SENATE—*Thursday, June 20, 1991*

(Legislative day of Tuesday, June 11, 1991)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable CHARLES S. ROBB, a Senator from the State of Virginia.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour. Owe no man any thing, but to love one another: for he that loveth another hath fulfilled the law.—Romans 13:7,8.

God of our fathers, we are tragically predisposed to bring people "down to size." For those who deserve honor, we practice reductionism, finding it difficult to accept another's honor more than our own. Our culture seems committed to stereotypes. We pigeonhole groups of people and label them with a caricature by a clever, if not cynical, cartoonist. One person in a group falls or fails, and we treat the whole group as falling or failing.

Forgive us for this stereotypical thinking. Help us to realize that every individual is of eternal value—that our value is determined not by our achievements but by the love of God. Teach us, Lord, to value each other, to honor one another, to love one another.

In the name of Him who said, "He that would be greatest among you, let him be everybody's servant." Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 20, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHARLES S. ROBB, a Senator from the State of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. ROBB thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADERSHIP TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the time of the leadership is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 10:30 a.m., with the Senator from New Mexico [Mr. BINGAMAN] to be recognized to speak for up to 30 minutes.

Mr. MITCHELL addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

Mr. MITCHELL. Mr. President, will the Senator yield for a minute?

Mr. BINGAMAN. I yield.

SCHEDULE

Mr. MITCHELL. Mr. President, at 10:30 a.m. the Senate will begin consideration of the comprehensive crime legislation. This is an important measure. There will be debate only until 1 p.m.

Beginning at 1 p.m., or possibly later if any change is made in the schedule, we will be taking up amendments to the bill. Rollcall votes are expected throughout the day.

I hope that the Senate can begin prompt and active consideration of this measure and move toward completion on it at the earliest possible time, consistent, of course, with thorough debate and full opportunity for Senators to offer such amendments and participate in such debate as they choose.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from New Mexico [Mr. BINGAMAN] is recognized for up to 30 minutes.

TECHNOLOGY POLICY AND MANUFACTURING COMPETITIVENESS

Mr. BINGAMAN. Mr. President, I first express my appreciation to the majority leader for his support in the legislation we are going to be discussing this morning, but also for his courtesy in permitting us to speak in morning business on this issue.

PRIVILEGE OF THE FLOOR

I begin by asking unanimous consent that a congressional fellow in my office, Harry Arman, be permitted on the Senate floor to participate in this discussion.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, technology is the future. But for the first time in this century, America's premier place in that future seems in doubt. The country that developed the computer, tamed the atom, and explored the Moon is losing one technology-based industry after another to foreign competition. The country that pioneered mass production, machine tools, and industrial robots now invests less in plant and equipment than Japan, that is less in absolute dollars, even though Japan has a gross national product of only 60 percent that of our own.

American stores are filled with products invented in the United States but no longer produced here. The ubiquitous video cassette recorder is just one example. Although an American company—Ampex Corp.—pioneered the technology, 95 percent of the world's VCR's are now built by foreign producers. The same story can be told of many other products: Televisions, audio tape recorders, cassette disks, liquid crystal display technology, silicon wafers. The list goes on.

This chart which I have put up here for my colleagues to view today shows the trend over the last 20 years from 1970 to 1990 in VCR's, machine tools, telephone sets, semiconductors, semiconductor manufacturing equipment, audio recorders, and many other examples could be demonstrated to support this very same trend that I am speaking about.

In other technologies that the United States pioneered, we are now a distant follower: numerically controlled machine tools, robotics, optoelectronics, and memory chips. Many experts believe that the American computer and software industries are in danger of following the same downward trend.

Ironically, the United Statres remains strong in science, and American firms continue to make most of the world's major technological breakthroughs. But our inability to follow through allows Japan and other rivals to produce the commercial products the world wants. Although the United States still holds key markets, on average, Japanese firms can turn technology into new products and processes both more quickly and less expensively than United States firms.

Because commercial products increasingly push the cutting edge in

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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technology, this pattern has led to American technological decline as well, particularly in the critical generic technologies that are driving economic growth. Many of these same technologies are vital to future weapons systems.

Senator GORE, who will speak after me, and I both serve on the Armed Services Committee as well as Senator NUNN, who is a cosponsor with us of this legislation along with Senator HOLLINGS.

A recent report from the Council on Competitiveness, warned that the U.S. position in many critical technologies is slipping and, in some cases, has been lost altogether. The council, a coalition of chief executives from business, higher education and labor, concluded that "unless the Nation acts immediately to promote its position in critical generic technologies, U.S. * * * competitiveness will erode further, with disastrous consequences for American jobs, economic growth and national security."

TECHNOLOGY POLICY FOR THE 1990'S

Yesterday, Senators HOLLINGS, NUNN, GORE, and I introduced a package of four bills aimed at reversing that decline in our technology position. Let me use my allotted time to describe the broad approach taken by these bills.

First, the bills provide a comprehensive national strategy for promoting U.S. leadership in those core technologies deemed critical to future economic prosperity and national security. This strategy, which builds on legislation we have enacted over the last 3 years, both in the Armed Services Committee and the Commerce Committee, addresses the essential points at which limited Government support is necessary to complement private markets.

Let me just list those critical points:

A means to identify and continually reevaluate our technology priorities, and a mechanism to manage efforts across Federal agencies to promote those priorities that we have agreed upon;

Adequate support for the research and development of these critical technologies, particularly high-risk, long-term research and generic, incremental technology development, which is so important;

Increased efforts to assist industry in commercializing and applying these technologies;

An enhanced capability to monitor and gain access to foreign sources of technological advantage; and

Greater attention to the U.S. manufacturing base, through additional support for both the development of advanced manufacturing technology and the deployment of existing technology, particularly to small- and medium-sized firms.

Second, although the bills address market failures, they recognize that a national technology strategy must be industry-driven to be effective. Thus they require industry's commitment of funds and people at every stage. Industry involvement in technology development is necessary in order to direct public funds to high-risk areas that industry itself thinks will have the highest payoffs. Similarly, Government's role in promoting technology commercialization and application, manufacturing deployment, and foreign technology monitoring is intended in these bills to complement private resources, so as to gain the highest leverage for the Federal funds that we spend in this area and to ensure that Federal dollars do not displace private dollars.

Third, the bills we introduced yesterday link technology development with manufacturing. U.S. industry, long accustomed to a virtual monopoly of world markets, ignored the critical importance of manufacturing in a global economy. Federal R&D policy—limited to support for basic science and mission-oriented technology development—ignored the importance of manufacturing as well. We are now paying a heavy price for that neglect. Michael Dertouzos, the chairman of MIT's Commission on Industrial Productivity, recently summed it up. He said "[in the U.S.] we value creativity and innovativeness, and we don't value production. But the money is not in invention, it's in production."

Our bills create a National Manufacturing Extension Program modeled loosely after the highly successful agricultural extension service. That we are all familiar with. Under this program, the Federal Government will provide matching funds for new and existing State, local and nonprofit programs to help modernize small- and medium-sized manufacturing firms, where the problem is most acute. There are 360,000 of these firms and they account for over half of the value added in manufacturing. The United States currently spends only $70 million a year on manufacturing extension—about $20 million of that from the Federal Government—compared to $1.1 billion on agricultural extension, one-third Federal of which comes from the Federal Government. As with other components of our legislation, the National Manufacturing Extension Program requires strong industry involvement, particularly by large customer firms, which are the primary drivers of production modernization.

In addition, our legislation supports manufacturing R&D and education:

It provides additional funds for manufacturing R&D, which currently receives less than 2 percent of the Federal research budget;

It authorizes $25 million to expand undergraduate and graduate programs to train manufacturing engineers and managers.

Senator NUNN is independently introducing a portion of this legislation and has a particular interest in this aspect of the legislation.

It provides matching support to recruit manufacturing experts from industry to teach in community colleges and other postsecondary schools, with the goal of strengthening the capacity of these institutions to serve regional manufacturing firms.

Manufacturing is a challenging endeavor, worthy of our brightest students in engineering and management. Our colleges and universities must upgrade their curricula if they are to prepare such students for the intellectual challenge of high-technology product development, design, and production. And they must engage the help of experienced manufacturing firms in this work.

Fourth, just as Federal policy has ignored manufacturing, it has ignored factors important to the commercialization and application of technology. That neglect has allowed our competitors to take our inventions and turn them into high value added products. Our legislation addresses the critical importance of technology commercialization and application through support for regional, industry-directed centers designed to promote those activities. Organized around the geographic concentrations of firms that exist in nearly all States—autos in Detroit, polymers in Akron, electronics in Phoenix—these critical technology application centers [CTAC's] will provide applied R&D and a range of shared technology services, such as equipment testbed and scale-up facilities, prototype test and development, and education and training. These activities represent a kind of technology application infrastructure that is often lacking for all but the largest U.S. firms. By drawing together firms from complementary sectors, this intrastructure will also strengthen member firms through closer linkages to their customer and supplier firms—a major strength of Japan's production system.

Fifth, our legislation forges a partnership between technology agencies of the Federal Government, particularly the Department of Defense and the Department of Commerce. The Commerce Department's National Institute of Standards and Technology would be the lead agency in implementing the Manufacturing Extension Program, since it has the resident expertise. The Department of Defense would help shape and fund that program. Conversely, the Department of Defense would take the lead, with the help of the Department of Commerce, in supporting the critical technology application centers. We also have a role in this legislation for the Department of Energy, for NASA, for the National Science Foundation, for NIH, all of

which agencies have a major role in technology development.

A partnership between Federal agencies in these areas is long overdue. And in this legislation we try to provide for a solution to that. Our historical reliance on defense R&D to foster commercial technology development is no longer appropriate. Experts agree that the commercial sector will increasingly drive the strategic military technologies of the future, and DOD will increasingly need to rely on commercial products, processes, and buying practices. Thus DOD has a major stake in the success of the national effort to strengthen industrial technological and manufacturing performance.

Finally, our legislation builds on existing technology programs that are working well. Last year, Congress appropriated $50 million to Department of Defense's Defense Advanced Research Projects Agency [DARPA] to support industry consortia conducting precompetitive R&D in critical technologies. The administration eliminated, in their proposed budget to us, any funding for that program. The National Critical Technologies Act reinstates that important program and authorizes $100 million for DARPA to expand it. The bill also authorizes $110 million—up from $35 million in fiscal year 1991—for the Department of Commerce's Advanced Technology Program, which supports industry-led precompetitive R&D projects.

Likewise, the Advanced Manufacturing Technology Act provides stable funding for DOD's Mantech and industrial preparedness programs, roughly $300 million, or triple the administration's request. Also in that bill, the National Manufacturing Extension Program supplements existing programs at NIST that were established under Senator HOLLINGS' leadership by the 1988 Trade Act and which his Manufacturing Strategy Act proposes to further strengthen. And all of these programs build on State and regional programs with strong local support.

CONCLUSION

This legislative package will not be sufficient to make up for government's and industry's past neglect of manufacturing and technological competitiveness. But these bills, taken together, are a necessary first step. Obviously more could and should be done. In particular, there must be separate consideration of direct incentives for firms to invest in worker training, plant and equipment, and technological innovation.

More generally, for over a decade now, this country has been losing its leadership position in technology and in manufacturing. And in this decade, the decade of the nineties, we must make a commitment to reversing that trend and to restoring our leadership. This legislative package proposed by Senators HOLLINGS, NUNN, GORE, and myself I believe represents a major step toward reclaiming our leadership in technology and in manufacturing.

Mr. BINGAMAN. Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Tennessee.

Mr. GORE. Mr. President, I rise to address the same subject, but I wish to begin by complimenting my colleague, the Senator from New Mexico [Mr. BINGAMAN] for his outstanding leadership in this area. I have been privileged to serve as the ranking Democratic member on the Technology Subcommittee which is chaired by Senator BINGAMAN on the Armed Services Committee. I have the privilege of serving as the chairman of the counterpart subcommittee, the Science, Technology, and Space Subcommittee of the Commerce Committee and have greatly enjoyed our cooperative working relationship in addressing these issues.

May I say as well, as he did, that the chairman of the Commerce Committee, Senator HOLLINGS, of South Carolina, and the chairman of the Armed Services Committee, Senator NUNN, of Georgia, have been absolutely indispensable in this four-way working partnership.

May I say that Senator HOLLINGS particularly has been having hearings and offering successful legislation on this topic for many years and has been the focal point, in my opinion, in the Congress for addressing this overriding challenge.

And Senator NUNN, as Senator BINGAMAN has suggested, has intently pursued important initiatives that have advanced the Nation's position in this regard.

The four of us have joined in introducing four bills, two coming out of the Commerce Committee and two coming out of the Armed Services Committee, all with the same basic intent and purpose.

We have worked with a number of other Senators who have been instrumental in bringing forward key ideas. May I mention the Senator from Connecticut [Mr. LIEBERMAN] who will speak in just a moment. And we appreciated the Senate majority leader coming to the press conference yesterday and in other ways, serving notice that this is going to be a priority for the Senate this session, as well it should be.

The basic outlines of this problem are pretty clear by now. The United States of America does basic research and development better than any Nation in the entire world. But when it comes to applying the new ideas and breakthroughs and inventions and innovations to making new products and designing new industrial processes and manufacturing things which are then sold to people, we are falling behind.

Europe, and especially Japan, and others are coming forward and changing the research and transforming it into useful products a lot more quickly than we are. And they are using not only their research, they are using our research, too. We have become the laboratory for the entire world. There is great honor and distinction in that, but there ought to be more. There ought to be a better opportunity for our companies and the working men and women of this country to benefit from the enormous amounts of money that we put into research and development and the tremendous achievements of our scientists and engineers.

When we look at what is going on, we see that Japan and many countries in Europe funnel a very significant portion of their governmental R&D into applied research and into efforts that are designed specifically to take the raw, new discoveries from the laboratory and transform them into use mechanisms for gaining an advantage in the marketplace.

The Senator from New Mexico has used the classic example of the video cassett recorder. That story ought to be known nationwise. We invented it. They marketed it. But there are so many other identical stories that are not as well known.

The chart which the Senator from New Mexico referred to earlier tells a part of that story. In industry after industry, field after field, new discoveries come in the United States of America and then a few years later the new products based on those new discoveries are imported from other countries and bought by Americans from other countries.

That is not the fault of those other countries. We do not begrudge them their success in coming up with these new products. But it is our fault for not recognizing the situation more quickly and doing something about it.

There is an ideological blindness in the Bush administration on this very point. It is not hard to understand the basis for it. They believe, and the President believes, that the Government ought to stay out of most things and just not get involved in trying to fix things that go wrong.

In foreign policy, for years, the country suffered from what some called the Vietnam syndrome, which was an unreasonable assumption that the risks of getting involved in trying to fix some problems overseas were always gong to be higher than the risks of just standing by and doing nothing and not even getting involved. So we tried to stay out of everything. We looked the other way. Even when our national interests were at stake, we would turn the other way and not try to get involved.

Maybe we have begun to get over that a little bit. I certainly hope so. The distinguished occupant of the

chair is a decorated veteran of the Vietnam conflict and has been an articulate spokesman in addressing this particular debate in foreign policy.

But what about domestic policy here at home? We face a similar kind of syndrome here at home. The Bush administration assumes that the risks of getting involved in trying to fix problems here at home are always going to be higher than the risks of standing by and doing nothing and not even trying to do something to make things better.

They are wrong. Just as the Vietnam syndrome was wrong in foreign policy, that approach is wrong in domestic policy. The problem we are identifying here this morning is one of the clearest examples of that. Senator HOLLINGS chaired yet another in a long series of hearings that he has organized just yesterday on this subject, and some officials of the Bush administration came and testified and told the following story.

They said that American companies involved in high technology research had been recently contacted by officials from Japan who said we are organizing a national consortium to look at this particular high technology area, and this one, and this one, and they listed them. Can you be involved? Can you help us? Can you join in this effort? And these American companies asked themselves, and then went to the administration and said, what are we supposed to do? We do not have anything like this in the United States of America. But in our labs we have ideas we know are extremely valuable in world markets, if they can be turned into useful products and processes.

We have nothing. The Japanese and the Europeans and others, they are moving out. They have a technology policy, an advanced manufacturing strategy. They have a game plan. They know what they are doing. We are doing nothing because we have zero leadership from the white House on this question.

That is what these four bills are designed to address; to put in place the kinds of strategies that we need here in the United States and to have a coordinated approach. Not an industrial policy—forget that old bugaboo. Not picking winners and losers. But having a coordinated game plan to do it the right way. That is what these bills are about.

I commend them to the attention of my colleagues. I am delighted with the working relationship we have in putting these forward with the support of the majority leader and the two full committee chairmen, themselves leaders on this question, who have made it a priority in the two relevant committees.

Through this legislation we can help make economic growth a priority. The American dream remains irrevocably tied with technology. It is time to restore our lead in technology and manufacturing. It is time to work to keep the American dream within reach and the economic growth that makes it possible a long-term reality.

Mr. NUNN. Mr. President, I am pleased to join with my distinguished colleagues, Senator BINGAMAN, Senator HOLLINGS, and Senator GORE in cosponsoring these four important bills intended to enhance America's technological and manufacturing strength. This legislation is the product of numerous hearings held by Senator BINGAMAN's Defense Industry and Technology Subcommittee, and of similar hearings held by Senators HOLLINGS and GORE in the Commerce Committee, and reflects the advice and recommendations of persons in Government, industry and academia given at many other meetings and discussions.

I am especially pleased to see the level of cooperation that has taken place between the Armed Services Committee and the Commerce Committee in crafting this legislation. Senator BINGAMAN, Senator HOLLINGS, Senator GORE, and their staffs have applied a tremendous effort in putting this legislation together. I believe they have created a good package and I am proud to join them as an original cosponsor. This legislation will go a long way toward helping America remain on top as a global military and economic power.

That these members of the Armed Services Committee and the Commerce Committee have found it appropriate to work closely together reflects the changing relationship between defense and nondefense technology and production. Not too many years ago defense technology strongly drove the technological advances of America and the entire free world. Defense inventions and developments not only kept America's Armed Forces technologically superior, but defense spinoffs found their way into all of our lives and improved our standard of living. These developments also were a major contributor to America's position as the world's leading high-tech exporters.

One good example of this is in the aerospace industry. There, in the late 1950's, the Air Force developed a new jet tanker, the KC-135, which provided the basis for designing and producing America's first jetliner, the Boeing 707. This defense investment, and its investment in the jet engines developed by General Electric and Pratt-Whitney for military aircraft over the years, have inevitably led to new models for use in the commercial jet aircraft market and is the basis for America's lead in this technology. Because of this, the United States continues to dominate the aerospace export market, and Boeing Aircraft is America's top exporter in terms of foreign sales.

Defense technology has spun-off many other applications for nondefense uses which have found their way into all of our lives. Things like the microwave oven, digital computers, semiconductors, and new materials for our automobiles and homes. But defense development and production no longer dominates like it once did. The evolution from the cold war will hopefully reduce military confrontation but economic warfare directly based on technology and productivity gains will intensify.

Today we find that there is more spin-on from nondefense development to defense than there is spin-off from defense to commercial markets. Since and technology no longer cleanly separate into defense and nondefense. And the same is true for manufacturing and production. That is why I believe this legislation, which takes a broader view of the Nation's technological and industrial agenda. And which attempts to create ways to prioritize and harmonize these activities, is so important.

Likewise, this legislation recognizes the strong role that manufacturing in America plays in keeping us No. 1 both in defense and in economic matters. It pays particular attention to the needs of the small- and medium-sized manufacturers who form the backbone of this Nation's production might.

Included in this legislative package is one provision that I feel merits special attention. This is the provision that supports enhancing existing programs, or establishing new programs, in manufacturing engineering education at our universities and colleges. Having the properly educated and trained human resources available is the key to any future success this Nation will achieve in technology and manufacturing. Today our universities and colleges produce the world's best scientists. They produce the world's best design engineers. But, for a variety of different reasons, we have neglected to adequately train enough manufacturing engineers. The purpose of this provision is to correct this inbalance. I have worked closely with Senator BINGAMAN on this provision, and because we feel it is so important, I have introduced it separately as a stand-alone bill which enjoys strong bipartisan support in the Senate.

Mr. President, this legislative package is strongly supported by numerous national organizations, and by many distinguished individuals all well-qualified to pass judgment on its merits. It provides an excellent opportunity for America to move ahead in establishing the policy and the mechanisms that we need to continue to be the world leader in technology and manufacturing.

In closing, I would like to thank my colleagues on the Armed Services Committee and the Commerce Committee for all of the excellent work they have devoted to preparing this legislation.

The results of their many long hours devoted to this effort is a truly comprehensive, far-reaching set of provisions that will provide a substantial basis for moving ahead in these two important areas. I urge my colleagues in the Senate to support this legislative initiative and give it your positive vote.

EXTENSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Connecticut [Mr. LIEBERMAN].

Mr. LIEBERMAN. Mr. President, I ask unanimous consent the period for morning business be extended not beyond 10:45 am., with Senators permitted to speak therein for up to 5 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TECHNOLOGY LEGISLATION

Mr. LIEBERMAN. Mr. President, first I join my colleagues, the Senators from New Mexico and Tennessee, and also Senators NUNN and HOLLINGS, in the introduction of these four bills which I think can play a critical role in jump-starting our economy.

