related to some, but I can tell you this, as a judge who has tried capital murder cases: Jurors are extremely concerned about the evidence that shows someone is a future danger, about any evidence that mitigates against the death penalty. Those are proper considerations for the jury. But I can also tell you without any regard for whether you believe this study, don't believe that study, take the position that waiting 22 years to impose a capital punishment penalty just skews any proper study of the deterrent effect, I can tell you this: The recidivism rate for those who would kill or murder a Federal judge or a Federal judge's family will be zero.

Mr. SCOTT. Would the gentleman yield?

Mr. GOHMERT. I yield back my time.

Mr. SCOTT. Would the gentleman yield?

Mr. SMITH. The gentleman has yielded back his time.

The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I move to strike the last word.

Mr. SMITH. The gentleman is recognized for 5 minutes.

Mr. NADLER. I support this excellent amendment, and I yield to the gentleman from Virginia.

Mr. SCOTT. Thank you, and I thank the gentleman for yielding.

First of all, this doesn't say whether you can have a death penalty or not. The States, if they want, can have a death penalty. This just—there just wouldn't be any Federal death penalty. And, furthermore, Mr. Chairman, this isn't just for Federal judges. It's for anybody who has—whose job is even partially paid for with Federal money, a federally funded public safety officer. So that could be—that could be local police if you've got COPS money.

So, Mr. Chairman, I would hope that we would adopt the amendment.

Mr. SMITH. The gentleman from New York, does he yield back the balance of his time?

Mr. NADLER. Yes, I do.

Mr. SMITH. If so the question occurs on the second degree amendment. All those in favor, say aye? All those opposed, say nay?

The nays appear to have it. The nays have it. The amendment is not agreed to.

Are there any other amendments? If not, the question occurs on the amendment in the nature of a substitute as amended offered by the gentleman from Texas. All in favor, say aye? All opposed—— [Laughter.]

All opposed, nay?

The ayes still have it, and the amendment in the nature of a substitute is agreed to.

The question occurs on the motion to report the bill H.R. 1751 favorably as amended. All in favor, say aye? All opposed, no?

The ayes have it, and the motion to report the bill favorably is agreed to. Without objection, the bill will——

Mr. GOHMERT. Could I have a recorded vote on that, Mr. Chairman?

Mr. SMITH. A request has been made for a reported—a recorded vote, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Lungren?

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Inglis?
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis, aye. Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye. Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye. Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye. Mr. Issa?
[No response.]
The CLERK. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye. Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Ms. Sánchez?

Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye. Mr. Van Hollen?

Mr. VAN HOLLEN. Aye.

The CLERK. Mr. Van Hollen, aye. Ms. Wasserman Schultz?

Ms. WASSERMAN SCHULTZ. Aye.

The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?

Mr. SMITH. Aye.

The CLERK. Mr. Chairman, aye.

Mr. SMITH. Are there any other Members who wish to vote or change their vote? The gentleman from California, Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye.

Mr. SMITH. The gentleman from Utah, Mr. Cannon.

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye.

Mr. SMITH. Are there any other Members who wish to vote or change their vote? The gentleman from Massachusetts.

Mr. DELAHUNT. Aye.

The CLERK. Mr. Delahunt, aye.

Mr. SMITH. The gentlewoman from California.

Ms. WATERS. Aye.

The CLERK. Ms. Waters, aye.

Mr. SMITH. Are there any other Members who wish to vote or change their vote? If not, the clerk will report the vote.

The CLERK. Mr. Chairman, there are 27 ayes and 4 noes.

Mr. SMITH. The motion to report the bill as agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today.

Without objection, the staff is directed to make any technical and conforming changes. All Members will be given 2 days as provided by the House Rules in which to submit additional dissenting, supplemental, or minority views.

Let me make an announcement to all our Members who are here. We obviously have a series of votes that have just been called. Also the Lawsuit Abuse Reduction Act, which came out of this Committee is on the House floor immediately after these votes. So we will be standing in recess pending the call of the Chair until after the Lawsuit Abuse Reduction Act is considered on the House floor. Then we will return and take up the third and remaining bill that we have to consider today.

Without—the gentlewoman from California has asked unanimous consent to change her vote, and without objection, that will be done and the record will reflect the correct vote.

We stand in recess until the call of the Chair.

[Intervening business.]

That concludes the markup. I thank everyone for their participation. Without objection, the markup is adjourned.

[Whereupon, at 6:22 p.m., the Committee was adjourned.]

## DISSENTING VIEWS

H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005" was introduced to address acts of violence occurring in and around courthouses and against judges, prosecutors, witnesses, law enforcement, and other court personnel.[1] However, in it's original form, the legislation failed to include several key provisions that would help it achieve this objective. Namely, it failed to provide state courts with adequate funding in the form of grants in order to improve courtroom safety and security. It also failed to provide the U.S. Marshals Service with the necessary resources to expand the investigative and protective services it currently provides to members of the federal judiciary.