In the debate over America's declining industrial competitiveness and slowing economic growth, which I think is the No. 1 long-term challenge facing Congress in America today, we must address the high cost of capital, our low rate of savings and investment, chronic trade and budget deficits, and the failure of our educational system to prepare our children for the jobs that we need done. But we also must address the fundamental issue of technological advancement. That is what these four bills would do.

Technological advancement can drive an economy by creating new jobs, goods, services, industries, and capital. It increases productivity and products, and it will break through the competitive disadvantage that American firms are now facing.

My colleagues have spoken about the essential fact here, and I just repeat it in one sentence: America is still No. 1 at research, but falling behind in our ability to convert that research into products that can sell in America and throughout the world. If we are going to compete again successfully, if we are going to remain the dominant economic power in the world, it is going to take a new kind of partnership between the public and the private sectors.

This administration, as the Senator from Tennessee has indicated, has been mired in out-of-date economic theory and irrelevant ideological debates. The White House says the Federal Government has no business picking winners and losers and that the free market must reign supreme. Obviously, today all of us support the market economy. Here, as President Yeltsin visits our country to find out how to make it work, certainly we are not going to retreat from capitalism and the market economy.

But the message of American Government and economic success is that the free market system works best when it is supported by American Government. We have always picked winners and losers going way back in our history. That is how the railroads were built. That is how the highways were built. That is how the American aerospace industry and American agriculture have become the worldwide standards for American excellence, all of that done by the market with Government support.

That is exactly what these four bills would do for our manufacturing sector.

Mr. President, I introduced legislation myself in late April that addresses some of the concerns that American manufacturers have had in trying to remain competitive. Basically, my legislation would create a civilian DARPA, building on the success of that agency in the Department of Defense. It is not picking individual winners and losers; it is putting the Government on the side of industry by forming a working partnership. That is the intent of these four bills, and that is why I am proud to join in cosponsoring them.

CHEMICAL PLANT ACCIDENTS

Mr. LIEBERMAN. Mr. President, briefly I want to address another subject and that is the chemical accident that occurred at a plant in South Carolina. This one killed 6 workers and injured 33 others earlier this week. The number of accidents at chemical plants in this country has been dramatically on the rise. Twenty-three workers have died in five such accidents this year. Yesterday's New York Times included an excellent article by Keith Schneider that chronicles the recent history of these chemical plant disasters. I ask unanimous consent that that article be printed in the RECORD following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LIEBERMAN. Mr. President, the time is right for an effective Federal response to this growing problem. We need an independent board equipped to respond to chemical plant explosions in the same manner as the National Transportation Safety Board responds to airplane crashes or train wrecks.

I am not talking about introducing a new bill. It is not necessary. We adopted it last year in the Clean Air Act, a section which provides for the creation of a chemical safety and hazard investigation board. But so far that section has been ignored by the administration. I ask this morning: Since when does the administration have the right to exercise line-item vetoes over laws passed by Congress? Since when can the President choose to ignore those sections of a law with which he disagrees?

The administration claims that it has failed to establish this board because of constitutional concerns over the board's relationship to the President and executive branch agencies.

I sat through the Clean Air Act hearings and the negotiating sessions with the White House on the Clean Air Act. I never heard a word of opposition based on constitutional concerns. Meanwhile, the explosions and the deaths continue with no independent teams doing the kind of methodical work that can identify the reasons behind these disasters and recommend improvements that safeguard human health. We need a watchdog because of the loss of potential human life.

The fact is that millions of people in this country live close enough to chemical plants to lose their lives if catastrophic explosions occur, and winds carry toxic fumes into their homes. The Bhopal disaster occurred thousands of miles away from our shores, but we must not delude ourselves into thinking it cannot happen here.

If the chemical industry needs to make safety improvements to protect their workers and their neighbors, we need to know now what those improvements should be. Only by establishing a Chemical Safety and Hazard Investigation Board can we be assured that every accident will be looked into with a professional, independent eye, and that the public will be told what went wrong, and what we can do to prevent disaster in the future.

The National Transportation Safety Board, by determining the cause of hundreds of accidents and making significant recommendations for safety improvements, has saved countless lives over recent decades. The American people feel safer—they are safer—because the NTSB is in existence. The American people deserve an NTSB for the chemical industry. The law requires it. It's time for the administration to fulfill the law, and create the Chemical Safety and Hazard Investigation Board, before some Bhopal-like disaster leads it to regret its unconscionable delay.

EXHIBIT 1

[From the New York Times, June 19, 1991]

PETROCHEMICAL DISASTERS RAISE ALARM IN INDUSTRY

(By Keith Schneider)

CHARLESTON, SC, June 18.—The blast that killed six workers at a chemical plant here on Monday was the latest in a streak of fires, explosions and poison-gas leaks at refineries and chemical plants around the nation.

Since October 1987, when a leak of hydrogen fluoride gas at a Marathon Oil refinery

forced the evacuation of thousands in Texas City, Tex., the American petrochemical industry has endured one of the deadliest periods in its history, one that has baffled Government experts and alarmed company executives. The 12 worst explosions have killed 79 people, injured 933 and caused roughly $2 billion in damage.

In the last six weeks, before the blast here Monday at the Albright & Wilson Americas plant, an explosion at the Angus Chemical Company in Sterlington, La., killed 8 workers, injured 128 workers and residents, wrecked businesses and ruined so many homes that 23 families are still living in motels.

The explosion at Albright & Wilson Americas, a subsidiary of the Tenneco, occurred as workers were mixing chemicals to make a flame retardant used in textiles and is being investigated. Twenty-one employees and two firefighters were injured.

ARE THERE ANY LINKS?

Oil and chemical industry executives acknowledge that the number of recent big accidents, but they say they do not know if there is a common link. A petroleum trade group has begun a study to determine if there is a thread.

But independent safety experts and industry unions point to several trends that they say have made plants and refineries more dangerous: a growing dependence on the use of outside contractors, slipping safety standards, improper and inadequate training, flaws in engineering and design, old and deteriorating equipment, and a more aggressive drive for profits.

Gordon Strickland, assistant vice president of the Chemical Manufacturers Association, the industry's policy group in Washington, said that safety and training are improving, and denied that any of these factors were causing the rash of problems.

"The accidents that have occurred, it seems, all have different causes," he said. "The consequence is that one cannot nail it down to design or maintenance or whatever. And I don't believe that safety is anything but a first-line interest and concern in our industry."

THE DEATH RATE DOUBLES

An independent research group in Chicago, the National Safe Workplace Institute, said that the fatality rate from 1971, when the Occupational Safety and Health Administration was established, until the early 1980's was less than 10 a year. Over the past four years, the rate has been more than double that.

In 1987, according to the institute, the number of deaths and injuries in the petrochemical industry began to rise steadily. In 1989, an explosion at the Phillips Petroleum plastics plant in Pasadena, Tex., killed 23 workers. A year later, 17 workers were killed at an ARCO Chemical Company plant in Channelview, Tex. In the first six months of this year, 23 workers have died in five accidents.

The safety group based its estimate on news articles and interviews with business executives, labor groups, and Government officials.

On Monday, in the Charleston accident, 6 workers were killed and 23 injured when a chemical reactor apparently exploded without warning. Investigators from the company, and the State Labor Department have not determined the cause of the explosion.

But some aspects of the explosion described today by the plant's general manager and several workers were reminiscent of previous accidents. It occurred soon after a week-long shutdown; many of the workers killed or injured were contract workers, not plant employees, and new controls were being installed.

At this stage in the investigation there is no way to know if any of these factors contributed to the accident. And there is not a Federal agency that compiles statistics and investigates every accident the way the National Transportation Safety Board does, for example, with air crashes.

Although amendments to the Clean Air Act signed into law in 1990 established a Chemical Safety and Hazard Investigation Board, the White House has yet to appoint any members or provide funds.

The White House, in a statement, said it has not acted because of concerns over the structure of the board, how its activities will be coordinated with the Environmental Protection Agency and OSHA, and whether it will function as an independent group or under the jurisdiction of the President.

But Mr. Strickland of the chemical manufacturers group said there should be no delay: "Congress intended for the board to be established rapidly, and the events we see today suggest it should be expedited as quickly as possible."

OSHA now conducts investigations at accident sites, but its findings are often kept secret, pending the outcome of court cases involving penalties or, in rare cases, criminal charges.

WE LIVE IN TOXIC CITY

In the cities and towns that are host to the nation's 2,300 refineries and chemical processing plants, more and more workers and residents are asking whether the disasters are a coincidence, or an urgent signal.

"We live in toxicity, and it is very scary," said Bebe Lising, 39, a resident of Texas City and chairwoman of the Galveston-area chapter of the Sierra Club. "People have been kept so in the dark, and a lot of jobs are dependent on the industry. Our local health department is understaffed, and the plants monitor themselves."

Labor Department reviews show that the rate of injuries in refining and chemical plants is half the national rate for all manufacturing industries and has been declining. But the statistics do not take into account deaths and injuries suffered by employees of engineering and construction companies that work under contract.

Contract workers, whose numbers are rising in chemical and refining plants, are generally paid less and perform more dangerous duties than fulltime workers. Mistakes by these workers have been linked to many of the most serious accidents, including a disaster in October 1989 at the Phillips Petroleum plant near Houston that killed 23 workers and injured 232 people.

A study commissioned by OSHA determined last year that contract workers had much higher turnover rates than regular employees, received far less training and were much less aware of safety procedures in the event of an accident. The study, by the John Grey Institute of Lamar University in Texas, found that contract laborers were "routinely instructed to run in the event of an emergency," leaving regular employees to fight fires and shut down pumps and pipelines.

OSHA, a unit of the Department of Labor, is proposing a rule to require companies to give more training to contract workers. The American Petroleum Institute, the oil industry's principal trade group, has urged the Department of Labor to change its practices and report injury and accident statistics for all employees plant by plant.

Six months ago, the Petroleum Institute also started a study to see if any of the accidents had common characteristics. The study may be completed before the end of the year.

"There is great attention given to safety," said Charles Thomas Sawyer, vice president of industry affairs at the Petroleum Institute. "Is there a common reason for all of these accidents? I don't know the answer to that right now."

Last year, Congress directed OSHA and the E.P.A. to require companies to conduct studies of the potential castastrophic hazards of their plants and to submit plans for preventing accidents.

OSHA has almost finished its regulations. The E.P.A. has until 1993 to finish its regulations, which are aimed at modernizing equipment and improving manufacturing. Next month, the E.P.A. is scheduled to meet with state officials from New Jersey and California, the first states to establish rules for preventing chemical disasters.

The operating weaknesses in the petrochemical industry, say independent experts, may be the result of the aggressive cost cutting prompted by the corporate takeovers and mergers of the 1980's. To protect themselves from takeovers, or to finance the mergers, oil and chemical companies greatly increased production even as they cut costs and staff.

JOB TOTALS ARE SLASHED

More than 40,000 jobs have been cut in the refinery industry since 1982, according to the Petroleum Institute, leaving about 115,000 refinery workers. About 30,000 hourly jobs were lost in the chemical industry, according to the Oil, Chemical, and Atomic Workers International Union. Phillips Petroleum employed 30,000 people before it came under attack by T. Boone Pickens in the mid-1980's. By October 1989, when its chemical complex near Houston exploded, it employed 22,000.

"No sector of the economy was affected more by the raiders than the oil and chemical industry," said Joseph A. Kinney, director of the National Safe Workplace Institute. "Workers are paying for it with their blood."

Though industry executives say cutting costs has not affected safety, officials at OSHA say economy measures and their potential in compromise safety is a valid issue.

DEADLY BLASTS, TOXIC CLOUDS

The most serious chemical and refining accidents in the United States in recent years.

1. Texas City, Tex., Oct. 30, 1987: A worker operating a crane at Marathon Oil's Texas City refinery dropped a heater on a storage tank, causing a rupture that released 30,000 pounds of hydrogen fluoride gas. Three thousand residents were evacuated for three days, and 800 people were treated for breathing disorders and skin problems.

2. Pampa, Tex., Nov. 14, 1987: Butane and acetic acid leaked from a ruptured tank, forming a vast cloud of vapor that caught fire and exploded, destroying the Hoechst Celanese chemical plant, killing 3 workers and injuring 35 people. Economic loss, including property damage, lost production, legal expenses and fines: $241 million.

3. Henderson, Nev., May 5, 1988: Fire and explosion destroyed a Pacific Engineering and Production Company plant that manufactured ammonium perchlorate, a component of rocket fuel. Two employees, including the plant manager, were killed, 350 people were injured, 17,000 people were evacuated from their homes, and property damage was found 12 miles from the plant. Economic loss: $75 million.

4. Norco, La., May 5, 1988: An eight-inch pipe ruptured at a Shell Oil refinery, releasing a vapor cloud that ignited and exploded, killing 7 workers, injuring 42 and causing property damage that resulted in 5,200 claims. Economic loss: $327 million.

5. Pasadena, Tex., Oct. 23, 1989: A valve on a polyethylene reactor was left open at a Phillips Petroleum plastics plant, venting gases that caught fire and exploded with the force of 10,000 pounds of TNT. Twenty-three workers died, 232 people were injured, and the plant was destroyed. Economic loss: $750 million to $1 billion.

6. Baton Rouge, La., Dec. 24, 1989: A pipeline operating at high pressure ruptured at the Exxon U.S.A. refinery, releasing a cloud of ethane and propane that exploded, killing two workers, injuring seven and causing property damage up to six miles away. Economic loss: $44.7 million.

7. Channelview, Tex., July 5, 1990: An explosion in a compressor at a plant belonging to a chemical company owned by Atlantic Richfield killed 17 workers. Economic loss: $90 million.

8. Cincinnati, July 19, 1990: A fire and explosion at the BASF coatings and ink plant resulted from the cleaning of a chemical reactor vessel with volatile solvents. Two workers died, 80 people were injured, much of the plant was destroyed and 162 buildings were damaged. Economic loss: Company will not reveal.

9. Lake Charles, La., March 3, 1991: A fire and explosion killed 6 workers, injured 12, and caused extensive damage at the Citgo Petroleum refinery. Economic loss: Company will not reveal.

10. Corpus Christi, Tex., March 6, 1991: Two workers died and five were injured when hydrofluoric acid vapors escaped from a gasoline blending unit at the Kerr-McGee Corporation's Southwestern Refinery. Economic loss: Company will not reveal.

11. Port Lavaca, Tex., March 12, 1991: An explosion in the ethylene oxide unit of Union Carbide's Seadrift plant kills 1 and injures 19. Economic loss: $50 million to $75 million.

12. Sterlington, La., May 1, 1991: A fire in or near a compressor detonated nitro methane at the Angus Chemical Company plant, killing 8 workers, injuring 128 workers and residents, destroying much of the town's main business district and leaving 30 families temporarily homeless. Economic loss: more than $110 million.

13. Henderson, Nev., May 6, 1991: A pipe from a storage tank at the Pioneer Chlor Alkali plant leaked thousands of gallons of liquid chlorine in the middle of the night, causing evacuations, shutting down the city, sending 55 people to hospitals for treatment of injuries, mostly breathing problems.

14. Charleston, S.C., June 17, 1991: An explosion and fire at the Albright & Wilson Americas chemical plant killed 6 workers and injured 23 others including 2 firefighters. The accident occurred one day after a weeklong shutdown. Economic loss: still to be determined by the company.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Connecticut [Mr. DODD].

AMERICAN MANUFACTURING

Mr. DODD. First of all, Mr. President, I want to commend Senator BINGAMAN, Senator NUNN, Senator HOLLINGS, Senator GORE, my colleague from Connecticut, Senator LIEBERMAN, and others, for their statements this morning regarding this package of legislation dealing with manufacturing in this country. And particular thanks to Senator BINGAMAN for taking the lead on this issue in developing this package which I think sets us at least on the track.

We are dealing with a fundamental issue that I think is going to determine global leadership by the end of this decade if not before and certainly in the 21st century. These four bills make up a comprehensive strategy to address a very serious problem facing this Nation: The decline of American manufacturing that threatens our technological leadership in the global marketplace.

As a member of the Senate Committee on Foreign Relations, I have had the opportunity in recent years to become more involved in issues relating to economic policy. In just this year alone, for example, my subcommittee has held a number of hearings on two matters relating to trade: the United States-Mexico Free-Trade Agreement and the Enterprise for the Americas Initiative.

Mr. President, I have long been convinced that economic policy must be considered as a fundamental part of our foreign policy. That is why I requested time this morning to speak on these bills introduced by the Senator from New Mexico.

Mr. President, some might think it is ironic that we choose this time to discuss the threat of America's decline. Some might think that America's role in the world is hardly a matter of concern right now. After all, some would say, we have just completed a highly successful and effective military mission in the Middle East. Within a matter of months, we moved over half a million men to the other side of the world—and within 100 hours after the start of the ground war, we brought the worlds fourth-largest army to its knees.

Some would even say that the United States, given the hardships that have befallen the Soviet Union recently, has finally established itself as the world's only superpower. And indeed, Mr. President, if you are talking about military power, they are absolutely, unequivocally correct. No other nation could have done what we did in the Persian Gulf. Everyone knows we were victors in the cold war, and our success in the Persian Gulf reflects that fact.

But Mr. President, we would be cruelly deceiving ourselves and the people of this country if we were to allow ourselves to believe that a victory in the cold war is the end of the story. Because U.S. military dominance in the world is just that—military dominance. It is nothing more. The New World Order will not only be based on who has the strongest air force and the better equipped troops. It will also be about who has the deepest pockets, the strongest manufacturing base, and the greatest technological know-how.

I firmly believe that the 21st century will be one of economic conflict, rather than military conflict. The fact is that we are moving from a bipolar world of nuclear confrontation to a tripolar world of economic competition. And we will need to move aggressively to firm up our manufacturing sector in order to keep up with the other two poles in this global competition—the Pacific rim and the European Community.

Mr. President, I think the approach taken in this package of legislation is a good one. It will unite the Department of Defense, the Department of Commerce, and other civilian agencies in a major effort to boost American manufacturing performance. It will significantly upgrade existing Department of Commerce efforts to assist U.S. manufacturers. And it will increase coordinated planning and management of Federal activities in critical technologies.

In short, Mr. President, this package recognizes that the problem threatening our Nation's manufacturing dominance is not one of creativity, but one of production. Our performance in some of the key technological sectors important to our economy confirms that fact.

In 1980, for example, 9 of the top 10 worldwide manufacturers of semiconductors were American firms. Nine years later, only 4 American firms remained in the top 10. In 1984, 7 of the top 10 computer manufacturers were American; 5 years later, only 4 reached the top 10.

And then there are the serious problems, of course, facing the Big Three automakers in this country. From the days of the old Model T, perhaps no product better symbolizes American creativity and ingenuity better than the automobile. But now the Japanese have 30 percent of the United States market, while American car manufacturers are racing to copy our competitors' assembly techniques.

Mr. President, we must take leadership now to address these problems. We do not need to instill creativity in American workers and manufacturers. But we do need to work on our follow-through. That is exactly what this package of bills will do.

So Mr. President, I firmly support this package. I commend the leadership for their introduction of it. And I commend Senator BINGAMAN and Senator HOLLINGS for their important work on this vital legislation.

As we stand on the verge of the New World Order, we must take the time to think carefully about what elements will make up that world order. And I think it is time we recognize that American economic policy and American competitiveness must take a paramount role. As we bolster our global diplomatic and military influence, this

important legislation will ensure that the American manufacturing sector is not left behind.

PRODUCT LIABILITY AND FAIRNESS ACT

Mr. DODD. Mr. President, I would like to take this opportunity to discuss briefly another related matter—my cosponsorship of S. 640, the Product Liability Fairness Act of 1991.

For over a decade, I have not been a cosponsor of this legislation. Initially, my reluctance was tied to my concern that the legislation was designed to help only manufacturers and not the victims of product injuries. Senator DANFORTH and I unsuccessfully in 1985 and 1986, tried to deal with a comprehensive approach in liability matters. Unfortunately, that matter never came to a vote in the Senate.

Since then, Mr. President, this legislation has refined those particular procedures, and I now believe this bill represents a better balanced package of changes, some of which would benefit manufacturers, some of which would benefit victims, but all of which I think would produce a fair and more certain system of rules for redressing product injuries.

I note the presence of the distinguished Senator from Wisconsin on the floor who spent an extensive amount of his time a number of years ago dealing with a very similar matter, as have a number of others. But my hope that S. 640 will be given consideration. It is linked, Mr. President, directly to the bills introduced by the Senator from New Mexico.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. DODD. I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator recognizes the Senator from North Dakota [Mr. CONRAD].

U.S. ECONOMIC VULNERABILITY

Mr. CONRAD. Mr. President, I join in commending our colleague from New Mexico for his work in bringing these four bills to the attention of this body.

It seems clear to me that the chief weakness facing this country is our economic vulnerability. Last year, for the first time, Japanese assets worldwide were valued more highly than United States assets worldwide.

Ever since the mid-1980's we have been running very serious trade deficits, and, in fact, we have now become the largest debtor Nation in the world. In the mid-1980's, we were the largest creditor Nation in the world. What could be more clear than that the trend lines are moving against this country. What could be more clear than in industry after industry our competitors are on the move and we are not.

Mr. President, in my role as head of the deficit reduction caucus, I had an opportunity to bring in the Competitiveness Council to talk about the underlying reasons for the weakness that we are seeing in various manufacturing sectors. They have identified critical areas to U.S. technological supremacy. They have identified areas in which the United States must be more aggressive.

The Senator from New Mexico has taken a first step toward riveting the attention of this body and our Nation on what we can do to shore up the manufacturing in our country.

RURAL CRIME AND DRUG CONTROL ACT OF 1991

Mr. CONRAD. Mr. President, I rise to indicate this morning my support for the Rural Crime and Drug Control Act of 1991. This is a good bill, a bill of critical importance, to the people of North Dakota and other rural areas of the country. I am proud to be an original cosponsor.

I want to especially thank the distinguished chairman of the Judiciary Committee, Senator BIDEN, for his work on this bill. He has once again crafted a solid and tough proposal for fighting drug abuse and crime, and I thank him for it.

Mr. President, crime and drug abuse in our big cities get a great deal of publicity. It is difficult to watch an hour of television without seeing in graphic detail what drugs have done to our inner cities.

In my own neighborhood—and I live in Washington less than 10 blocks from this Capitol—in the 4½ years I have been in Washington, we have had two murders. I assume both of them were drug related. We have had numerous break-in attempts on our home, one of them successful. We have had our car stolen. We have had our renter have her transmission stolen out of her vehicle. She wakes up one morning, goes out, and the transmission is gone.

One of our renters went to try out for a play in suburban Maryland. After the play, she went to a fast-food restaurant to eat. While she was waiting for her order, a man jumped into the passenger side of the vehicle, put a gun to her head and said, "drive." This young woman, who had only been in Washington a relatively short time, a year earlier had been pistol whipped in a park three blocks from our house.

Mr. President, I do not know if all of these incidents were drug related, but I think we know in the big city that many of them are. And the time to act is now.

My point is it is not just here in the inner city; it is also in the rural parts of our country. But the drug problem in rural America has been largely ignored in the national debate. Little attention is paid to the damage drugs are doing to Main Street in middle America. This bill recognizes that the drug problem in rural America is just as potent, just as threatening and just as deadly.

It has been less than a year since I joined four of my colleagues to release a GAO study which showed that drug and alcohol abuse rates are just as high in rural areas as in urban centers. I said then that we needed the resources to fight this problem. I said then that we needed the money to educate our kids, and the money to find and punish drug dealers and pushers.

This bill delivers those resources and provides the tools needed to protect the streets and school yards of rural America.

Last year, we had a rural crime and drug bill which proposed only $25 million to tackle the problem. This year's bill proposes $50 million, and I promise by colleagues that every cent of it is needed. There is money here for the front end of the equation—stopping drug abuse before it starts. This bill provides the resources to go into the schools and tell kids that drugs are a dead end street. There is also money here to help those kids who do get into trouble, money to treat them and give them a chance to be drug-free citizens.

This bill promises that the pushers will pay. It promises tough penalties for those who turn a profit on the addiction of others. It promises prosecution to the full extent of the law for those who promise a high but deliver only misery. To those people, this bill says you will pay for what you have done. This is tough, workable legislation which will help make the streets of rural America safe again. I urge my colleagues to support it.

I yield back the remainder of my time.

EXTENSION OF MORNING BUSINESS

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the time for morning business be extended to 11 o'clock under the same conditions and limitations previously ordered.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Chair recognizes the Senator from Colorado [Mr. WIRTH].

CRITICAL TECHNOLOGIES AND MANUFACTURING ACTS OF 1991

Mr. WIRTH. Mr. President, I am pleased to be an original cosponsor of the two bills introduced yesterday by the distinguished Senator from New Mexico [Mr. BINGAMAN], the majority leader, the chairman of the Armed Services Committee, and others.

The National Critical Technologies Act and the Advanced Manufacturing Technology Development, Deployment, and Education Act are complementary and essential initiatives to put America to work in the demanding international technology marketplace of the 21st century. These bills together

point the way to a productive partnership between industry and government to sustain and nurture a viable technology and industrial base for this country.

Mr. President, we all watched with fascination and considerable pride the technological sophistication of American Armed Forces during the recent war in the gulf. Whether it was the pictures of American high-technology weapons striking their targets or the reports of the carefully orchestrated movement of massive amounts of troops and equipment, the technological accomplishments of the U.S. forces during the war were truly astounding. And a great deal of the credit for this success is due to American defense industry.

Yet as the images of the war fade, we are reminded that the technological successes we witnessed during the war stand in sharp contrast to the challenges we face in the broader world marketplace. Our Nation is going through a period of rapid and potentially profound change—changes brought about by the end of the cold war and by the emergence of new political and economic challenges.

The challenge of maintaining a robust defense industrial base in this period of transition and in the decade ahead will be a difficult as it is important. A falling defense budget will certainly erode the resources devoted directly to the defense industrial base. At the same time, American competitiveness in the world economy is being challenged for a variety of reasons well familiar to all of us. It is in this environment that we must address the challenge of maintaining a viable defense industrial base in the decade ahead.

We need a two-phrase policy that:

First, acknowledges the most cost-effective way to maintain a strong and innovative defense industrial base is to break down the barriers between military and civilian industry—to do away with the defense industrial complex as a kind of enclave within the broader American industrial effort; and

Second, acknowledges that this broader American industrial and technological effort exists in a highly competitive world, and this in turn requires a governmental role in enabling infrastructure for technological innovation and diffusion.

The critical technologies and manufacturing bills introduced yesterday do just that. And they are long overdue, Mr. President.

As a result of studies by industry groups, private research institutes, working groups of scientists and former Government officials, and even the Defense and Commerce Departments, the challenges confronting the U.S. economy and specific high technology sectors are fairly well understood. Compared with our economic competitors, we trail or are losing the narrow lead we have in a wide range of markets, from semiconductors to advanced materials to manufacturing technologies. The various critical technologies lists provide a valuable starting point for industry and Government alike to see where our weaknesses lie.

However, the lists alone are not enough. If the United States is to remain competitive in an increasingly sophisticated global economy, over the long term, the Federal Government—in close cooperative with industry and labor—must devise strategies both to remedy the underlying problems and to create a climate conducive to long-term success. Using the slow and blunt instrument of Government policy to address rapidly changing technological challenges on a case-by-case basis will lead at best to only occasional success. Instead, we must cast our net wider if our efforts are to be more than half-measures and practical solutions.

Overcoming the technology challenges facing the economy is not simply a matter of promoting innovation in our leading edge companies. Rather, we must work to increase the technological sophistication of the broad range of American industry, from semiconductor manufacturers to steel producers. That will demand policies designed to increase investment and stimulate diffusion of advanced technologies throughout all of American industry. It will also require that we not only train our scientists to be the best in the world, but also that we increase the technical competence of our entire work force.

As a member of the Senate Armed Services Committee, I have worked to encourage a movement of defense industry away from DOD dependency and toward greater common-ability with our civilian economy. As defense budgets shrink, it will become increasingly unviable to sustain a defense industrial enclave, as Bill Perry put it, within the U.S. economy, to bolster our defense industrial preparedness, we must broaden that base to take advantage of the much more dynamic commercial industrial base. To that end, last year the Senate Armed Services Committee broadened the scope of reimbursable independent research and development [IR&D] to include dual use technologies—an issue further addressed in the Critical Technologies Act. We also have been trying to get the DOD to reverse the tendency to write milspecs for every DOD acquisition.

It is likely the bills introduced yesterday will face a buzzsaw of opposition from ideologues in the Republican Party who will claim that these initiatives represent industrial policy and will engage the Federal Government in "picking winners and losers." To argue that the Government has no role in promoting the technological competitiveness of its people is to ignore reality. When a working market exists, it undoubtedly will remain the most effective means for channeling resources into promising areas. However, we have long recognized that in specific areas such as education, infrastructure, and basic research, markets do not work. Instead, it has fallen to the Government to intervene in these areas to achieve our society's goals.

The proper role of the Federal Government is one of creating enabling policies to foster technological advances throughout the entire economy just as scientists and engineers creating enabling technologies that permit progress in a wide range of field. We must work to devise a long-term, sustainable environment in which technological innovation and diffusion can flourish. Perhaps most importantly, we must stimulate greater investment in our future—by our citizens, our companies, and our Government.

Despite this fact, U.S. investment in basic infrastructure has declined over the past decade. We must reinvest in our technological infrastructure. The two bills introduced by the Senator from New Mexico does just that by increasing and targeting Federal support for precompetitive critical technologies and by expanding our commitment to manufacturing technologies.

Mr. President, let me anticipate, Mr. President, what I think will be some of the criticisms that are made of this legislation. We will hear not only that this as another Democratic effort, but statements will be made that this is industrial policy, that somehow the Democratic Party is once again advocating a program in which the Government, the cold hand of Government, is going to intervene in an otherwise vibrant economy and foul things up.

Mr. President, that criticism which we are going to get just as sure as I am standing here runs totally counter to the history of this country.

Let me explain. We have for more than 200 years in the United States had a partnership between the public sector, the Federal Government, and the private sector. When that partnership is run properly and when that partnership is recognized to be as strong as it is, we have had enormous success, running all the way back, Mr. President, to the Northwest Ordinance in which a certain amount of land was set aside for public education. That was a partnership between the public sector and the private sector. That set a pattern for education throughout the United States which has worked very well.

We had, Mr. President, during the 1820's, canals that were built from right up here on the Potomac River across into the West. Those canals were built in a partnership between the public sector and the private sector. Was that industrial policy? It probably was, but it was also a very important thing to do.

During the 1860's we had other examples of this. The State land grant university program, industrial policy? Could well have been, but certainly an enormously important investment in terms of developing the institutions of higher education and the research programs that have served us so well in the United States.

The railroads went across the country. We passed the Railroad Act during the 1860's as well providing a section of land, the alternative checkerboard pattern we have all learned about in our history books. Was that industrial policy? Certainly it was. It was the right kind of a partnership between the public and the private sector.

The examples go on and on and on. The Vocational Education Act, the 1920's, 1930's, in which we established the base of training through our public education structure of the private sector, setting up programs, the public sector helping to fund them.

The National Defense Education Act, established after Sputnik went up; everybody was deeply concerned about what happened.

We put together a partnership which was enormously successful in developing programs that ranged all the way from foreign language education in the United States to programs that built a lot of our research capacity for the modern day and age.

The Interstate Highway Program started by President Eisenhower, during that period of time. We have been debating the Highway Act here. That again is a partnership between that crucial private sector in transportation and the public sector working very closely together.

A final example, all around us, which we are so aware of, is the space program, again a very good example of the partnership.

We have more than 200 years of this history. It is very important to recognize that the legislation so important, so needed, and so well crafted by the distinguished Senator from New Mexico [Mr. BINGAMAN] builds on this great and final tradition. We must do that as we make a transition in the 1990's from an economy that had so much dependence on our military capability in figuring out what these critical technologies are, what again is the partnership going to be between the public and private sector, how do we maintain so many of these important industries in the United States, and how do we look ahead to become increasingly competitive in a more and more competitive international situation.

I am pleased to be an original cosponsor of this legislation. I thank the distinguished Senator from New Mexico for his leadership on this. I look forward to having our colleagues act on this very expeditiously.

Finally, my thanks to Senator KASTEN for his courtesy.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. KERREY). The Senator from Wisconsin is recognized.

Mr. KASTEN. I thank the Chair.

(The remarks of Mr. KASTEN pertaining to the introduction of S. 1335 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. KASTEN. I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

WEST VIRGINIA DAY

Mr. BYRD. Mr. President, on this date 128 years ago, West Virginia was officially admitted to the Union as the 35th State.

West Virginia's admission to the Union was, however, neither smooth, swift, nor without pain.

Many Members of this very Senate were opposed to West Virginia's admission to the Union.

Some radical Republicans opposed the admission of West Virginia because the western Virginians who populated the proposed new State owned thousands of slaves, the emancipation of whom had nowhere been broached in the proceedings aimed at creating West Virginia.

On the other hand, strict constructionists objected that the War Between the States was being waged against the principle of illegal secession for any reason, and that West Virginia's separation from Old Virginia was nothing but illegal secession by another name.

Again, roughly a third of the residents of the counties of western Virginia to be included in the proposed "West Virginia" favored the secession of Virginia into the Confederacy, and thousands of these secessionist western Virginians were enlistees in the Confederate Army. To this day, the allegiances of these "Confederate West Virginians" are memorialized in a number of bronze Confederate soldier statues standing in several West Virginia communities.

To West Virginia's advantage, the slavery objection was satisfied by an agreement by West Virginia statehood proponents to gradual emancipation.

Abraham Lincoln himself dispatched the strict constructionists' objection by remarking that, though illegal secession was the issue between the Union and the Confederacy, the West Virginians were secessionists in favor of the Union and therefore to be tolerated.

Though legal admission to the Union took place on June 20, 1863, West Virginia was still rent by clashes between loyal Unionists and unreconciled Confederates until the end of the war, and even the Hatfield-McCoy feud of the 1880's was vaguely rooted in the Hatfields' Confederate ties and the McCoy's Unionist heritage.

In spite of all of the divisions that separated West Virginians originally, however, over the generations the citizens of the 35th State have learned increasingly to transcend their differences and to forge their identity as West Virginians.

Mr. President, I am proud today to wish my home State a "Happy Birthday," and to hail the heritage on which it stands. At the same time, I wish West Virginia even greater success in the years ahead as it stretches its potential and fulfills its promise as the 35th State in our country's unfolding destiny in the 21st century.

WEST VIRGINIA BIRTHDAY

Mr. ROCKEFELLER. Mr. President, I rise today to wish the great State of West Virginia, and all of its citizens, a very happy birthday. West Virginia was born 128 years ago, its people resolute with a single purpose in mind: To grant freedom to all men and women, black and white. This revolutionary spirit led Mountaineers in the western counties of Virginia to stand up against their richer, more powerful brothers and sisters to the east and demonstrate their willingness to fight for a principle.

The people of West Virginia have always been the first to stand up and fight for our country and for the principle of freedom. Our citizens' unwavering dedication to their State and Nation, their strong convictions, and their strong values make me proud to be a citizen of West Virginia.

Perhaps the most incredible characteristic that distinguishes West Virginians is their genuine concern for their neighbors, whether they live across the street or across the country. To West Virginians, a good government is one that ensures the well-being of all its citizens.

Happy birthday to a wonderful State on its 128th year.

RECOGNITION OF BALTIC FREEDOM DAY

Mr. WARNER. Mr. President, I rise today in recognition of Baltic Freedom Day, which celebrated its 10th anniversary on Friday, June 14, 1991. For the past 10 years, both the House and the Senate have passed legislation authorizing and requesting the President of the United States to declare June 14 as Baltic Freedom Day. On June 13, 1991, President Bush held a proclamation signing ceremony at the White House declaring June 14, 1991, as Baltic Freedom Day.

Even though the United States has never recognized the Soviet Union's hegemony over the Republics of Latvia, Lithuania, and Estonia, the Soviets continue their occupation of these states. We must leave no doubt in the minds of both Americans and Soviets regarding where Congress stands on the issue of independence and self-determination for the Baltic States. We stand firmly behind the Baltic people.

I am proud to once again be a cosponsor for Baltic Freedom Day and I look forward to the day when those brave people achieve independence.

ALBANIA REJOINS THE FAMILY OF EUROPE

Mr. PELL. Mr. President, yesterday Albania ended decades of isolation by becoming the newest member of the Commission on Security and Cooperation in Europe [CSCE]. By unanimous decision, the foreign ministers of CSCE countries meeting in Berlin yesterday voted to admit Albania as its 35th member.

I welcome this decision, and trust that the United States will use the CSCE forum to monitor and encourage Albania's compliance with its CSCE obligations, particularly those in the area of human rights. I would hope that during his upcoming visit to Albania, Secretary of State Baker will engage Albania's leaders in discussions on how Albania can contribute to what the Secretary has called "the Euro-Atlantic architecture."

In March, I traveled to Albania to observe that country's first democratic elections. During my trip, I discussed the CSCE issue with President Alia and Foreign Minister Kapplani. Incidentally, both these leaders played a key and strong role in guiding their country to democracy. They both too, went to great lengths to assure me that Albania wants to become a part of Europe and that it is determined to meet CSCE standards on political, economic, and human rights. Moreover, during his recent trip to the United States in May, Albanian Democratic Party Leader Sali Berisha identified CSCE membership as a key to Albania's increased integration into the world community.

For decades, Albania has lived beyond the pale of European civilization. In the last several months, however, it has taken great strides to tear down the walls that have separated it from the rest of the civilized world. Membership in CSCE undoubtedly will prove to be a key step in this process.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The Chair advises the Senate the period for morning business has now expired.

VIOLENT CRIME CONTROL ACT

The PRESIDING OFFICER. The Senate will now proceed to consideration of S. 1241, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1241) to control and reduce violent crime.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Under the previous order there will be debate only on the bill until 1 p.m.

The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, last week the President of the United States, as has been his wont lately, chided the Congress for our failure to pass a crime bill within an arbitrary deadline of 100 days. I wish to note for the RECORD that we would have had this very crime bill we are debating now last year had the President seen fit to do something about assault weapons and been willing to accept the provisions that we passed here last year for the banning of certain assault weapons with such colorful names as Street Sweeper, and names like that.

So, here we are today. We are back at it again, and I should indicate at the outset the issues are contentious and basically the same issues, and one of them again is guns, whether or not there should be a so-called Brady bill, which is incorporated in the bill before us right now, the so-called Biden bill, and whether or not we should do something about those assault weapons everybody reads about and 85 percent of the American people think we should do something about, the same assault weapons, I might note, which the President said it is against the law to import into the United States and sell, but by some phenomenal stretch of logic it is all right to make them in the United States and sell them. I have never quite gotten that one yet, why the President thinks it should be against the law to be able to manufacture these guns in London or Germany or Korea, or wherever, and import them into the United States and sell them, but it is all right to take the very same gun and make it in Connecticut or Delaware or California and sell it. It sounds more like trade policy to me than it does law enforcement policy. But, nonetheless, that is one of the issues again this year, and we will be hearing a lot about that today.

But as the Senate begins consideration of the comprehensive crime legislation, we should start with the question not of what has happened in the past 100 days, which the President keeps talking about, but rather what has the Bush administration done or failed to do over the past 100 weeks that he has been President to fight crime.

Under this administration, America has seen its worst crime explosion in our entire history. Let me repeat that. In the last 100 weeks—the President likes to talk about 100 days; I want to talk a little bit about 100 weeks—in the last 100 weeks, under this administration, the United States has undergone the worst crime epidemic in its entire history. Under this administration we have seen an all-time national record for murders, over 23,000 people murdered in this country, making us the most dangerous Nation in the world; an all-time national record for rapes. A woman in Italy is over 40 times safer from the prospect of being raped than a woman in the United States. A woman in England is over 15 or 20 times, in that range, safer than a woman in the United States. There is a literal epidemic of rape in this country. We have also seen an all-time national record for violent crime. This is a product of 100 weeks of tough talk on crime and too little tough action on crime.

The President blames this crime plague and, in turn, the need for a new crime bill on congressional inaction, and he is certainly entitled to make such political statements. Every President does. A Democratic President coined this capability, Harry Truman, who was a fine President, but he found there was great benefit in running against the Congress. There always is, and were I in the President's position, I would find it great political fodder as well. He is entitled to engage in such statements.

But let us look at the facts: Since 1986, Congress has passed over 230 new or expanded penalties for drug and criminal offenses in these United States, 230 new penalties, and these penalties range from an automatic 5 years in jail for any person caught with a rock of crack cocaine, a piece of crack cocaine as small as a quarter.

I do not have a quarter with me but if you visualize what one looks like—yes, I do have a quarter. If you have a piece of crack cocaine no bigger than this quarter that I am holding in my hand, one-quarter of $1, we passed a law, through the leadership of Senator THURMOND, myself, and others, a law that says if you are caught with that you go to jail for 5 years. You get no probation. You get nothing other than 5 years in jail. The judge does not have a choice.

Now, the fact of the matter is we have gone from there all the way up to saying—under the leadership of Senator THURMOND and I would like to suggest that I take some small credit for it myself, as well and others, the Presiding Officer—that there is now a death penalty and we have passed it a couple of years ago. If you are a major drug dealer involved in the trafficking of drugs and murder results in your activities, you go to death. And there are a number of other severe penalties.

We changed the law so that if you are arrested and you are a drug dealer, under our forfeiture statues, the Gov-

ernment can take everything you own, everything from your car to your house to your bank account. Not merely what they confiscate in terms of the dollars from the transaction that you have just got caught engaging in, they can take everything. We have laws in the last several years where we do not allow judges discretion to sentence people. Flat-time sentencing. You get caught, you go to jail.

Well, all of these tools have been at the President's disposal for the last 100 weeks and more. Now if America's crime problem is worse than it ever was, it is not because the Congress has failed to give the President the tools—it has done its part—but rather because the administration has failed to use the power given to it by the Congress over the last 5 years, and in particular the last 100 weeks, to bring this epidemic under control.