Fortunately, thanks to the Majority's willingness to work with the Democratic members on the committee, many of these issues have been adequately addressed. However, two important issues still remain. Specifically, the legislation's creation of sixteen new mandatory minimum criminal sentences and its establishment of a new death penalty eligible offense. It is for these reasons, and those set out below, that we respectfully dissent.

### THE LEGISLATION IMPOSES INEFFECTIVE AND DISCRIMINATORY MANDATORY MINIMUM SENTENCES

HR 1751 proposes to add 16 new mandatory minimum sentences to the current criminal code. Mandatory minimum penalties have been studied extensively and the vast majority of available research clearly indicates that they do not work. Among other things, they have been shown to distort the sentencing process, to discriminate against minorities in their application, and to waste valuable taxpayer money.

The Judicial Conference of the United States, which sees the impact of mandatory minimum sentences on individual cases as well as on the criminal justice system as whole, has expressed its deep opposition to mandatory minimum sentencing over a dozen times to Congress, noting that these sentences "severely distort and damage the Federal sentencing system . . . undermine the Sentencing Guideline regimen" established by Congress to promote fairness and proportionality, and "destroy honesty in sentencing by encouraging charge and fact plea bargains."

In fact, in a recent letter to Members of the Crime Subcommittee regarding H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005," the Conference noted that mandatory minimum sentences create "the opposite of their intended effect. Far from fostering certainty in punishment, mandatory minimums result in un-

[1] Hearing on H.R. 1751, the "Secure Access to Justice and Court Protection Act of 2005" Before the Subcommittee on Crime, Terrorism and Homeland Security of the Committee on the Judiciary, 109th Cong. 7, 10 (2005) (statement of Chairman Howard Coble)

warranted sentencing disparity. Mandatory minimums . . . treat dissimilar offenders in a similar manner, although those offenders can be quite different with respect to the seriousness of their conduct or their danger to society . . ." and . . . , "require the sentencing court to impose the same sentence on offenders when sound policy and common sense call for reasonable differences in punishment."

Additionally, both the Judicial Center in its study report entitled "The General Effects of Mandatory Minimum Prison Terms: A Longitudinal Study of Federal Sentences Imposed" and the United States Sentencing Commission in its study entitled "Mandatory Minimum Penalties in the Federal Criminal Justice System" found that minorities were substantially more likely than whites under comparable circumstances to receive mandatory minimum sentences. The Sentencing Commission study also reflected that mandatory minimum sentences increased the disparity in sentencing of like offenders with no evidence that mandatory minimum sentences had any more crime-reduction impact than discretionary sentences.

The inconsistent and arbitrary nature of mandatory minimum sentences is made readily apparent by a quick analysis of section 2 of the bill. Section 2 establishes a one year mandatory minimum (with a 10 year maximum criminal penalty) for assaulting the immediate family member of a law enforcement officer or judge—if the assault results in bodily injury. However, just a few lines later in the same section, an identical criminal penalty is established for a simple threat. Thus, the same section of the bill makes two completely different actions, with considerably varying outcomes, subject to the same term of imprisonment.

Ultimately, the continued reliance on mandatory minimum sentences will not lead to a decrease in crime as some contend, but only further expand an ever-increasing prison population. And, with more than 2.1 million Americans currently in jail or prison—roughly quadruple the number of individuals incarcerated in 1985—it's hard to see how anyone can continue with such a deeply flawed strategy. Today, the United States incarcerates its citizens at a rate 14 times that of Japan, 8 times the rate of France and 6 times the rate of Canada; and expends approximately $40 billion a year in incarceration costs, alone.

### THE LEGISLATION UNWISELY EXPANDS THE USE OF THE FEDERAL DEATH PENALTY

H.R. 1751 unwisely creates a new death penalty eligible offense for anyone convicted of killing a federally funded public safety officer.[2] Expansion of the use of the federal death penalty in the current environment is patently unwarranted. The public is clearly rethinking the appropriateness of the death penalty, in general, due to the evidence that it is ineffective in deterring crime, is racially discriminatory, and is more often than not found to be erroneously applied. In a 23-year comprehensive study of death penalties, 68% were found to be erroneously applied. So, it is not surprising that

[2] Section 4 defines a "federally funded public safety officer" as any individual who receives federal financial assistance while serving a public (federal, state or local government) agency in the capacity of a judicial officer, law enforcement officer, firefighter, chaplain, or as a member of a rescue squad or ambulance crew.

119 people sentenced to death for murder over the past 12 years have been completely exonerated of those crimes. Nor is it surprising with that such a lackluster record of death penalty administrations that several states have abolished the death penalty. For example, Connecticut has not executed anyone in 45 years.

Without a doubt, the increasing numbers of innocent people released from death row illustrates the fallibility of the current system. Last year, a University of Michigan study identified 199 murder exonerations since 1989, 73 of them in capital cases. Moreover, the same study found that death row inmates represent a quarter of 1 percent of the prison population but 22 percent of the exonerated.