Specifically, the administration's record of inaction includes some glaring examples. And the only reason I am doing this is so we can cut through all of this and try to get down to the facts so when we start to vote on specific pieces of legislation, we get away from all the hyperbole and political posturing on this legislation.

No wonder the press only covers this legislation in terms of the politics of it. You hardly every hear a debate in the press about whether or not one habeas corpus bill is in fact better than another. You hardly ever hear any discussion about whether or not one sentencing mode is better than another. You hardly ever hear any discussion in the press about whether or not State or local law enforcement, along the line I am suggesting and the President is suggesting, which is better, because the President is leading the band and everyone else here in the Congress is following the chief majorette out there, the drum major.

What happens? We all talk about the politics of it instead of the substance.

Well, the facts are glaring how bad things are. Two hundred days ago, Congress enacted life in prison for major drug dealers. Yet in the past 3 years, the President has obtained this penalty for only, on average, four drug dealers in the entire country each year.

If you live here in Washington you pick up the paper daily—as a matter of fact the papers stop doing it, because people are tired of seeing it—major drug deals, engaging in turf wars, people getting shot on street corners, murder rate phenomenally high. So we said 3 years ago, put those in jail for life, no probation, no parole. And in certain circumstances if they kill someone put them to death. And guess what? Out of all those crimes you read about, out of all the outrageous action, this administration on average in the last 3 years has gotten, on an average, four persons per year. Four. Count them. Four per year.

Think about it.

We have about 2 million people who have been using cocaine weekly in this country over the past half decade. But over the past 3 years, the administration has used its power to send drug dealers to jail for life only once every 3 months.

"The Congress is not tough on crime."

One thousand days ago, Mr. President, Congress gave the President the power to seek the death penalty against drug kingpins who murder. But in the last 1,000 days, this President, during the period of bloodshed and mayhem of which the President has spoken, the President has obtained the death penalty for only one person—one.

Congress is not tough? Congress passed the law and said, "Mr. President, find these people. When you get them, when the Justice Department has them and they murder somebody, put them to death." That is what we said. "You have the power;" 1,000 days ago that was given. One time has the vaulted Justice Department, under the leadership of Mr. Thornburgh, who beats up the Congress all the time, one time have they obtained the death penalty.

Now, look, maybe there are reasons why they cannot. Maybe it is hard to make the case. Maybe there is a whole rationale for why. But I find it, quite frankly, preposterous that this President stands up and says that this Congress is not tough on crime after we have given him all this power and, just to take two examples, he has only four times a year put someone in prison for life and only once gotten the death penalty. There were 23,500 murders; 2.2 million people cocaine addicts; 5.7 million felonies a year. One death penalty; four times a year life imprisonment. And the Congress is not tough on crime?

Mr. President, this quarter—remember I told you before, we passed a law, bipartisan. We said crack cocaine is such a bad deal that if you find someone with this much of it, a quarter's worth—not in value, in size—a year in jail.

Well, guess what? If the Justice Department in New York City, the U.S. attorney, arrests you with that much, the police arrest you, and they take you to the Justice Department and you only have that much, guess what the Justice Department, Mr. Thornburgh, says? We are not going to prosecute you. You have to have 10 times that much for us to prosecute you in New York City.

Whose judgment is that? The Congress, or the President?

And guess what, if you are in Miami and you get picked up with this much cocaine, crack cocaine, they say we are not going to put you in jail for 5 years. You say, well we caught him with 10 times this much. They say, well, we are still not going to do anything. We are not going to prosecute you. You have to have 100 times the minimum amount required.

Congress said put them in jail for a year if they have this much. The President said—and he has his own reasons for saying it and they may be good ones—but he says, "No, not unless you have 100 times this much are we going to even prosecute you."

I ask you, Mr. President, who is not tough on crime? Congress? The Constitution says we pass the laws, the President enforces the laws. We do not have a vigilante posse up here. We cannot start holding court here. We cannot prosecute people from here. We cannot, in the Congress, say: Arrest him, or her, or him, bring them into this Chamber. We have a law that says you go to jail for 5 years, no probation, no parole, if you have this much, they had this much, the jury finds they have this much, lock them up and put them in our prison.

We have three equal branches of the Government. One branch, the Presidency, is supposed to enforce the laws.

If you wonder why I am so frustrated, Mr. President, I have been dealing with this issue of crime and have been either the sponsor or cosponsor of every major tough piece of legislation relating to dealing with the criminal element in this country in the last 10 years, as many others have. And I hear the President tell me I am not tough on crime. And he gets a death penalty once?

Is he trying to tell me there is only one person out there in the last 1,000 days that has met the statutory requirement of death as a consequence of being a drug kingpin? Is there only one drug kingpin who murdered somebody who got caught in the last 1,000 days? Is that what he is saying to me? Or is he saying to me that, for whatever reasons, they were not able to, or chose not to use the laws at their disposal, made available by this—very tough on crime—Congress?

Mr. President, 1,000 hours ago—the President has us all in units of 100 these days. He likes to talk about 100 hours, 100 days. One thousand hours ago the President of the United States of America went on television, if I am not mistaken, and said to the American people, as he was required to by a law passed by the Congress, and written by me, to tell us what his national drug strategy was. So, he stood before the American people and all the press that are sitting up there, and he says: Here is my national drug strategy. And he said it is tough.

So, they asked me to comment. I said some parts are really good, some parts are not, but I am waiting for the President to send up more than his speech. I have his speech. I have that. I got that. But now he is supposed to do what all Presidents do. He takes his

speech and he reduces it to a piece of legislation and he sends it up to the Congress and he says: "Now, Congress, here is what I want you to do. If you want to amend it we will debate it. If you do not agree with it, change it. But this is what I want you to do. Here is the legislation I want to become law."

So, as chairman of the Judiciary Committee, asked by the press will I move and act on the President's legislation, I said as soon as we get it we will act. One thousand hours ago. Guess what, Mr. President, the President has not sent us anything, anything. Not a word, other than over the television, not a single thing has he sent to the House Judiciary Committee, the Senate Judiciary Committee, the leadership of the Senate, the leadership of the House, the minority leader, the majority leader—anybody.

Hello, Mr. President, where is it?

And we are not tough? We are not acting on initiatives to try to stem the scourge of drugs in this country, and violent crime?

One thousand hours ago he said to all these people: I have an idea. This is how I am going to help stop the drug problem. And he has not sent us a thing. Not one single little bit.

And then I hear him on television, and hear his Attorney General stand up and say, "Our problem is the Congress is not tough." The problem is we have such an incredibly low regard in the minds of the public, and with some good reason—myself included—that you can just about say anything about the Congress and anyone will believe it. So, when in trouble, blame the Congress.

When in trouble, like that ad. There used to be an ad on TV for a cereal. Three little brothers are sitting there, and one little chubby brother in the middle sitting like this, and they look at it and say, "What is this cereal? I don't know. Gosh, what do you think? Let us try it. Well, Mikey will try it." And they pour a bowl for Mikey.

There is a rule in politics, when a President is in trouble, does not have an answer, what will we do, let us have a meeting—got it: Congress. Congress did it. Or Congress did not do it.

There is a lot we do not do, and by the very nature of this institution of 535 persons, it is not designed to move quickly. But the executive is so designed, as the Presiding Officer knows as a former Governor. That is the mark of the leadership of an executive, to move quickly, decisively and with incision.

Where is the drug bill? Is the Attorney General too busy? Is the drug czar too busy? Where is it? I want help. Where is it?

There are many other examples. Last year, responding to the administration request, Congress created new Federal judgeships. It was an unusual circumstance, Mr. President. People who do not follow politics, which is the vast majority of people—and there is good reason why not to; I am not chiding anyone for not following it—but those who do, know the following. There has just been a general principle over the past 200 years. Under the Constitution the Congress creates the number of judgeships. We, the Congress, decide whether there are going to be two district court judges in America or 2,000; whether there are going to be 20 or 5,000 circuit court judges. We are the ones under the Constitution to make that decision.

As the country has grown we have needed more judges to enforce the laws that have been passed—not enforce them, to pass judgment on the laws that have been passed.

Mr. President, an unusual circumstance came around last year. I, after having been around the country a little bit and with the urging of the distinguished senior Senator from South Carolina and others, was told, and they are right, that there were not a sufficient number of judges out there in order to be able to prosecute all these cases. Everybody knows that you cannot ultimately put people in jail until you get them before a judge. You cannot be tough on crime if there is no way to get people from the street, when you arrest them, in front of a judge because that is the intermediate stop, if they are guilty, to get to jail. It is an unusual little system like that. You need judges.

I am told the backups, particularly on drug cases in south Miami, in south Florida, in parts of the Southwest—all around America, are incredible. So the President said to me—not directly. Well, I guess he did by letter. He said: Look, we need more judges. I did something that is not particularly common for this place, I went into a group of Democrats—the Presiding Officer was there, and others—and said look, ladies and gentlemen, we should create new judgeships.

Someone said, wait a minute, we are going to create new judgeships? The President is going to take all these Republican conservatives and make them judges. We do not like that. And, besides, Joe, nobody does that. When there is a Democratic President, the Republicans do not let new judges be created.

And when this is a Republican President, Democrats do not create new judges. I stood there before you all and it did not take long because you all agreed with me that the Nation needed new judges because the law enforcement problem was serious, urgent. So we did something not only unusual, but swiftly. We created 84 new judgeships—85 new judgeships. Let me be precise.

The reason we did it is so that more criminals could be brought to justice in Federal court. Yet today, 200 days later, only 10, the President has only sent up the names of 10 men or women to fill those 85 slots. Who is tough on crime? Who is being diligent? The Congress is weak on crime? He said we need new judges. We said, Mr. President, here they are and here is where they are. We had little disagreement with the Justice Department.

I wanted to put the judges into areas where there are high crime rates and high backups of crime. So we worked out a formula where they had the most drug problems, the most drug cases, and we put judges there. And here we are 200 days later, not 100 days, 200 days later and the President who calls us soft and weak on crime has not sent us but the names of 15 people and, as we all know, under the Constitution, we cannot fill those judgeships. We cannot sit here and say so and so and so and so and so should fill those slots and then vote on it.

So here we are, 200 days later, and those judgeship slots are still empty.

Last week, the President said he "could not understand" why the Congress could not pass a crime bill in 100 days. Today, I must say I cannot understand why the President of the United States has been unable to exercise this important crime-fighting power of appointing new judges in 200 days.

Let me put it another way, Mr. President. In the past 1,000 days, Congress has given the power to the President to take away every penny a drug dealer makes, seize their houses, their cars, their boats, their jewelry, lock them up without parole or probation, and even execute them if need be.

We have already done our part, and now it is time for the administration to do its part. The laws are there; the tools are there to make a dent in this horrible crime problem. Yet, instead of getting better, things are only getting worse.

Mr. President, having said that, I want to turn now to the crime bill pending before us today.

The President says that he wants to get criminals off the streets. There is not a woman or man in this Chamber that disagrees with that. But the heart of the President's bill is to stop—let me put it another way. The heart of the President's bill, I believe, is basically shopworn proposals that, whatever their merit, will do very little to reduce crime in this country.

The President's death penalty proposals—and I might add the Biden crime bill before us calls for the death penalty for 51 offenses. A wag in the newspaper recently wrote that something to the effect that Biden has made it a death penalty offense for everything but jaywalking.

The President's bill calls for the death penalty on 46 offenses. The difference is negligible. Yet, I am a supporter of the death penalty. I am a supporter of the death penalty without the

racial justice provision in it. I think it is better with it, but I am a supporter of it without it as well.

Let us put in in perspective, Mr. President. There were last year in this country over 23,000 murders. The President is making it sound to the American people like once this death penalty provision is passed—and I believe we will pass one—that we are going to end the problem.

So I asked my staff to write to the Justice Department, not the Democratic Justice Department, not the bipartisan Justice Department, not the scholastic Justice Department, not the academic Justice Department, not the Brookings Justice Department, but the President's Justice Department, the Republican Justice Department headed by a Republican, as it should be, a Republican Attorney General, at the command of the Republican President. I asked my staff to write to them and ask them the following question—I am paraphrasing: If the death penalty bill, as you are proposing it, Mr. President, as you are proposing it to be enacted in the year 1991, if that were the law in the year 1990, how many people would have received the death penalty under your death penalty bill? We wrote them a letter and asked them that question. Keep in mind 23,000 murders last year.

I tried this on a couple people at home who are not involved in the Senate at all. I said, if you had that death penalty bill, how many people do you think the Justice Department, now, the outfit that works for the President, how many people do you think they said would be put to death last year if the President's death penalty bill had been in place? 5,000? 10,000? 2,000? 500? 100? 50? 10?

No, six, s-i-x, six. That is what the President says. If my bill were in effect last year, there would be six people—six. This is not our number. This is their number. Give them 100 and a straight A for honesty. Six.

I think if six people deserve the dealth penalty, they should be given the death penalty. But let us not oversell it, Mr. President. And the same could be said for the Biden death penalty bill because it is Federal. If it is not on Indian lands—and this excludes Indian lands—only six people. But, yet, if you listen to the way it is advertised, people at home think if you pass either the Biden death penalty bill or the President's that we would increase the number of death penalty cases in America by 100, 500, 1,000, or 10,000. That is going to stop crime in the streets, six more people being put to death?

A second provision we will fight over that the President's bill has is habeas corpus. The President's habeas corpus reform plan is arguably very good. I disagree with parts of it because I think we should change habeas corpus. If you listen to the President and others speak about habeas corpus, you would think habeas corpus is the name of a man who is crouched in an alley every night waiting to rape or murder somebody. Habeas corpus is a process, and it means that once you are convicted of a death penalty case—it need not only apply to death cases but let us keep it in death cases. You are convicted of murder in a State court. It means that prisoner can file a piece of paper with a Federal court and he can say on that paper, "Look, the State Court of Delaware, Alabama, or California violated my constitutional rights, judge. They didn't apply the Federal Constitution. Here's my habeas corpus petition."

Now I am already behind bars when I file that. Every single person who files a habeas corpus petition is already in jail. It does not in any way affect whether my mother is going to be safer on Saturday night or Thursday night when she goes to the Pathmark to shop and comes out into the parking lot in the dark to put her groceries in her car.

Habeas corpus change will not affect her at all, because all the people who file these petitions by definition must be behind bars. They are in jail. They cannot get out. That is why they put the paper out there. They say, "Let me out or rehear my case because, look, here is the bad thing the Court did to me."

That is habeas corpus.

Now, what has happened is it has become abused. Somebody sentenced to death, what they do is they file a specious petition saying they coerced my confession. They put it out there, slide it between the bars, figuratively speaking, and it goes to a Federal district court, and the Federal district court says, "Well, I look at this and I look at the record, and it looks to me like that wasn't violated." And then the lawyer of the guy in jail says, "Well, I want to appeal that." They take it up to the circuit court of appeals, and the circuit court of appeals says, "It looks like no violation was made here. The guy was rightly convicted."

Then they say, "Whoa, wait; I am going to file cert. I want to go to the Supreme Court."

By the time that all gets done, even though I was sentenced to death on July 4, now it is 4 years later; it takes that long for it to get there, and so I sit there in my jail cell, and I am still alive. Then when they come back and say "No, it was not violated, no one violated your rights, now you get put to death," I say, "Wait a minute, I got another way." I say they kicked my dog in court.

I am being a little facetious now. But I come up with another claim, and so I slide another paper out the door. That goes to the district court. The district court says,"Something is wrong here," and they say, "Well, take it to the circuit court."

That is why, as the Senator from South Carolina is going to tell us today, as he should, there are ax murderers and violent murders in his State who have maimed—he had a woman come before our committee who was brutally raped and beaten and physically maimed, and the guy who did it to her—beyond a reasonable doubt, the jury concluding he did it—was in jail, sat there for 18 years or something, or some incredible amount of time.

Mr. THURMOND. Twelve years.

Mr. BIDEN. Twelve years. Because he kept filing these habeas corpus petitions.

So the issue here is how do we stop that? We do not want to take away the right of the Federal court to oversee whether a State court is applying the Constitution because we all know from our history sometimes they do not. But we do not want this repetitive thing to keep going.

So I have a bill that says, look, you get to file one of these papers and it has to be filed within 1 year, and it has to be adjudicated, and that is it, unless—and then there are three exceptions.

What we are going to argue about is whether there should be exceptions, not whether or not there should be a habeas corpus change.

But listening to the President, he says the second big anticrime initiative to make you safer on the streets of Washington tonight is to change the habeas corpus law. Now, how many people in the gallery, I wonder, as they walk out of here tonight back to their hotel rooms, think, "You know, they changed that habeas corpus and I bet that guy is not going to try to take my purse or he is not going to knock me in the head because he is going to think, 'Gee, before I do that, habeas corpus has been changed, I am not going to do that.' It's a big incentive to keep me safe."

Lest the people in this gallery think I am kidding, go back and listen to what the President says every time he says he is going to make the streets safer for us. He is going to give the death penalty. I want the death penalty. But he says only six people will it apply to. Then he says, "I am going to change habeas corpus."

Do you feel safer because habeas corpus is changed? I wonder how many criminals in their first act of violence even know what habeas corpus is. They probably have been listening to the President, too, and think it is an individual.

But that is the second big initiative, folks, and the reason why it is offered is not only should it be changed but it is the hot button for every civil libertarian in America because it is the great writ, it is 800 years old. And every time you say you are going to

start fooling around with that one, everybody, including me, goes, "Now, wait a minute; let us be careful."

But the debate today and tonight and tomorrow and next week on habeas corpus is going to be about how many times you can slide that paper between the bars. But we are behind bars.

What is the third proposal the President has that is going to stop crime in the streets? The exclusionary rule. Now, here is a rule that really will get some people in this Chamber and in this Nation a little riled up, and with some good reason, because they see on "L.A. Law," they see in the newspaper for real, they see where somebody has been arrested and when they got arrested the cops found the goods, found the murder weapon on them or in their house, found the drugs in their car, found the contraband, the stolen television in their apartment, found blood samples and hair follicles on their rug, found things that allow the prosecution to prove they clearly did it, or Harry did it, or Mary did it, and then along comes the lawyer for Charlie, Mary, or Harry, who says, "Even though you have that evidence, if you ever show it to a jury, is surely going to convict my client, you cannot show that evidence to the jury because when the police got that evidence they violated the constitutional right of an individual when they got it."

Under our law we have an enshrined principle that says, for example, if without a search warrant and without probable cause I break down the door of your house and I go in and I find something there to sustain that you did something wrong, I cannot go into court and say, "Look, arrest this guy and convict him because look what I found in his house," because if you allowed that to happen, police who didn't like individuals would say, "I don't like Charlie. I am just going to periodically break down his door, go in, search his house, see what it has. I am going to stop anybody I want on the street and frisk them."

How would the folks feel if we did not have a fourth amendment which says they are not entitled—the police, the State—to illegally search you and seize your property? Everybody says, "Oh, it wouldn't matter to me"—until the first time it happens.

So to keep police from doing that—and police, by the way, 99.9 percent, do not do anything like this. And for the record, just in case you are wondering, every major police organization I am aware of has been a supporter of mine, endorses me, and I work with, so I am not an anticop guy. But there are some police who violate the law, the Constitution, just like there are some individuals who do it in any walk of life.

So we have this rule called the exclusionary rule, and up to now the way it works is we say look, you have to have probable cause and you have to have a search warrant. You have to go to a judge and say, "Before I break into Harry's house, judge, I am telling you why I want to be able to break into Harry's house. We have had that house under surveillance and we have watched that apartment. It is only 1,200 square feet, but we notice he has 12 48-inch televisions, and the place down the street is missing 12 48-inch televisions, so we think that maybe Charlie did it." And the judge will say, "OK, police officer, here is a warrant to go to 227 Maple Street; without getting permission, knock on the door, say, 'Let us in.' If they say, 'No,' you can break the door down to go in."

Now, what happens sometimes is the person who types that up, instead of saying 227 Maple, it says 227 Apple. So a police officer, in good faith, takes that search warrant, looks down, says 227 Apple, goes to 227 Apple, and knocks on the door of an innocent person. The person says, "You cannot come into my house." the cop says, "Here I come," and breaks the door down.

When they break the door down, they do not find television sets, concidentially, but they find out there are stolen bicycles in there. They say, "Whoa, you are not the person we are looking for, but guess what? You did something wrong. Now we are arresting you, and we will admit those bicycles in evidence."

I think if that happens with the police officer, he should be able to say, "Hey, look, Judge. I made a good faith mistake. So I should still be able to admit that evidence. I did not deliberately go to do that. It was a typo. I did not do anything wrong as a police officer."

Well, the leader of the Republicans says: "No. Not only should you do what BIDEN suggested in expanding the change in the exclusionary rule; you should be able to say, even when you do not have a search warrant, if you knock down a door without a search warrant, then later say, "God, I made a mistake; I thought I was on Maple and it was really Apple,' or 'I thought I was going after Jones, and it looked like Jones; but it turned out to be Wilson.'"

Now, we are getting a little shaky because now if a police officer has been looking for you but cannot get any evidence on you, I wonder how many might be tempted to say, you know, I am following Jones back to his house and I am going to break down Jones' door. I am going to say, "Oh, my goodness. I thought it was that cat burglar, Wilson, I was going after."

Well, that is extending the rule. It gets a little shaky. I do not think we should do that. But in good faith, people think we should be able to do that. I respect their judgment.

But now, what does the President say? His third big thing that he is going to do to stop crime in the streets, he is going to change the exclusionary rule to say the following: Not only if you make a mistake in good faith with the search warrant, or make a mistake in good faith without a search warrant, but if you make a mistake in bad faith. If I say, "I do not like Jones; I am going to find something on that so and so." I go break his door down. It is no mistake; I have no right to be there under the Constitution. But I find a gun.

The President actually proposes an unusual proposition for American law, that it does not matter whether it is good faith or bad faith, constitutional or unconstitutional. If you find a gun when you break in, everything is all right.

I wonder how many police officers will be issued two guns, one to carry and one to plant, if that crazy change in the law were able to take place.

Can you imagine that. You can say, "I am going to violate the Constitution, but if I find a gun, it is OK."

Now, I do not want to get into teaching a class, because I am not qualified on ethics or morals. But in undergraduate school, I recall those courses in philosophy where we talked about the ends justifying the means.

In America, if there is any one principle we have resisted in any aspect of our daily lives, it is the notion of the ends justifying the means. We have said the way to keep people law-abiding and civilized is to make sure that the means justifies the end.

We are going to enshrine in the law a new proposition, according to the President: If the means justifies the ends, so be it constitutional. So be it constitutional. If it does not work, just tear that piece up, put it over here, and we will move on. We will worry about another piece later.

But leave aside the merits for a minute. This is the third big thing the President says that is going to stop crime in the streets, that is going to make it safer for my mother in the Pathmark parking lot.

Guess what folks? Of the 5,700,000 felonies committed in America last year, of all those where someone is arrested and it goes to trial, in only 1 percent of the cases is the exclusionary rule an issue. Only 1 percent of the time does the defense counsel say on behalf of a defendant, "That piece of evidence you have to convict my client under the Constitution should not be admitted." One percent.

(Mr. LIEBERMAN assumed the chair.)

Mr. BIDEN. So, as the Presiding Officer, as one of the finest lawyers in this body, and also a former Attorney General knows, we sometimes argue in the alternative. Let me argue in the alternative.

For the sake of discussion, assume that the President, on the merits, is right about the exclusionary rule. As-

sume you should be able to say to the Constitition, "We will just put that piece aside for a while, because we found a way to get to it." Assume he is right to do that. Even if he is, it is 1 percent of the cases.

Let us go back and tally up the President's anticrime message. The same President, for over a 1,000 days, has only put one person, convicted one person, after the tough crime law; whose oath says, "if you have a quarters worth of crack, you have to have 5, 10 times that much in New York and 100 times that much in Miami before my prosecutors will even prosecute you"; the same guy who says, Knowing that we are able to put people in jail for life for drug offenses, has only four times a year done that; the same guy, or his administration, now says, "But now, I am really going to get tough. I am going to change the death penalty. Biden and I both want to change it. He likes this thing called racial justice. We think that is going to do away with the death penalty. So he is wrong about that. But I am going to make it for 46 crimes. BIDEN says make it for 51. We are going to get tough. And I am for the death penalty."

His own Justice Department says six people, other than on Indian reservations. So now, my mom knows that there are going to be six fewer people next year out of the 23,500 murders committed, I do not know by how many people. But six of them will be gone. Good; I want to do that.

Now, he says, "The second thing I am going to do to get tough is I am going to change habeas corpus. That is what I am going to do," knowing every one of those people are behind bars.

My mother can only hope, as I said earlier, somewhat facetiously, that before the guy bangs her on the head, God forbid, they say, "Oh, wait. I just remembered: Habeas corpus has been changed. I am not going to do that. I am going to go in and buy my own groceries." That is the second big thing he is going to do to make us safe in the street.

And the third big thing his administration has come up with is to change the exclusionary rule, allowing on a limited basis to shred the fourth amendment. Only on a limited basis, affecting 1 percent of the cases. OK; that is it folks.

What else is the President going to do to make sure that we are, in fact, safe? Well, he is going to change the gun law somewhat, although I am not sure that it is going to be introduced here. He talked about changing the gun laws to make the penalties tougher to get caught with a gun. I am all for that.

We already have a law, I believe, that says if you get caught with a firearm in the commission of a felony, it is 5 years. We already have that law. The President wants to make it 10 years. Well, make it 10 years. If you have a gun and you commit a felony, 10 years. We already have it 5 years, minimum mandatory. The judge cannot say, "You know, you had it in your pocket. You never intended to use it. We are only going to give you 1 year." The judge has to say 5 years.

He wants to make it 10 or 20 or 60. We can work that out. What else is he doing? Well, let me tell you what he is not doing—the President's tough talk and his Attorney General's tough talk. We look at this crime bill and read his lips and see that there are no new police, no new police that may cruise through that parking lot that my mom is in shopping.

By the way, you may think I am being a little facetious when I say that. I mean this seriously when I say this, because there is not a woman or man in this Chamber up here who, when their mother, who is 75, goes shopping, does not worry about their safety, or when their husband or wife are out on a business trip in a motel that they have never been to before, or when their kids have to go downtown to the library and are coming back home, or when they walk through the mall; there is not a person that does not worry about their kids, mother, husband, or wife. So I am not kidding when I say this.

The President says, when you read his bill and read his lips: no new police, zero, not an extra patrol car to ride through that parking lot where my mother is, on the chance that at the time something might happen to my mom, the patrol car rides around. No, we are going to rest on the death penalty, habeas corpus, and exclusionary rule to take care of that.

No new prosecutors. The occupant of the chair was a prosecutor. A lot of people in here were prosecutors. No new prosecutors, zero, none.

No new prisons. There is not a person, I respectfully suggest, Mr. President, in this gallery today from all over America, and various parts of the world, that is not aware of the assertion I am going to make. I doubt whether there is one person over the age of 12 in that gallery that is not aware of the fact that there are some hardened criminals who have been let out of jail before their sentence was served in their community, because their prison is overcrowded, and because the Federal court has ruled that it is a violation of the eighth amendment, cruel and unusual punishment, keeping them in a cell 6-by-8 with four people, or whatever. Not one person does not know that. Everybody, I suspect, in this Chamber, in this gallery, wants to get tough on convicted beyond a reasonable doubt criminals. Yet, does anybody know how we can do that without more prisons? Can anybody tell me that? I propose new prisons. The President wants no new prisons.

So before I get to my bill and the provision in it, let us look at some of the things the President does not want. He wants the death penalty. I want it. He wants a change in habeas corpus. I do. He wants a change in the exclusionary rule. I want it, but not nearly what he wants. But that is it, by and large. He does not want more prosecutors. He does not want more prisons, and he does not want more police. He does not want more aid to local law enforcement. He does not want help to fight juvenile gangs in America. The list goes on. He says: Do not worry, I will make the streets safe with these three things. I do not need any of these things over here.

These other elements are all in the so-called Biden bill, Mr. President, along with others. These are vital steps and sensible firearms management. My bill includes two commonsense and, I believe, moderate measures along these lines.

By the way, talking about what else he does not want, he does not want to do anything abut the guns in the streets. He does not want to do anything about even convicted felons getting those guns. I believe he would like to do something, do not get me wrong. I do not think he wants them to have them. I know he does not want them to have them. But there is a bill that says—In my State, for example, we have an instant check; when you go into a gunshop to buy a gun, as of January, and put your name down, they say, show me the identification, and the gunshop owner goes click click click in his commuter and looks in the screen and says: I cannot sell it to you, Smith; you are a convicted felon.

They say that is crazy, that convicted felons do not go into gunshops to buy guns. Guess what, in the first month, in my State, 12 percent, 12 out of 100 people who walked in to buy a gun were convicted felons. The administration admits that it is 17 percent, and a new study says it is 21 percent, out of every 100 people. Roughly 20 that walk in to buy that Magnum, that Street Sweeper, that AK-47 for target practice, are convicted felons.

The President says, though, wait a minute, we have a second amendment problem. I always find it funny how the second amendment takes precedence over the fourth amendment, and sixth amendment, which is the right to counsel. Anyway, I will not go into that. But the second amendment says we have a right to bear arms, and we do. But once you cross the threshold to say the Government has a right to tell you what kind of arms you can bear, you have already crossed the threshold. I respect those people who are pure second amendment people, that say under the second amendment the Government has no right whatsoever, under

any circumstances, to deny you any arms.

The logical extension of that is you would be able to buy World War II tanks. If I have the money, why not buy an Abrams tank. Some of the people are laughing in the gallery, but there are flamethrowers you can buy. How many people think we should be able to own bazookas? Good idea. Or maybe, if you can do it through some terrorist means outside the country, maybe you can buy a SAM missile.

We all say, Biden, stop being ridiculous. That is foolish talking about those things. We all know you should not be able to have a tank in your backyard, or a flamethrower, or a SAM missile, or bazookas, which people try to buy. We all know you should not be able to have these big submachine guns, machineguns. Folks, if you say that, you have already crossed the line. You have already acknowledged that the Government has a right to say, notwithstanding the second amendment, that there are certain kinds of restrictions that can be placed on the ownership of arms.

All I am saying here is, in this bill, are two moderate things, which, frankly, will help only marginally. A lot of people who support this say this is going to change the world. It will not, but they will help. One is to say, look, if you are going to buy a gun, and the State does not have all its criminal records sitting on a disc so you can press a computer, like you can in my small State of Delaware, and find out who is a felon, that you have to wait 7 days; so the cops have a chance to check you out to find out whether or not you are the ax murderer from the next country over. Is that so preposterous? It does not say you cannot own a gun; it does not say when you get a gun, you have to register the gun. It only applies to handguns.

The NRA sees that as a foot in the door. This means you not only took my bazooka, you will next take my handgun. The second provision I have I spoke to in the beginning—it is not my provision; it is the DeConcini provision, the Brady provision, amended by Senator MITCHELL, but it happens to be in this crime bill I put together.

The second one says, hey, look, there are 14 guns, killer assault weapons, some of which we have seen used already in schoolyards, in mass murders, in Stockton, CA, and other places in the Nation that appear to have no recreational purpose.

Now, look, I am not a gun expert, Mr. President. I come from a State that owned a company that resides in your State and has been around for 100 years or more. I am not antigun. All my years here the gun-control people have been angry with me because I am not ready to support anything like registration or anything close to it. But it seems to me if you walk into Kmart today or walk in any store, go to the gun rack folks and you show me those big guns that have little handles on them. Since when do you go hunting with a gun that has a big old long barrel and a little tiny handle?

Maybe the deer in your part of the country are slow, not like they are in my part of the country. But I do not know any reason to hold that. How many hunters do you know that go out there and say, OK, bring on the deer, and stand there like this? What is the purpose of that?

And guess what. The President of the country of Colombia came to see me, personally—personally came to see me and asked me would I go to dinner with him. I said I would be flattered. I went to dinner with him at the Blair House with three or four other people. He said, "Senator, I know you are trying to do something about the drug trade; we keep working with you trying to effect chemical transfers and the rest, but can you do one thing?" I said, "What would you most like done?" He said, "Can you somehow shut down these gun factories because all the Medellin cartel people are flying up to Florida, walking into the Florida gun stores and buying these guns; coming back and blowing up and killing our Supreme Court Justices, two of our Presidential candidates."

Why? Now keep in mind, this is one I will never understand. I am going to repeat it and I will repeat it again in this debate. The President of the United States said—how many guns did he say were imported? I want to get the number in. I ask my staff who knows about the gun issue to come down here right away, if they would. I want to be precise here.

The President said that you cannot import into the United States of America a certain number of guns, and that is the number I want to know, 43 different types of semiautomatic assault weapons. He said there are 43 guns out there that you are not allowed to import into the United States and to sell, ostensibly because they are bad for the health of the American people and they have no legitimate hunting, no legitimate competitive purpose, target shooting or anything else. So he picked out 43 and he wrote up a list; is that correct?

He picked out 43 and said here is the list, and gave them to the people who work at Customs and said, "If you get any of these guns you confiscate them and you destroy them."

We came along and Senator DECONCINI came along and said: "Great, we are making progress. There are only 14 of those guns that we want to stop manufacturing in the United States," not 43, 14.

Now, this bill says 14 of these guns you cannot make in the United States of America, you cannot produce and you cannot sell. The MAC-10 assault pistol—I am not making up these names now. These are not made up by me. These are the names of the guns, the names by which they are marketed and processed. I mean, how many people say, "Well, I am going deer hunting. What you need is a MAC-10 assault pistol." What do you assault deer with these days? Or you can get a MAC-11 assault pistol or you can get a Striker-12 Street Sweeper. That is a good one.

Maybe this is just marketing names. "Biden, these are just marketing." I mean, why do you think you have to market the hunters? Names like MAC-10 assault pistol, MAC-11 assault pistol, Striker-12 Street Sweeper, Beretta AR70. Come on.

But forget all that. Let us assume it makes sense for them to be able to be sold here. Why does it make no sense for them to be able to be imported here? It is essentially the same weapon. How can the President say in one breath you cannot build this weapon in London and sell it in New York but you can make it in New York and sell it in New York? If that is true that is basically a violation of the GATT agreement. This is an unfair trade practice.

These are the two things included in my bill. So let us go back and review the bidding on guns.

The President has a way he is going to stop the impact on violent crime in the street. He does not say stop. To be fair with him he says impact on it. And he says as the No. 1 business we are going to change the death penalty. BIDEN wants to change the death penalty; the Congress wants to change it.

No. 2, we are going to change habeas corpus.

No. 3, we are going to affect 1 percent of all the cases that affect the exclusionary rule and maybe in someplaces have to tear up the fourth amendment but we are going to do that for 1 percent of the cases.

We are not going to allow no new cops, no new prosecutors, no new jails, no new help for juvenile gangs and no attempt to do anything about assault weapons or preventing criminals from being able to legally buy guns in the first place.

That is why my bill contains almost a dozen more significant, important, and, yes, tough anticrime measures. Let me just name a few right now.

Law enforcement. My bill provides an authorization for aid to enable local police agencies to boost their ranks by 10,000 new policemen, 10,000 new crime fighters, more police, more prosecutors and truly the front-line troops. So there is a total of 10,000 new combined, prosecutors and police officers.

For Federal law enforcement, our bill also authorizes, 2,800 new Federal crime fighters, 1,000 new FBI agents. The Director of the FBI came before us and he identified the drug cartel.

I said, "How many men will it take you?" He said, "I can only go after a

certain few." "How many do you need to go after all of them?" He said, "I need 1,000." I said, "I will give you 1,000."

Why not give him 1,000, 1,000 folks to be able to target all the agencies, save us tens of billions of dollars if we did it properly.

My bill provides for 400 new Drug Enforcement Agency agents, 350 more Federal prosecutors and, as I said, we already provided for new judges. We need these new men and women if we are going to enforce all the tough new penalties Congress already passes and is passing. All right.

Also, I call for construction and the President opposes regional drug prisons. Our bill authorizes 10 new regional prisons, to hold 8,000 drug offenders. The President says he wants to get the criminals off the streets, but unless we build new prisons, the threat of incarceration is just that, a threat and no more.

The rural crime initiative is contained in my bill. Our bill contains a comprehensive initiative drafted by Senators BAUCUS and PRYOR to fight rural crime by providing more money, training, and help for rural law enforcement agencies.

Look, many of your States have a police force of two or three people. I just put out a report on rural crime that made the front page of every newspaper in America pointing out violence and crime. Drug crime is growing faster in rural America than it is any other place in the Nation. Some of you live in cities. That is not a problem for them. Yet these folks are not able to be trained. They have a police force of two, or three, or one; they should be able to get training down at Glynco in Georgia and other places to train them so they can help do the job.

Drug emergency areas. Our bill contains the Biden-Specter-Kennedy Drug Emergency Areas Act, a plan to rush emergency aid to areas hardest hit by drugs. We do that if you get hit by a hurricane, and we should do that if you get hit by a drug hurricane that erupts and blows up a whole section of the city. We act like we have to live with that.

It also provides drunk driving protection for children. Our bill—and not the President's—provides a 1-year penalty, enhanced penalty beyond what you would ordinarily get, for drunk drivers charged in a Federal court who have a child in the car. There is a simple reason for that, Mr. President. If you want to stop crime, stop the crime of a father or mother who are drunk insisting that they put their 5-, 6-, 2-, 1-, 8-year-old child in the car, a child totally incapable of saying, "Daddy, you're drunk. I'm not getting in the car with you," and then they are maimed. Thousands of kids. Well, that drunk driver should face a harsh penalty because when children are in the car they are in the car against their will, they are prisoners.

An antigang initiative. Our bill contains an innovative and tough new program to tackle the problem of juvenile gangs, endorsed by and proposed by the major entities in this country that deal with gang violence in the major cities.

It provides for boot camps. Our bill authorizes the use of 10 closed military bases as boot camps for youthful offenders. Most of these offenders will be put back on the street without any punishment whatever unless we build facilities. And again, this is the difference between being tough on crime and talking about being tough on crime.

Also in our bill, we have a police corps. Our bill adopts the Sasser-Specter-Graham compromise police corps plan—a plan to provide ROTC-type programs for police officers, and educational opportunities for those officers who have already agreed to serve and to protect. We need to get more people in this Nation graduating from college who want to go into public service to get involved in police work.

In closing, Mr. President—and I will have much more to say in the ensuing days and weeks—let me say what I would hope to have over the next several days is a serious, thoughtful debate on crime, and the competing measures before the Senate that are being presented to combat this epidemic. I would hope that the debate would be free from acrimony, and aimed at reconciling our differences, not highlighting them.

But my friends on the other side of this aisle—or, more likely, their friends at the other end of Pennyslvania Avenue—seem to want a political fight. So to that I say, I have no reservations defending this Democratic crime bill as a tougher crime bill than what the President has proposed, and I have no fear of debating this point with my Republican colleagues.

For the fact is simply this. Our crime bill—and not the President's—includes more death offenses; bans killer assault guns; keeps criminals from buying guns; beefs up Federal and local crime fighters; launches an attack on gangs, on rural crime, and on drug areas; adds new prosecutors and new prisons. That is the thing in my humble opinion that is going to truly have an impact on crime. Along with the implementation and enforcement of the bills we have already passed.

I hope our debate does not come to this, though, because in the past we always in this body have been able to ultimately compromise. The Senator from the great State of South Carolina who is second to none in this body in his commitment to fighting crime, second to none in his desire to be tough on criminals, is at some point going to introduce a bill to amend—essentially strike—what I have said, the bulk of what I have said, and insert the President's bill.

I welcome that debate. And I welcome that vote. I hope we at one point get a chance to vote on the President's bill. Let the President, who wants this bill, have the leadership of this body introduce his crime bill that he says is what the Congress needs and the country needs.

We have been trying to get this up but the highway bill has gone on and on. We did not make the 100 days but as arbitrary as it was, we tried to make it. We are here now.

Let us give the President a vote on his bill and find out whether Republicans and Democrats in this body believe that the President's bill freestanding or the bill that we have up freestanding is a better vehicle from which to attempt to fight crime. I respectfully suggest if we do that we will find that the majority of the Congress and ultimately the majority of both political parties will understand the need for more prosecutors; understand the need, notwithstanding the resistance of the President for more prisons; understand the need for more police officers, notwithstanding the President's objections; understand the need to do something about assault weapons; understand the need to do something about trying to get criminals from legitimately purchasing firearms.

I believe this body, I believe Republicans and Democrats know that you cannot make the parking lot of Pathmark, in a generic sense, all those parking lots, you cannot make the senior citizen housing, you cannot make the playgrounds, you cannot make the office area, you cannot make the parking garage, you cannot make the streets of America safer unless you are willing to take some bold steps beyond the death penalty, which I support, beyond changing habeas corpus, and beyond the issue of changing the exclusionary rule.

I yield for the moment.

The PRESIDING OFFICER. Is there further debate?

The Chair recognizes the distinguished Senator from South Carolina [Mr. THURMOND].

Mr. THURMOND. Mr. President, my good friend from Delaware talked so long. In view of that, several Senators want to speak over here and I ask unanimous consent that we extend this time until 2 o'clock.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. THURMOND. Thank you, Mr. President.

Mr. President, today, the Senate begins consideration of legislation which responds to the No. 1 domestic problem we face as a nation—violent crime. The average American today is no stranger to the volume of violent crime ravaging our cities and towns. The violent

crime rate has risen at an alarming rate. The Federal Government's National Crime Survey estimates that there were over 5.8 million violent crime victimizations in the United States in 1989. Today, the Senate will be given the opportunity to take action to remedy this serious problem.

There are numerous factors which have contributed to our violent crime scourge. However, a principal reason for the growth of violence is that our criminal justice system has become soft on heinous criminals, failing to impose swift, effective punishment. Despite the efforts of law enforcement officers, many offenders are released back into society with little or no punishment. Offenders who commit heinous offenses no longer expect to be held accountable for their actions. For example, Department of Justice studies reveal that the average time served in State prisons for murder is 6 years, 7 months. The average time served for rape is less than 6 years. Unquestionably, these figures send the wrong message to violent offenders. Without a fear of punishment, there is little to deter the violent offender.