Equally disturbing is the fact that in its application, the death penalty is often applied in a racially and economically discriminatory manner. A careful study of the use of the death penalty in the United States undertaken by the United Nations' Human Rights Commission in 1998 issued a report which rightly concluded that: "Race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a sentence of death."

Unfortunately, these problems are not confined to state systems. A recent Department of Justice survey documents racial, ethnic and geographic disparity in the charging of federal capital cases. Indeed, the review found that in 75 percent of the cases in which a federal prosecutor sought the death penalty, the defendant was a member of a minority group. The explanation for these extremely troubling disparities is unclear, but the possibility of discrimination and bias cannot be ruled out.

DESCRIPTION OF AMENDMENTS OFFERED BY DEMOCRATIC MEMBERS

**1. Amendment offered by Rep. Chabot & Rep. Conyers**

Description of amendment: The Chabot/Conyers amendment provides federal judges with the discretion to allow media coverage of courtroom proceedings.

Vote on amendment: The amendment was adopted by a vote of 20 to 12. Ayes: Representatives Goodlatte, Chabot, Hostettler, Green, King, Franks, Conyers, Berman, Nadler, Lofgren, Waters, Delahunt, Schiff, Sanchez, Van Hollen, Wasserman Schultz, Coble, Meehan, Inglis, Weiner.

Nays: Representatives Smith, Gallegly, Jenkins, Canon, Keller, Issa, Flake, Forbes, Feeney, Gohmert, Scott, Watt.

**2. Amendment offered by Rep. Schiff & Rep. Weiner**

Description of amendment: The Schiff/Weiner amendment directs the Attorney General, through the Office of Justice Programs, to award grants to state courts in order to enhance courtroom safety and security.

Vote on amendment: The amendment was agreed to by voice-vote.

**3. Amendment offered by Rep. Schiff & Rep. Weiner**

Description of amendment: The Schiff/Weiner amendment authorizes $20 million for each of fiscal years 2006 to 2010 for the hiring of entry-level deputy marshals to provide judicial security;

for the hiring of senior-level deputy marshals to investigate threats; and to enhance the Office of Protective Intelligence.

Vote on amendment: The amendment was agreed to by voice-vote.

**4. Amendment offered by Rep. Scott**

Description of amendment: The Scott amendment proposed to strike section 11 of the bill. Section 11 placed limits on the ability of an individual to apply for the writ of habeas corpus.

Vote on amendment: The amendment was agreed to by voice-vote.

**5. Amendment offered by Rep. Scott & Rep. Waters**

Description of amendment: The Scott/Waters amendment proposed to strike all of the mandatory minimum criminal sentences from the text of the substitute amendment.

Vote on amendment: Subject to an agreement between the Majority and Mr. Scott to work together to address some of the concerns highlighted by the amendment, the amendment was withdrawn.

**6. Amendment offered by Rep. Jackson Lee**

Description of amendment: The Jackson Lee amendment directs the Attorney General to establish a grant program for states to establish threat assessment databases.

Vote on amendment: The amendment was agreed to by voice-vote.

**7. Amendment offered by Rep. Jackson Lee**

Description of amendment: The Jackson Lee amendment authorizes the Director of Bureau Justice Assistance to make grants available to state and local prosecutors and law enforcement agencies for the establishment of juvenile and young adult witness assistance programs.

Vote on amendment: The amendment was agreed to without a recorded vote.

**8. Amendment offered by Rep. Nadler**

Description of amendment: Building upon the current incitement to riot statute, the Nadler amendment would make it a crime to incite, to organize, promote, encourage, participate in, or carry on, to commit any act of violence against a judge or other court personnel.

Vote on amendment: The amendment was withdrawn by Rep. Nadler.

**9. Amendment offered by Rep. Scott**

Description of amendment: The Scott amendment proposed to eliminate the new death penalty offense created in subsection (a) of section 4 of the substitute amendment.

Vote on amendment: The amendment was defeated by voice-vote.

JOHN CONYERS, JR.
ROBERT C. SCOTT.
MELVIN L. WATT.
SHEILA JACKSON LEE.
MAXINE WATERS.

## ADDITIONAL DISSENTING VIEWS

I share the concerns expressed in the dissenting views that H.R. 1751 unnecessarily and unwisely creates sixteen new mandatory minimum criminal sentences and a new death penalty eligible offense. In addition, I also believe that the bill as reported contains an ill-advised provision authorizing the discretionary use of cameras in federal courtrooms.

During the markup I raised a point of order that the amendment offered by Mr. Chabot and Ranking Member Conyers was not germane. My objection was overruled and the amendment passed. The broad authorization to use cameras in courtrooms now included in H.R. 1751, however, clearly has no direct relation to the security issues underlying the bill as introduced. Moreover, although there is a substantial body of law and literature balancing the competing rights of defendants to a fair trial with the rights of the public and the press to access to the courtroom, this amendment was adopted without the benefit of any consideration or evaluation of this information. Because I believe that there was inadequate process for considering this amendment and also disagree with the policy it authorizes, I respectfully dissent.

MELVIN L. WATT.