Mr. President, vicious criminals often commit numerous crimes before they are truly held accountable. For example, an estimated 76 percent of State prisoners serving time for a violent crime had prior criminal sentences—nearly half of them had been previously convicted of violent crime. Furthermore, 20 percent of the violent offenders entering prison would have still been in prison for a previous offense if they had fully served their prior sentence. These figures serve as evidence of what every law enforcement officer knows first hand—that, today violent criminals have no fear of the criminal justice system and pose a greater threat to Americans than ever before.

In recognition of the violent crime threat, I introduced President Bush's sweeping antiviolent crime bill, S. 635, on March 13, 1991. I fully intend to offer this major cirminal law reform measure as an amendment to the bill which is now before the Senate. This measure will take significant steps to ensure that our criminal justice system is tougher on criminals than on the law abiding. The Comprehensive Violent Crime Control Act of 1991, the President's proposal, recognizes that today's criminal justice system is balanced in favor of the violent criminal element without according adequate weight to the rights of victims, the law abiding, and law enforcement. It is time for a change. The American people are not clamoring for more debate on substantive criminal law reform proposals which seek to treat brutal criminals more favorably or expand vicious criminals' rights. Rather, they are demanding that Congress act upon the measures contained in the President's violent crime bill which limit the rights of the criminal and ensure tough, effective punishment.

Mr. President, the Senator from Delaware has been critical of the President's crime bill alleging that it provides inadequate funding for law enforcement. In an effort to pass an effective violent crime bill, I consulted with the administration. We are prepared to move the President's crime bill along with all of the additional funds called for by the chairman and contained in S. 1241. With much of the funding differences behind us, the Senate can focus upon the major reform proposals which the American people are demanding. I believe that it is important that those who have opposed the President's bill based upon funding differences clearly understand that now the debate can focus upon the truly critical reform provisions which must be adopted. Without question, the President's death penalty, habeas corpus, and exclusionary rule proposals are much tougher on criminals than the pending bill, S. 1241.

An example of a measure which the American people overwhelmingly support is the death penalty. Polls indicate that public support for the death penalty is at an all time high with almost 80 percent of the people of this Nation supporting capital punishment. Title I of the President's bill answers this call for appropriate punishment by restoring an enforceable Federal death penalty. It restores the Federal death penalty for such heinous crimes as murder of a Federal law enforcement officer or other official, attempted assassination of the President, terrorist acts, espionage, and treason. The rise in our Nation's murder rate must be stopped and the President's bill will go a long way toward reaching that goal. S. 1241, the Senator from Delaware's bill, has several troublesome provisions, including the so-called Racial Justice Act. This provision will effectively eliminate the death penalty in every State. No legitimate death penalty proposal can include such a provision which invalidates the death penalty in 36 States which currently have it.

The President's death penalty proposal also permits the presentation of victim impact evidence at the sentencing phase of a death penalty case. The President's bill specifies that evidence may be presented at the sentencing phase of a death penalty case concerning the effect a vicious murder had on the victim and the victims' family. Such evidence may include the suffering of the victim in the course of the killing and the victim's family emotional anguish and distress. Not only does S. 1241 not allow for such victim impact evidence, it would also further tilt the sentencing phase of a death penalty case in favor of the convicted murderer by mandating that the Government be bound by the Federal Rules of Evidence and Criminal Procedure in the sentencing phase. The convicted murderer would not be bound by these technical rules. Such a step is simply intended to impede the Government's ability to offer reliable and probative evidence which supports the imposition of a death sentence. For example, evidence of previous murder convictions may not be admissible against the convicted murderer during the sentencing phase. In other words, in determining whether to recommend a death sentence, the jury may not know that the defendant had murdered before. Such a provision would make the death penalty extremely difficult to impose. Again, this shows that the pending legislation expands the right of those facing the death penalty at the expense of victims—and I mean by that the Biden bill.

Another example of how our criminal justice system has lost sight of its responsibilities is the lack of finality and excessive litigation surrounding Federal habeas corpus appeals. There are currently over 2,400 individuals on death row. Yet, since 1972, only 146 brutal murderers have had their sentences carried out. This is due in large part to the Federal judicial system's continued tolerance for frivolous appeals and lack of respect for State court decisions. Between June of 1989 and June of 1990, almost 13,000 petitions for Federal habeas corpus review were filed in Federal district courts. These endless appeals bring our criminal justice system into disrepute.

The President's crime bill responds to the problem of endless appeals by combining the basic Powell Committee recommendations for death penalty litigation with the most important features of a habeas corpus reform bill which I introduced as S. 148 in January of this year. In exchange for providing death row inmates with competent counsel on State habeas cases, Federal courts will be required to accord deference to the results of State court adjudications which are full and fair when resolving issues of Federal law. Further, each capital petitioner would be entitled to only one Federal habeas petition except in very limited situations. Finality of litigation and the elimination of the habeas abuse which currently surrounds State death penalty convictions is critical. A State death penalty will not deter a potential cop killer until those who have been given a death sentence for similar crimes are actually punished without undue delay.

Unfortunately, those who do not appreciate the importance of habeas corpus reform will diminish its impact upon the violent crime problem. They will argue that habeas reform only impacts upon those individuals who are currently on death row or in prison. I disagree. True habeas reform will speed

up the imposition of executions so that potential murderers will actually be deterred and just sentences can be imposed. In addition, it will bring a sense of finality to the families of victims who are forced to relive the vicious murders which haunt them day after day. Despite this, opponents of true habeas reform are the same people who downplay the effectiveness of true habeas corpus reform. They will oppose the tough reform contained in the President's bill and will advocate the weak habeas reform provisions contained in the Biden bill which will actually expand death row inmates' rights.

For example, the habeas provisions contained in S. 1241 would overturn several leading Supreme Court decisions which have limited habeas abuse. It overturns the recent Supreme Court decision in McCleskey versus Zant which narrowed death row inmates' ability to bring claims in Federal court which should have been raised in earlier petitions. In addition, it would reverse the major decision of Teague versus Lane which recently clarified the complicated area of law surrounding the retroactivity of law. The Biden bill overturns this case by allowing a prisoner to take advantage of interim changes in case law—no matter how insignificant. Furthermore, S. 1241 overturns a leading case, Wainwright versus Sykes, which established the procedural default rule. This rule limits the ability of a Federal court to hear habeas corpus claims which should have been raised in State court. S. 1241 would overturn these decisions to the benefit of the convicted criminal rather than building upon these decisions to the benefit of the law abiding, which is what the President's proposal does.

Mr. President, the President's crime bill also responds to some of the serious problems caused through application of the exclusionary rule. This bill seeks to codify the good faith exception to the exclusionary rule that has been recognized by the Supreme court. All too often in violent crime and drug cases, evidence is excluded at trial simply because the law enforcement officer innocently violated search and seizure rules. This provision codifies and expands upon the Supreme Court decision in U.S. versus Leon by simply providing that when a law enforcement officer acts in good faith compliance with the fourth amendment, any evidence obtained therefrom will be admissible as evidence in a criminal trial. Law enforcement officers should not be punished when they act in good faith.

The President's bill also proposes increased penalties for serious gun offenses. It is imperative that we make substantial prison time a certainty for the drug traffickers and other criminals who prey upon the innocent in our society and use firearms to commit their brutal crimes.

S. 635 also expands victims' rights and responds to the problems associated with sexual violence and child abuse. It creates a nationwide program of drug testing for Federal offenders on post conviction release. Finally, the bill responds to the threat of terrorism by including measures which strengthen our efforts against maritime and airline terrorism.

In summary, the measures contained in my amendment are fundamental, urgently needed reforms which Congress has debated for many, many years. A minority of Members of Congress who are fundamentally opposed to the death penalty, effective exclusionary rule reform, and substantive habeas reform should not be allowed to kill these vital measures. Clearly, these measures will prove to be effective tools in halting the spread of vicious crime. If true habeas corpus reform is enacted, heinous murderers sentenced to death for their unspeakable acts will finally be executed. If true exclusionary rule reform is enacted, law enforcement officers will not be punished for their efforts and criminals will not be set free on mere technicalities. If a comprehensive Federal death penalty is enacted, the Federal Government will be able to do its part to ensure that vicious, brutal murderers are appropriately punished.

Congress should act swiftly to pass the President's bill when we offer it as an amendment. It should not support the watered down Biden version which is currently before the Senate. Although some might assume that the two bills before the Senate are similar since they both contain a death penalty title, a habeas corpus reform title, and an exclusionary rule title, this is simply not true. The President's bill and the Biden bill are vastly different. In fact, S. 1241, the Biden bill, actually expands the rights of criminals at the expense of the law-abiding and it would effectively eliminate the death penalty in every State.

Mr. President, we must have real reform. Anything less is not acceptable. An effort to push a liberal bill through Congress which expands violent criminal's rights at the expense of law enforcement and the law abiding will not suffice. We must enact S. 635, the President's proposal, which is the toughest legislation to deal with violent crime in our Nation.

Mr. President, I would like to respond to some of the criticisms raised by my distinguished colleague. The Senator has criticized the administration for not doing enough to fight crime. I would like to note, however, the House has just cut—and the House is controlled by Democrats—has just cut by over $500 million the President's budget request for Federal law enforcement in 1992.

Second, there has been discussion of a gun search provision which would permit, in Senator BIDEN's words, police to act in bad faith. This provision is not in the Thurmond amendment.

Third, Senator BIDEN states that the President's death penalty would apply to only six cases. The Justice Department refutes this number when all murders are considered, not just those cases where life sentences had been imposed; it is refuted by both readily available statistical data and also by specific information that the Department of Justice recently provided to Senator BIDEN at his request.

For example, one death penalty provision contained in the President's bill covers all murders in the course of felony violations of the Federal drug laws. This includes almost all murders in the course of drug trafficking offenses or conspiracies.

The most recent Federal figures indicate that over 1,500 murders a year are identified by the police as being drug felonies. Hence, there are over 1,500 murders annually for which the death penalty could potentially be considered under this one provision of the President's proposal.

Mr. President, if you want to know what the sentiment is in this country on the President's bill, and the way I have amended it, compared with the Biden bill, the following list of victims' groups, States attorneys general, district attorneys, local law enforcement agencies, and law enforcement organizations have expressed their endorsement of the President's crime bill, S. 635, as I shall introduce it.

The attorneys general of the following 28 States and the Territory of Guam have endorsed the habeas corpus provisions of the President's crime bill, S. 635, and oppose the habeas corpus provisions of the Biden bill, S. 1241, and also are opposed to the Racial Justice Act embodied in S. 1241: California, New Jersey, North Carolina, Connecticut, Idaho, Florida, Nevada, Hawaii, Utah, Washington, Kansas, Oregon, New Hampshire, Georgia, Guam, Mississippi, Colorado, Pennsylvania, Texas, Arizona, Montana, Vermont, West Virginia, Nebraska, Alabama, Wyoming, Alaska, South Dakota, and Indiana.

Mr. President, I am sure attorneys general in many other States oppose the Biden bill and would favor the President's bill as I have amended it. We just have not heard from all of them.

I want to say that these are the people responsible for enforcing the law of this country. What do they do? They are against the Biden bill and for the President's bill, as I have amended it.

Mr. President, also, how do the district attorneys feel in this country? They are the people who prosecute the criminals. What bill do they favor, the President's bill or the Biden bill? The National District Attorneys Association favors the President's bill; the

California District Attorneys Association favors the President's bill; the Conference of District Attorneys in North Carolina favors the President's bill; the Louisiana District Attorneys Association favors the President's bill; the South Carolina Solicitors Association, which is equivalent to the district attorneys, favors the President's bill.

Janice Clardy, district attorney in Wetumpka, AL, favors the President's bill. Thomas Charron, district attorney, Marietta, GA, and president-elect of the National District Attorneys Association, favors the President's bill. Michael Bradley, district attorney, Ventura County, CA, favors the President's bill. Robert R. Gallagher, district attorney, Englewood, CO, favors the President's bill.

Mr. President, not only the law enforcement agencies of this country endorse the President's bill over the Biden bill, which ought to be enough in itself to pass the President's bill, but, as I mentioned, the district attorneys who do the prosecuting feel the same way. They favor the President's bill.

Now, what about the victims groups? Those are the people who have suffered at the hands of the criminals, and the families who have suffered at the hands of the criminals. How do they feel? Do they favor the President's bill or do they favor the Biden bill?

I will tell you, the Citizens Against Violent Crime, in South Carolina, favor the President's bill. Memories of Victims Everywhere, out of Irvine, CA, favor the President's bill. The Joey Fournier Anticrime Committee in Massachusetts; and Survival, Inc., of Saltillo, MS, favor the President's bill. Justice for Murder Victims, in California, favors the President's bill. The North Carolina Victim Assistance Network, Inc., favors the President's bill. Justice for Homicide Victims, from California, Inc., favors the President's bill. The League of Victims and Empathizers, Inc., from Florida, favors the President's bill. The Citizens for Law and Order, Oakland, CA, favors the President's bill.

Now, Mr. President, what about your law enforcement associations, those associations that represent the law enforcement of this Nation? How do they feel? The people of this Senate are entitled to know how they feel, because their members are responsible for enforcing the laws of this country. They want a tough crime bill. They do not want a watered down bill. How do they stand?

The National Law Enforcement Council, which is headquartered here in Washington, DC, favors the President's bill. The Federal Criminal Investigators Association, a national organization, favors the President's bill. The International Narcotic Enforcement Officers Association favors the President's bill. The Massachusetts Association of Italian American Police Officers favors the President's bill. The Massachusetts Crime Prevention Officers Association favors the President's bill. The California Correctional Peace Officers Association favors the President's bill. The Airborne Law Enforcement Association favors the President's bill.

These are all Federal national organizations. The Federal Investigators Association—they are the ones who investigate national crime—and its members favor the President's bill. The Fraternal Order of Police, which represents the whole Nation, how do they feel? The Fraternal Order of Police, for the whole Nation—not one State, all States—favors the President's bill. The Society of Former Special Agents of the FBI—these are people who have served as FBI agents in the past; they have no interest except to see the law supported and see crime eliminated—favors the President's bill.

The National Troopers Coalition favors the President's bill. Who are they? National troopers are the ones who are on the highways all the time and have to deal with these people, and a number of them are killed, some of them killed recently. They favor the President's bill. The National Sheriffs Association—every county in this Nation has a sheriff—favors the President's bill—not the Biden bill; the President's bill.

The Commission on Accreditation for Law Enforcement Agencies, Inc., favors the President's bill. The Greater Boston Hotel Security Directors Association favors the President's bill.

The law enforcement officers of this Nation favor the President's bill, and that is what I am going to offer as an amendment, except I am going to include the money that Senator BIDEN has included in his bill, because he has complained that the President does not want to put the money in it. We are going to put the money in the President's bill. Now there is no excuse for anybody not voting for the President's bill. It will embody the Biden money.

Mr. President, now is the time. This is the time—not another day—to support the President's bill. The people of this country are sick and tired of weak law enforcement. They are sick and tired of watered down bills on a pretense they are helping law enforcement, when they are really not.

The President's bill, as it will be amended to put in the Biden money, is the bill this Congress ought to pass. And I ask the Senate to pass this bill when it comes up.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. FOWLER). The Senator from Utah.

Mr. HATCH. Mr. President, I should like to pay personal tribute to my distinguished colleague from South Carolina, the ranking member on the Senate Judiciary Committee. I have to say that nobody has ever worked harder to try to get law and order bills passed than Senator THURMOND. If we would listen to him, we would make huge inroads against organized crime and against criminal activity, organized or otherwise, in this country.

I cannot begin to tell this body and everyone throughout this country the respect and admiration and fondness and downright brotherhood that I feel for the distinguished Senator from South Carolina. He not only has accurately portrayed the differences between both bills, but he has done so, I think, with fervor and with intelligence and with very well thought out words and deep feeling.

The country would be better off if we would listen to the Senator. The fact is that we have gone on in this country, year after year after year, allowing criminals to get away with it.

I think the differences between the two bills is stark. I encourage my colleagues to support the bill that the President has come up with, and which is so aptly sponsored by the distinguished Senator from South Carolina. Should that bill be defeated, I hope the distinguished Senator from South Carolina will be willing to call up component parts of that bill and have them debated against the component parts in the Biden bill, so that each of us will understand just exactly what the differences really are, and each of us will really know that the Thurmond amendments are far superior in the battle against crime than the parts of the Biden bill.

Mr. President, before Senator THURMOND spoke, the chairman of the Judiciary Committee spoke for more than one hour, and his principal point, restated several times, was that the President's crime bill does little to address our Nation's crime problem.

This raises a very interesting question. If the President's bill does so little to combat crime, if it is really so insignificant, as Senator BIDEN claims, then why does he stand here for over an hour opposing it? Why does the Senator so strenuously object to these provisions if they do nothing? Why let them pass?

The Senator protests too much. The President's provisions on the death penalty, habeas corpus, and exclusionary rule reform are very tough, and they make a difference. That is why, virtually, as Senator THURMOND has brought out, every State attorney general supports them. And that is precisely, why, in my opinion, the chairman of the Judiciary Committee and many of his colleagues oppose them.

Mr. President, Americans want a tough anticrime bill. Last year, they watched as one or both Houses passed tough crime measures, only to see the conference committee of Congress trash those measures. The American people will not forgive Congress if, in 1992, we repeat that sorry spectacle.

President Bush has sent to Congress a tough anticrime bill. I want to mention briefly some of the reasons I believe the President's bill contains much tougher provisions on the death penalty, haveas corpus reform, and exclusionary rule reform than the Democratic alternative in S. 1241, introduced by my friend, the distinguished chairman of the Judiciary Committee, Senator BIDEN.

I respectfully submit it is not enough to say the two bills have sections addressing the same subjects. The substance, and thus the differences, lie in the details.

Take the death penalty. I would first like, Mr. President, to remind my colleagues of a simple historical fact: There has always been a Federal death penalty. No bill now before this body introduces a new form of punishment into the Federal system. Instead, the main purpose of the pending legislation is only to adopt procedures to allow the death penalties already on the books to be constitutionally carried out.

In addition, the death penalty is authorized, under the President's bill, for certain heinous crimes not previously punishable by death, such as retaliatory murders of witnesses and jurors in Federal trials, and the use of weapons of mass destruction against American nationals.

Retired Justice Lewis Powell recently wrote on the subject of capital punishment in the Harvard Law Review that:

> The Supreme Court has made clear that death is a constitutionally valid sanction for some offenders, and a clear majority of citizens favors its use.

I agree with his conclusion.

I turn to the question of whether the death penalty is applied in a racially discriminatory manner. This issue is the principal difference between the Bush penalty proposal and the Biden proposal. It is now, however, the only important difference.

I would simply note at this point that no one has ever established racial discrimination based on statistics in an individual case, nor is this statistical approach to achieving racial justice likely to provide anything except paralysis in our criminal justice system. The so-called Racial Justice Act provisions contained in the Democratic alternative provide that the death penalty cannot, will not if these provisions pass, ever be carried out except by a racial statistical formula. It is a backdoor way to abolish the dealth penalty in the name of restoring it. Indeed, it will effectively repeal the death penalties in those States which now enforce it.

This fixation with statistical racial justice will make it absolutely impossible to carry out the death penalty. And in order to do so, should that provision pass, race will have to be a factor considered in the rendering of a death sentence. Not what they did necessarily, not the heinous criminal conduct, but the racial factor alone could prevent the death sentence even though it is well deserved.

The Senate properly recognized the fallacy underlying this theory when in the last two Congress this proposal was soundly rejected. This year's attempt to abolish the dealth penalty should be even more soundly defeated. I think it should be stripped out of the bill.

The President's bill contains a sound and reasonable precaution against discrimination on the basis of race, color, religion, national origin, or sex of the defendant or of any victim. It requires the court, in a hearing, to instruct the jury that it shall not be influenced by prejudice or bias related to these characteristics when considering whether the death penalty is justified. Moreover, if such a sentence is recommended by the jury, each juror, under the President's bill, must sign a certificate that such prejudice or bias was not involved in reaching his or her decision.

I urge anyone who feels that the present law does not adequately protect the criminal sentencing process from the infection of prejudice to examine this important section in the President's bill. Maybe we cannot legislatively ensure that discrimination will never exist, but I do believe that the certificate procedure required by section 102 of the Bush bill is the single most effective means we have of requiring that each capital sentencing jury carefully and soberly reflect upon the importance of race-neutral sentencing.

The certificate approach is forward looking. The Racial Justice Act, by contrast, does not in any way seek to prevent discrimination in the future. Its only goal is to remedy discrimination that allegedly may have occurred in the past by effectively prohibiting all executions in the future. That is no remedy. Indeed, the alleged discrimination purportedly addressed by the Racial Justice Act has never been proven in an individual case or otherwise.

The certificate approach is precisely the sort of guarantee that the Supreme Court in McCleskey versus Kemp suggested as a meaningful attempt to address possible discrimination in death penalty procedures. Unlike the scattershot approach of the Racial Justice Act, the certificate provides that alleged discrimination be addressed in the individual case, which the Court has recognized is the only place where it can logically be addressed.

Section 102's "special precaution to assure against discrimination" seeks to achieve justice; section 207's Racial Justice Act only seeks to prevent executions, regardless of whether justice is achieved or thwarted by that result. We can guard against discrimination in imposing the death penalty. President Bush's bill does so. The Biden bill will effectively end the death penalty under the guise of restoring it, and I do not think anybody who reads it and understands it could conclude otherwise.

With regard to habeas corpus, habeas corpus reform is one of the subjects on which the two crime bills most clearly differ. The contrast cannot be more stark. One bill, the President's, will decrease the number of times that a State prisoner can appeal his or her sentence in Federal court. The other bill, S. 1241, will without doubt increase these often frivolous and repetitive suits. Even under the President's approach, a convicted criminal will have numerous opportunities, half a dozen at least, to appeal his or her sentence. But under the Biden approach there is no limit whatsoever.

The habeas corpus provisions of S. 1241 will compound the problems that exist today, not reduce them. These provisions are a giant step in the wrong direction. Instead of enacting the reform that everybody seeks—less delay and more finality in resolving the criminal cases—the proposed bill will do exactly the opposite. It will, if enacted, overrule many of the most significant Supreme Court cases of recent years, which have had the effect of stemming the habeas corpus hemorrhage and will introduce new avenues of delay and postponement to be exercised by prisoners on death row.

This is not simply my view alone. It is the view of most of the Nation's State chief justices, speaking through the Conference of Chief Justices. It is the view of virtually all of the Nation's State attorneys general, many of whom, such as Attorney General Paul Van Dam, of Utah, are Democrats.

Since 1867, the Federal Government has, by statute, allowed certain prisoners in State confinement to challenge their convictions or their sentences by a means of application filed in Federal district court. While this remedy was originally limited to jurisdictional challenges and later expanded to encompass all constitutional claims, the habeas corpus remedy under 28 U.S.C. 2254 is now virtually limitless. Every prisoner in State custody can relitigate the validity of his or her confinement through this means for a virtually unlimited number of times throughout his or her imprisonment.

Reasonable limits on a prisoner's opportunity to relitigate his or her case must be recognized in order that the judgment of the court and the jury not be trivialized. The President's bill provides such limits by establishing, for the first time, a 1-year limit on the filing of habeas petitions, a rule of deference to State court determinations of issues that were "fully and fairly litigated," and a limitation of second and other successive habeas petitions in capital cases for claims raising

doubt concerning the guilt of the prisoner.

S. 1241 provisions relating to postconviction remedies are nothing more than the thinly disguised effort to overturn half a dozen of the most recent Supreme Court decisions in the area of habeas corpus reform.

Most critically, it would undo current principles of finality of sentence by replacing the holdings in Teague versus Lane, a 1989 case, and Murray versus Carrier, a 1986 case, by replacing that good language with vague language on retroactivity that would allow death row inmates to have their sentences reviewed again whenever an allegedly new right is, in the view of anyone of more than 700 district court judges, created.

Can you imagine that? Can you imagine that being habeas corpus reform?

Retroactivity means they will have renewed hundreds of opportunities to make habeas corpus claims, frivolous claims at that, claims that we know are frivolous, claims that really should not be made.

S. 1241 would allow the Supreme Court's rulings on retroactivity to be overruled by a single Federal trial judge whenever that judge determines that it will be just to give the defendant the benefit of a law that the Supreme Court has ruled the defendant should not receive the benefit of.

I question, Mr. President, whether we have the power to create article III courts that can overrule the decisions of the U.S. Supreme Court, which is established by the Constitution. But even if we do possess that power, it is clearly unwise to exercise it. The decisions of the Supreme Court must be followed by the lower Federal courts. Otherwise, there will be chaos in our judicial system.

Congress should not be in the business of telling the Supreme Court what its opinions mean, and it certainly should not tell the lower Federal courts what parts of which cases they need follow. Such a practice cannot be countenanced in our constitutional system under our separation of powers principles. Moreover, it is a path that, once gone down, Congress could not be expected to resist in the future. What restraint would there be on a future Congress from setting aside any part of any other constitutional decision of the Court that it just plain did not like?

Our power to affect the constitutional interpretations of the Supreme Court is through the amendment process, not through disingenuous alterations of the principles of retroactivity.

S. 1241 also requires the district court to hear every claim that alleges a "miscarriage of justice," even if the argument has been specifically waived or abandoned at trial or on appeal for strategic or other reasons. This rule would overrule the leading case of Wainwright versus Sykes, a 1977 case, a landmark case, which has kept the number of habeas cases from being still larger by prohibiting a prisoner from raising in Federal court a claim which he is legitimately barred from raising in State court, unless the prisoner can show good cause for the default resulting in prejudice to his case. That is a reasonable rule, broad enough to allow every genuine case of constitutional error to be heard. It should be retained.

A bill which allows any death row inmate alleging that he is the victim of "miscarriage of justice," to obtain another review of his confiction and sentence in Federal court—no matter how many times he has previously been to Federal court—is not calculated to reduce the number of habeas corpus petitions.

But that is exactly what S. 1241 provides. That is one of the reasons why retired Justice Lewis Powell, as well as the chief judges of the Fifth and Eleventh Circuit Courts of Appeal, have testified that enactment of this title in the Biden bill will result in more, not fewer, repetitive habeas corpus cases.

The Supreme Court is limited in what it can do to address the habeas crisis. All it can do is interpret the statutes that Congress passes, as it did recently in McCleskey versus Zant, when it gave substance to our statutory language relating to an "abuse of the writ." But the ultimate problem is still Congress' to address. It is incredible to think that Congress would be tempted to act by undoing those few significant Supreme Court cases that have brought some semblance of sanity to this process.

I remind my colleagues that when we discuss postconviction counsel, we are talking about prisoners whose guilt has been established beyond a reasonable doubt and whose conviction and sentence have, in every case, been reviewed and affirmed by the highest appellate court of the State and, in many cases, by the Supreme Court of the United States of America. Only then, after their appeals are over and their criminal case is completed, would S. 1241 operate to provide still more lawyers for the prosecution of their civil remedies.

It is ridiculous to argue that the habeas provisions in the Biden bill do anything to reform habeas corpus. They expand the right to take appeals and to file petitions.

With regard to the exclusionary rule, under the judiciary-created exclusionary rule, completely credible and probative evidence critical to conviction is excluded from trial. This is done because a court, deliberating weeks or months later, rules that the evidence was unreasonably seized. The criminal goes free, to the detriment of society.

The Supreme Court has chipped away at the exclusionary rule, and properly so. Under the recent Supreme Court case cited, U.S. versus Leon, evidence obtained, based upon an objectively reasonable belief in a search warrant's validity, is admissible in court.

The Bush bill takes the logical, sensible, anticrime step of extending this good-faith exception to warrantless searches. The Democratic alternative does not.

Indeed, the Democratic alternative's attempted codification of the Leon standard might be viewed by the courts as a prohibition on further judicial expansion of the good faith exception or the judicial overturn of the exclusionary rule altogether.

Further, the language of the Democratic alternative does not even codify Leon for search warrant cases; it narrows it. In Leon, the Supreme Court stated that the good-faith search warrant exception to the exclusionary rule would not apply "in cases where the issuing magistrate wholly abandoned his judicial role. * * *"

Under the Democratic alternative, the good-faith exception would not apply if the judicial officer provided approval of the warrant without exercising a neutral and detached review of the application for the warrant. By tinkering with Leon decision in this way, the Leon good-faith rule itself will be narrowed, if the Biden Democratic bill is passed.

I want to chat a little bit about another important aspect of this whole debate.

Let me stress, in conclusion, that gun control is not crime control. The only thing gun control measures, such as waiting periods do is harass law-abiding citizens and deny the constitutional right to keep and bear arms. At the same time, criminals can obtain firearms through theft, the black market, or otherwise.

Combining the Brady waiting period bill with a background check might be compromise for gun control advocates. It is not acceptable to this Senator. Such a scheme will ensnare the law-abiding citizen in delay and erroneous denial of firearm purchases, leaving some citizens defenseless in the face of criminals. The criminals will have no such trouble obtaining firearms.

Let me just say this: Most crimes committed with the use of firearms were committed with firearms that are illegally obtained. In fact, almost all. The others are generally crimes of passion, which the Brady bill will not resolve. The Brady bill, No. 1, does not resolve most criminal activity with firearms, because those firearms are stolen or obtained in the black market, or otherwise, illegally. So the vast majority of all criminal activity with firearms, the Brady bill will not touch.

Second, the few remaining cases that are left over are, primarily, crimes of passion, which the Brady bill will not touch either. Very, very few cases

might possibly be touched by the Brady bill.

I happen to love and respect Jim and Sarah Brady. There is no question in my mind that they are very fine and wonderful people. They have gone through untold suffering as a result of the useless and criminal act of an insane person.

On the other hand, I have to say that the Brady bill, No. 1, is not going to work. No. 2, it is going to be very costly.

We probably could take the estimated $200 million-plus that it will cost to implement that bill for no good reason, because it is not going to work, and put it into crime control and into our law enforcement mechanisms and we would be a lot better off. We would be a lot farther down the road of crime control.

I have to say also that the Brady bill is a step towards gun registration. To those of us who believe in the right to keep and bear arms, we do not want gun registration. We do not want the pre-Firearm Protection Act days to come back where because of mistakes in spelling, minimal mistakes in filing forms, decent law-abiding sports people have been indicated and persecuted. We do not want to go back to those days. We know this is just step one to get us back to those days.

We also do not want to have people lose their rights to keep and bear arms in this society. I am sure we will get into this debate a lot more, but I have to tell you there are a lot of people out there in this country if they really understood what is involved, and how really unlikely the Brady bill, or the Mitchell modification of the Brady bill are really unlikely that those bills will work, they would be darn mad to realize we are going back to a bureaucratic overregulatory harassing approach to gun control.

To sum up, Mr. President, the Democratic bill is a soft-on-crime bill. It effectively repeals State death penalty laws, that is unless we can get rid of the Racial Justice Act. It guts the Federal death penalty in the guise of restoring it because it cuts out the use of the Federal death penalty even if we took the Racial Justice Act out. It is a Godsend for convicted murders on death row because it makes it easier for them constantly to appeal their convictions and delay their executions. It hamstrings the police for cutting back on evidence that should be admissible in court.

Mr. President, I think it is eyewash because the American people want Criminal Code reform, want tougher gun approaches that makes sense, want tougher laws that will nip criminal conduct in the bud and make it tough to be a criminal, and want law that basically protects American citizens from unlawful activities, and especially criminal activities.

Mr. President, again, I compliment my distinguished colleague from South Carolina. He has been in the forefront of strong Criminal Code reform language ever since I have been here. The Criminal Code reform bill, the most monumental bill, was enacted to reform our criminal laws a few years back, was enacted largely because of his perseverance and the work that he did. And if we would listen to him I think we would find that his particular bill, that is, the President's bill would do an awful lot to put a big dent into criminal activity in our society and to help all of us to have a better and more responsive society to our needs.

Mr. President, I admire him, and I certainly support him and the President in this bill. I hope our colleagues will consider doing that because if we really want to do something about crime we ought to do it.

Having said all that, is there injustice in our criminal system? You bet. Are there inordinately high sentences? You bet. Are there judges who go off the reservation? You bet. Are some of the things the ACLU brings up in the protection of individual rights correct? You bet your life.

We have to fight those things with everything we have. But the Biden bill does not do that. I have to say the way the President's bill is written will be tough on crime without, I think, negating or hurting the rights of individual citizens and those who are accused of criminal activity in our society.

I am going to work all my lifetime to try and make sure that justice occurs in our courts. I do not agree with everything that happens by tough criminal judges, by any stretch of the imagination. I do not think they are always right. But if we give them laws that basically are good laws that give teeth to anticrime efforts everybody in our society will benefit and there is only one bill that is going to be debated here that has that type of law or that type of legal backing and that is the bill that the distinguished Senator from South Carolina is advocating, along with the President.

Mr. President, I yield the floor.

Mr. GRAMM and Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President——

Mr. GRAMM. Mr. President, I did not even hear the Senator from Delaware ask to be recognized.

Mr. BIDEN. The Senator from Delaware did.

The PRESIDING OFFICER. The Chair heard the Senator.

Mr. BIDEN. I would be delighted to yield to our colleague if he wishes me to. I will speak more in a Texas voice next time.

Mr. GRAMM. If the Senator did ask to be recognized then he deserves the floor.

Mr. BIDEN. It is fine by me for the Senator to have the floor. I was just going to make some comments on what Senator HATCH had said, but I already had a chance to speak.

The PRESIDING OFFICER. The Senator from Texas is recognized in his own right.

Mr. GRAMM. Mr. President, we are today debating a very important bill. I think most of us spend numerous days and hours talking about things that are important to individual interests in the country but issues important to the general interest of the country often go unmentioned.

Mr. President, I submit that we are debating today an issue that is critically important to every man, woman, and child in America. I submit that our bleeding Nation desperately wants us to do something about the problem of rampant crime.

I believe, Mr. President, that we are going to give the people of America a choice in the bills and amendments that are going to be presented here. And I think, Mr. President, that the choice is indeed clear: That if you believe the time has come to grab criminals by the throat and not let them go, you are only going to get one opportunity to do that and that is the opportunity that will be afforded when the distinguished Senator from South Carolina offers the President's crime bill.

Mr. President, I wish to review some statistics that I think are vitally important. These statistics reveal very clearly why the American people are 20 years ahead of Congress in demanding that action be taken. I think it is an absolute outrage that action has not been taken, that the democratic process has faltered because Congress has refused to act on an issue that consistently, whether you measure it in terms of public opinion polls or whether you simply listen to the voice of the people expressed individually, is the number one issue of concern in the country.

I want to present a series of statistics, Mr. President, that I think make a clear-cut case that we have crime without punishment in America, that show when people consider committing crime, they look rationally at the process of being indicted, convicted, sentenced, and imprisoned, and they conclude that there is not very much of an effective deterrent in the criminal justice system.

I want to further, in looking at the data, suggest that the one thing we could do that would immediately have a profound impact on the safety of the American citizenry is to stiffen mandatory sentences. And I want to present some new data on this subject.

I also want to talk about the data that now is available and which relates to the certainty of prison sentences, to crimes that are committed, and the growth of the crime rate. And, finally,

I want to outline how critical I think this problem is and why I believe that we should not follow the normal process here where we simply debate the issue, vote on it, have it go off to conference somewhere, and never see most of it again.

In fact, Mr. President, we have voted on many of the critical issues that are in contention here. The Congress has voted on most of these issues in the House and the Senate. Under the normal procedure, when the House adopts a provision and the Senate adopts a different provision, we go to conference to work out the difference and the provisions that can be agreed upon end up in the final bill. But in the last few years that has not been the case. And so not only the will of the American people but the will of the majority in both Houses of Congress has been circumvented.

But let me begin by talking about crime without punishment. Mr. President, in a study by Dr. Morgan Reynolds of Texas A&M University that has been published by the National Center for Policy Analysis, Dr. Reynolds tries to do something that I think is profoundly important to this debate. He tries to calculate what he calls the risk of punishment.

In other words, what he does is look at the various crimes that are committed each year as they are reported in our official crime statistics and look at the probability that someone who commits a crime is going to be arrested. He looks at the probability that if they are arrested, whether they will be prosecuted. He looks at the probability, if they are prosecuted, whether they will be convicted. Then he looks at the probability that, if they are convicted, whether they will actually be imprisoned. He then calculates, looking at the crime of murder, for example, what the probability is of the amount of time that a person committing a murder can expect to spend in prison if he falls under this average statistic.

Mr. President, I do not know whether this is exactly relevant in each individual criminal decision, but I think it tells you a lot about our society when you look at these statistics.

Dr. Reynolds has gone back to 1950 in looking at these statistics. He has found that since 1950 the expected time in prison that you get for committing a serious crime—murder, rape, robbery, and assault—that the expected cost in terms of time in prison, when you take into account probability of arrest, the probability of prosecution, the probability of conviction, and the probability of imprisonment, that the expected cost in time spent in prison has declined by 60 percent since 1950.

Since that time, Dr. Reynolds finds that the amount of crime committed—again in terms of these very serious violent crimes—is up sevenfold. In fact, he found—and these statistics are startling to me and I am almost reluctant to repeat them as I do not want the criminals to know it. Unfortunately, they already do know it.

In 1950, when Dr. Reynolds pools all these serious crimes, like murder and rape and assault and robbery, together, he finds that if you look at all of them as a composite, in 1950, given the probability of arrest, conviction, and sentencing to prison, that the expected cost in 1950 of committing one of these crimes was 24 days in prison. Dr. Reynolds concludes that, by 1988, that had dropped to 8.5 days in prison.

Now let me just give you some of these figures, and listen to them.

Dr. Reynolds concludes that the average person who committed a murder—when you calculate everything out about the probability that he would be arrested, prosecuted, convicted and imprisoned—the average murderer in 1984 risked serving 2.3 years in prison. For a burglary, it was 7.7 days; for a car theft, it was 6.3 days.

> It is virtually impossible to prevent people from committing crimes. The most that the criminal justice system can do is impose punishment after the crime has been committed. * * * People commit crimes so long as they are willing to pay the prices society charges, just as many of us might risk parking or speeding tickets. Viewed in this way, the expected [risked] prison sentences * * * are the prices we charge for various crimes. Thus, the price of murder is about 2.3 years in prison; the price of burglary is 7.7 days; the price for stealing a car is 6.3 days.

Mr. President, is it any wonder, when the expected cost of stealing your automobile is 6.3 days in prison, that we have a lot of people that are waiting out there to steal our cars? I submit, Mr. President, that we have crime without punishment in America. And that is why we have so much crime in America.

We all know about repeat offenses. But let me just review the statistics because I think these statistics are absolutely alarming. They frighten me and, obviously, to the extent that the American people know them, they will outrage the American people.

We have had some detailed calculations conducted in 11 States that accounted for more than half of all State prisoners released in 1983. The Federal Bureau of Justice Statistics looked at what happened to people who were serving time in prison who were released that year and then looked at where those individuals were years later. Now this is only 11 States, but I think everybody concludes that it is basically representative of the Nation as a whole.

Of the people that were let out of prison in 1983, the vast majority of whom had served only a fraction of their time, 62.5 percent had been rearrested within 3 years for serious violations of the law. Almost two-thirds of the people who were let out of prison, State or Federal, in 1983, had been arrested within 3 years for a serious violation of the law; 46.8 percent had been convicted and 41.4 percent were back in prison or a local jail.

Mr. President, if you simply look at the data on arrests per crime being committed, I do not believe that it is stretching our imagination too much to conclude that fully 75 percent of the people who are being let out of prison today are walking right back out on the street and killing and murdering and brutalizing and robbing our people. I mean, that is basically what the facts say. If 62.5 percent within 3 years had been rearrested, how many have committed these crimes and not yet been caught?

Mr. President, let me talk about the cost of keeping somebody in prison and the cost as compared to the benefits of keeping them in prison. Keeping people in prison is expensive. We all know it. And I take pride in the fact that last year, after delaying for years, we finally put a lot of money into the system to build Federal prisons. Some people might say, "Well, that is not the problem. It is society's problem." And I will get to that. Quite frankly, I think it is part of the solution.

Botec Analysis Corp. has done a study of the annual cost of operating prisons in America. They concluded that it costs between $23,000 and $70,000 per year to operate one prison cell in America. Now that is a big variance between $23,000 and $70,000, but that is the range we are looking at.

It costs a lot of money to keep people in prison, and I do not deny that. But we now have a study by two Harvard professors, David Cavanagh and Mark Kleiman, who have studied the benefits in terms of preventing crime, preventing costs from being imposed on law-abiding citizens, of keeping those people in prison 1 more year. And what they have concluded is that by using a prison cell to extend the length of a prison sentence by 1 year, we save between $172,000 and $2.364 million a year.

In other words, it costs somewhere between $23,000 and $70,000 to keep somebody in prison a year. But, according to the Cavanagh and Kleiman study, the savings in terms of crime costs imposed on the working men and women of America in destruction of property, lessening of their earning power because they are crippled, loss of earning power because they are killed, is between $172,000 and $2,364,000, depending on how you value those things. But if you take the most expensive cost anywhere for a prison cell and then take the lowest value of preventing crime by keeping somebody in prison for another year, the benefits of doing so exceed the cost by a minimum of 2 to 1. And I submit, Mr. President, that that is a pretty remarkable statistic.

Now, I know there are going to be people who are going to say—and let

me make it clear, Mr. President, that I never impugn the motives of people who make arguments on the floor of the U.S. Senate. I never assume the superiority of my argument over somebody else's in terms of motive. I think we all are motivated by the same thing. Some of us are right and some of us are wrong, and it is up to history to decide who that is.

But there are going to be people who say prison is not the answer. I do not claim it is the only answer. But I do believe it is part of the answer. It is an indispensable part of the answer.

Let me give some new data I think is pretty revealing. This data comes from the Bureau of Justice Statistics. In 1960, we had about 200,000 of our fellow countrymen in prison. By 1969, that number was basically the same, about 200,000. But America, of course, was a bigger country in 1969 than it was in 1960, and there was a 17-percent decline in the Nation's per capita imprisonment rate. So that on a per capita basis, in the 1960's, the percentage of our citizens in prison declined by 17 percent.

What happened to crime during that period? According to the FBI's Uniform Crime Report, between 1960 and 1969, violent crime in America exploded, soared 104 percent. The percentage of the population in prison went down; the crime rate went right through the ceiling.

In the 1970's, things changed dramatically in America in terms of people in prison. The imprisonment rate rose by 39 percent and the crime rate rose by 47 percent. So whereas the crime rate had more than doubled in the previous decade as the number of people in prison went down, as the number of people in prison in the 1970's went up, the crime rate rose by less than half.

But that does not tell the whole story, because in 1973 we started compiling a new statistic, which unfortunately we do not have for the 1960's, and we conducted a National Crime Survey of the public to try to measure not just crime reported but crime that occurred but was not reported.

What the Bureau of Justice Statistics' National Crime Survey said is that from 1973 to 1980, while the imprisonment rate was going up, the violent crime rate went up by only 6 percent, whereas it had more than doubled in the decade of the 1960's when on a per capita basis the number in prison went down.

In the 1980's, the number of people in prison almost doubled; it went up by 99 percent. By the national survey, which measures both reported and nonreported crime, for the first time ever it went down—by 13 percent. The number of people in prison almost doubled. The crime rate as measured by the National Crime Survey actually fell for the first time by 13 percent. Even if we use the FBI's Uniform Crime Report, which measures only reported crimes, violent crime went up by only 11 percent in the 1980's, compared to the 104 percent increase during the sixties.

Let me read a quote from Dr. Steven Dillingham, Director of the Bureau of Justice Statistics. Dr. Dillingham concludes a speech he gave in March by saying:

> Looking back over the three decades, we learn that over time—by decades—when imprisonment rates fell, violent crime rates soared; and when imprisonment rates rose, the violence crime rate experienced decreased rates of growth or even reductions, whether measured by the National Crime Survey or the Uniform Crime Reports.

Mr. President, I ask unanimous consent that Dr. Dillingham's full statement be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GRAMM. I am not going to get into the minutiae of the two bills before us. There are a lot of people here who know more about these bills than I do. But I want to make several points I think are important.

First, it is pretty clear to me the American people want the death penalty restored. They do not want it restored in such a way that nobody can ever be executed. They want it restored so when the punishment fits the crime we have the capacity to use the ultimate deterrent.

Mr. President, we have voted for such a death penalty on many occasions. The House last year voted for such a death penalty by 271 to 159. And yet today we still do not have workable capital punishment. Why?

How can it be that the House votes for it, the Senate votes for it, the President is for it, the American people are for it, and yet it is not the law of the land? How can that be?

Well, how it happened was that the leaders of the committees of jurisdiction in the conference dropped these provisions. So, despite the fact both Houses of Congress stated a clear preference, it did not become law.

The American people want capital punishment for drug kingpins, who are ordering murders, who are conducting violent crimes, who are preying on the health, happiness, and lives of our children. We adopted it. The House adopted it 295 to 133. It was adopted in both Houses of Congress.

When I was in the seventh grade I learned if the House votes for it, the Senate votes for it, the President is for it, the American people are for it, then probably it becomes the law of the land. But not so.

On habeas corpus——

Mr. BIDEN. Will the Senator yield on that point? I will only take a second to explain. There was a difference in what the House passed and what the Senate passed. And the House passed a provision on both cases, including the racial justice provision. We did not pass the racial justice provision.

As the leader of the conference on the Senate side I offered to take the death penalty without the racial justice provision and the House would not yield. They stuck to the racial justice provision.

The Republicans on this side said under no circumstances would they accept the death penalty with racial justice. And the House Members who voted for racial justice said under no circumstances would they accept the death penalty without it.

That is why it did not occur.

Mr. GRAMM. Mr. President, let me say I appreciate the enlightenment given to me by our colleague. In fact I know that is the case. But it does not alter the basic point I want to make, and that is if we had an up-or-down vote in the House today on capital punishment for drug kingpin murders it would be adopted overwhelmingly. A similar vote on the floor of the Senate, if it occurred today, and probably will occur today, or sometime next week would be adopted overwhelmingly.

Mr. BIDEN. I agree.

Mr. GRAMM. I know there are those who are so committed to racial quotas they want them not just in hiring, but they want them in capital punishment. I find that absolutely, incomprehensibly astounding. But I should never be astounded by the position of the U.S. Congress.

Habeas corpus reform—and again there are distinctions. But it does not change the point I am trying to make. We are for habeas corpus reform. The House adopted habeas corpus reform 285 to 146. Yet it has not become the law of the land.

Habeas corpus has to do with the court appeals of somebody who, for example, goes out and kills somebody and is convicted and sentenced; we are now giving that person endless ability to tie up the courts for years and years, decade after decade, circumventing the functioning of the criminal justice system.

The exclusionary rule, both Houses of Congress have basically concluded that if a police officer in good faith gets evidence, where they made a mistake—they broke into a house, there is a shootout, they grab the guy and they forget to read him Miranda and he confesses, for example, or if they find evidence without having a search warrant when they were drawn in by hot pursuit, or other factors that people more expert than I am can talk about—the point is, if a police officer in good faith finds a gun that was used to kill somebody or finds drugs, or finds incriminating evidence, should we let that evidence be used? Both Houses of Congress in one form or another have said yes. The American people say yes, the

President says yes. Yet it is not the law of the land.

The only thing I can conclude is we are out of touch with the thinking of the American people.

That, in a very real sense, we are a privileged few who are protected. I think we are never going to deal with this crime problem until each of us can emphathize with the people who are victims.

I know somebody famous said it and I looked for the quote, so I am not trying to claim credit for somebody else's quote. I do not know who said it, but he was right when he did say it. He said: The crime problem will not be solved until the people who are not the victims are as outraged as the people who are the victims.

Mr. President, I am outraged. I want us to do something about it. I do not want the crime issue as a political issue in the next election. I want us to vote to this issue. I want us to adopt a strong bill.

Let me conclude by saying just a little about the two bills and about procedure. First of all, I do not doubt the sincerity of the people who have the underlying bill before us, who have written it, who have put it together. As I look at it, Mr. President, I do not see it as being the tough bill I want. I do not see it as giving us the tough death penalty that I want. I do not see it dealing with the major issues that the President has called for us to deal with.

I do not see it as a total step backwards, but I think, quite frankly, it is mixed enough that it is worse than current law in some areas.

We have in the bill before us—and I know there will be a move to strike it, and I am not even sure—in fact, I think the distinguished chairman may, in fact, be opposed to racial quotas in capital punishment. But it is in the bill before us. Mr. President, I do not think that is the bill the American people have in mind when they talk about grabbing drug thugs by the throat.

We have procedures here that allow endless amendments. I just simply would like to propose a couple of things. Once, I think we ought to have an up-or-down vote on the President's bill. I think we ought to give the people an opportunity to vote yea or nay on the President's bill.

Mr. BIDEN. Will the Senator yield on that point?

Mr. GRAMM. I will be happy to.

Mr. BIDEN. I am prepared to do that. I am prepared the moment the Senator stops speaking to give the President an up-or-down vote on his bill.

Mr. GRAMM. Mr. President, I yield the floor.

EXHIBIT 1

THE ATTORNEY GENERAL'S SUMMIT ON LAW ENFORCEMENT RESPONSES TO VIOLENT CRIME: PUBLIC SAFETY IN THE NINETIES, MARCH 4–5, 1991

(By Steven D. Dillingham, Ph.D., Director, Bureau of Justice Statistics)

I appreciate very much Dr. Blumstein's outline of many of the factors we might consider as we try to project what will happen to violent crime and violent crime rates in the 1990s and beyond. Certainly it is desirable to consider possible impacts of demographics, and Al has devoted much time and talent to this challenge. As was mentioned, other variables can have some impact—such as drug use, social attitude, constrained criminal justice resources in times of tight budgets, changes in criminal laws, changes in crimes of preference, and new effeciencies and improvements in criminal justice practices.

The Department of Justice, through the Bureau of Justice Statistics (BJS) collects data and performs analysis on a national basis of topics, developments and trends relating to each component of the criminal justice system—beginning with vitimization and extending to law enforcement, prosecution, courts, jails, prisons, probation and parole, and recidivism studies. For example, regarding corrections statistics, national-level data goes back to pre-Civil War, with the initiation in 1850 of the first count of prisoners held in the states and then-existing territories. Today, we receive corrections data from every single prison and jail in the nation—without exception. BJS data are collected independently by agencies such as the Bureau of the Census and are available to the public for independent analysis at the University of Michigan. BJS studies are relied upon by Federal, state and local governments cirminal justice officials, and the public-at-large. The United States Supreme Court has cited our data in its decisions. BJS now fills 1 million requests each year for statistical reports.

Without overloading you with numbers, I will present some highlights of recent findings and trends:

First, let me address the one topic that generally dominates discussions of violent crime and appropriate responses to it. That topic is the relationship of imprisonment to violent crime (see slide with table).

Statisticians and criminal justice researchers have consistently found that falling crime rates are associated with rising imprisonment rates, and rising crime rates are associated with falling imprisonment rates (e.g., A. Blumstein, J. Cohen, and D. Nagin, Eds., Deterrence and incapacitation: estimating the effects of criminal sanctions on crime rates. Washington, DC: National Academy of Sciences, 1978, p. 5) It should be explained that "associated with " does not mean "directly or only caused by," as other factors I alluded to can also influence crime rates. BJS has examined the nation's relationships and I would like to share certain findings with you:

THE 1960'S

In 1960, State and Federal prisons in the United States held over 200,000 prisoners. The prison population fell during that decade while the nation's population increased so that, by 1969, the number of prisoners was below 200,000, representting a seventeen percent decline in the nation's per capita imprisonment rate. What happened to violent crme during that period? It soared. The FBI's Uniform Crime Reports (UCR) recorded a 104 percent increase in the UCR violent crime rate from 1960 to 1969. In other words, during the 1960s, as the imprisonment rate declined 17 percent, the UCR violent crime rate more than doubled. (The UCR is one of two national indicators of crime rates, and is based on crimes actually reported to police.)

THE 1970'S

The prison population decline that started in the 1960's continued into the early 1970s, bottoming out in 1972. Beginning in 1973 the prison population started growing year after year, usually in record numbers. By the end of the decade the imprisonment rate had risen 39 percent above its 1970 level, setting a new record for the largest single-decade increase ever. As the imprisonment rate rose, the UCR violent crime rate also continued to rise, but instead of the more than 100 percent increase observed in the 1960s, the increase was half as large, 47 percent.

Another source of data on crime rates, the National Crime Survey (NCS) of the Bureau of Justice Statistics, became available for the first time in the 1970s. The NCS—the second largest survey by the Federal Government reaching approximately 100,000 persons is an annual survey of America's households that asks household members about crimes they may have suffered. The NCS is based on the accounts of crime victims and includes both reported and unreported crimes. The survey's first year of operation was 1973. From 1973 until the end of the decade the NCS violent crime rate, recorded a slight rise of 6 percent.

THE 1980'S

The record 39 percent increase in the imprisonment rate during the 1970's was followed in the 1980's by a 99 percent increase. And what happened as the imprisonment rate nearly doubled? The NCS violent crime rate fell 13 percent and the UCR violent crime rate recorded its lowest single-decade increase ever, 11 percent, considerably lower than either its doubling in the 1960's or the 47 percent increase in the 1970's. Of special interest during the decade of the 1980's was the fact that the UCR violent crime rate actually dropped in 4 of the 10 years. Comparably, it had dropped only 1 year in the 1960s' and only 1 year in the 1970's.

THE 1990'S

Looking back over the three decades, we learn that over time (by decades) when imprisonment rates fell, violent crime rates soared; and when imprisonment rates rose, the violent crime rate experienced decreased rates of growth or even reductions, whether measured by the National Crime Survey or the Uniform Crime Reports. In the case of the National Crime Survey, an actual decline was reported. In the case of the Uniform Crime Reports, there has been an important comparative decline in the sense that the 11 percent increase in the 1980's is an indicator of positive movement when compared to either the doubling in the 1960's or the 47 percent increase in the 1970's.

No one knows for sure what the 1990s will bring. But if trends over the past three decades continue, and if imprisonment rates continue to rise, overall violent crime rates may not increase in the 1990s and may actually decline. A major unknown, of course, is whether imprisonment rates will continue their steady climb upward. Debates about our Nation's prisons are likely to be a recurring issue in the 1990s and it is not clear what the outcome of the debates will be. The implication of three decades of statistics and countless other studies are clear, however. The possibility that prisons are helping to

ameliorate America's crime problem must be seriously weighed in those debates.

It certainly accords with both past research and common sense that policies and laws favoring swift, certain, fair and strong punishment (through incarceration of serious and violent offenders) should remain priorities for government at all levels and will serve to protect the public safety. After all, national statistics reveal that 95 percent of state prisoners have been convicted of violent crimes, or are recidivists. (At a Congressional hearing recently, a group of judges from New Jersey were startled at this high number and questioned it. However, the New Jersey Department of Corrections data continued to show that fully 97 percent of their inmates were either violent offenders or recidivists.)

Finally, let me highlight a few additional findings that represent the recent workings of our criminal justice system in responding to crime.

First, law enforcement and correctional systems across the nation have been hiring more officers and implementing higher professional standards. Simultaneously, the assets of criminals increasingly are being seized and forfeited to support criminal justice programs and innocent victims.

Second, during the 1980's, arrest rates increased, conviction rates increased, incarceration rates increased, and probation and parole supervision increased—evidence of improving effectiveness.

Third, Federal and state systems are utilizing more intermediate sanctions and punishments (*e.g.*, "boot camps") to complement prisons and jails in holding offenders accountable and controlling their behaviors.

Fourth, most states and Congress have enacted victim-oriented legislation (including victims bill of rights, restitution, victim assistance and compensation programs, victim impact statements, victim notification rights and missing children's acts).

These findings indicate that, while crime levels remain unacceptably high and demand our continued vigilance, the criminal justice system has responded to the demands of the 1980's and there are many indicators of dramatic improvements and increased efficiences. The point is that your dedication and your efforts indeed have had a major impact and made a very big difference—a difference that will continue in the future. Let us listen intently as others on this panel and at this conference discuss recent improvements and future initiatives that they foresee as being responsive to the demands of the 1990's and beyond.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER (Mr. DODD). The majority leader.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I am advised that discussions are continuing on attempting to reach an agreement on how best to proceed with respect to various amendments to the bill. I think it useful that such discussions continue. The debate has been joined, and I think that is a very good thing, too. I hope all Senators will continue to debate as they see fit.

Mr. President, I thank my colleagues, and I encourage those Senators who wish to make statements to continue to do so, and I hope we can proceed promptly with this bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I now ask unanimous consent that there be a period for debate only on the bill until 3 p.m., and at the conclusion of the period for debate only, before any further action occur on the bill, the majority leader be recognized.

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

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, the Senate is in the process of addressing one of the most important issues of the day. That issue is crime. Almost every poll that has been taken on major issues, reflecting the people at the grassroots, considers crime only second most important to the issue of the economy. I would say that except for the economy, there is no more powerful or emotional issue for the American people.

It is time for us in this body to, once again, deal with this issue, and in the process of dealing with it, I hope that we pass tough, meaningful anticrime legislation.

I have participated in many hearings on the issue of crime and considered many so-called anticrime bills during my years in the Senate and as a member of the Judiciary Committee. But the time for study and the search for the root causes of crime, which debate consumes so much of this body's discussion of crime, has passed. We have to talk about dealing with criminal code reform and see that as a solution to the problems of crime. Our constituents are demanding action to stop criminal violence against persons and property, whatever the cause.

The American people are not interested in excuses and theories from sociologists who are looking for the root causes of crime. They do not want to hear explanations and justifications for criminal behavior. The citizenry of this country instead wants us to act in a way that says, "You commit a crime; you are going to pay a penalty for it." They want crime stopped right now.

That is why, Mr. President, it is time for us to consider the President's comprehensive crime package sponsored by our distinguished colleague, Senator THURMOND. This legislation is a meaningful antidote for the ailing criminal justice system. That is why just a few minutes ago it was good news for all of us on this side of the aisle to hear that we will have an opportunity for an up-or-down vote on that measure.

This bill put forward by Senator THURMOND calls for stiffer penalties for Federal firearm crimes, tougher laws on juveniles and gangs, simplified prosecution for sexual violence and child abuse acts, and expanded drug testing for Federal parolees and probationers.

It calls also for improvements in the judge-made exclusionary rule to allow Federal courts to exclude probative evidence only on constitutional grounds and admit evidence seized by police, if they are acting in good faith. A reasonable limitation is also called for on Federal habeas corpus petitions in order to promote some sense of finality in the criminal proceedings. And it also calls for the strengthening of the Federal death penalty by the addition of several new capital offenses, such as attempted assassination, kidnaping resulting in death, murder for hire, and murder during hostage taking.

Mr. President, I would like to elaborate on a couple of those issues and illustrate why the bill proposed by Senator THURMOND is the right approach, as opposed to the bill that has been reported from committee.

First, I refer to the exclusionary rule. This judge-made rule prohibits the introduction of certain evidence if proper procedures are not followed. The rule is derived from the fourth amendment protection against unreasonable search and seizures. This is a very important and a very fundamental right, but its interpretation and application has resulted in limiting the evidence the court can hear in a criminal case. The practical effect, then, has been that criminals go free because of legal technicalities.

The President's bill codifies a good-faith exception to the exclusionary rule. This means that evidence can be admitted if the police officers, in conducting the search and seizure, acted reasonably, believing that their conduct conformed with the fourth amendment.

The President's bill allows for this exception to the exclusionary rule, whether or not the police acted with a warrant. In contrast, Senator BIDEN's bill allows the exception only in the cases where the police are acting with a warrant. The simple fact is the Biden bill just does not go far enough. Procedural loopholes would be left and criminals could walk free.

The second issue of importance in this debate concerns habeas corpus proceedings. That term, as you all know, is a legal expression that literally means to have the person. Under our legal system, a person convicted in State court proceedings can petition a Federal court, claiming that he is being wrongly held or that his Federal rights are being violated.

Habeas corpus proceedings have gotten so out of hand that no State conviction can be considered final. Convicted criminals have the right to attack virtually every issue connected with their conviction. The result is that our Federal courts are tied up in reviewing too many State court proceedings. We need a system which recognizes the integrity and, most importantly, the finality of the State court process.

The President's bill would give us just that approach. The Biden bill, by

contrast, would not curb habeas corpus petitions. Successive and repetitive petitions would be allowed in the Biden bill. The rule created by the Biden bill would be more permissive than current law.

In conclusion, Mr. President, the Bush-Thurmond package is tough on people that it ought to be tough on, those who commit violent crimes, and at the same time it is fair to suspects, and it protects law-abiding Americans.

The latest FBI report is evidence that violent crime in the United States presents us with one of our most crucial national security challenges of the last decade of the 20th century. Let us not be distracted from the mission ahead of us: To approve tough anticrime legislation. We must move forward in the consideration of this package, and we have that opportunity now. I hope very much there is a positive vote.

I yield the floor.

Mr. BIDEN. Mr. President, I listened with great interest to my friend on the committee, Senator GRASSLEY, who is one of the most productive members of the committee and with whom I vote a lot. We vote a lot together.

I respectfully suggest, though, that the distinctions between the Biden provision on amending habeas corpus, saying you only get one chance at getting out of jail with a habeas corpus petition, and the President's are significant, but neither of which are going to make it fundamentally safer in Des Moines or Maquoketa or any other city in Iowa. If we eliminate habeas corpus, if we said tomorrow nobody can ever again file a habeas corpus petition, we just eliminate it, all of those people are already in jail, the likelihood of that making it safer in rural Iowa or urban Iowa—maybe it could marginally, but it is certainly not a big ticket item in terms of whether or not you are going to be able to walk into an unlit parking lot at 11 o'clock after a movie in Des Moines or whether you are going to be able to hitchhike a ride from Maquoketa to Sioux City. I do not know that that is going to make a lot of difference. Maybe it will. It should be changed. But I really hope we keep the focus here.

The distinction between the Biden approach on habeas corpus and the Bush approach on habeas corpus, the Biden approach on the death penalty—we all know, by the way, where everybody is talking about the notion on the death penalty that we are going to have racial justice as part of this. Racial justice is sound. To put this in perspective, all the Racial Justice Act says is if you have 100 people in your State who are black and are convicted of murder and all 100 get the death penalty, and you have 100 people in your State who are white who are convicted of murder and none of them get the death penalty, something is rotten in Denmark. That is what this is designed to find out, because everybody knows the death penalty has been applied in ways that seem not to be fair.

Unlike many people who support the racial justice provision, I am one who supports the death penalty. I have written into my bill 51 offenses for which there would be death. An interesting little number, Mr. President, is that—I think this is true so let me amend this. I ask my colleagues to allow me to amend this over the next hour if I am wrong, but if memory serves me there is not a case that we could find where a white person who killed a black person was convicted of murder and got the death penalty. And there is hardly a case where a black person killed a white person that they do not get the death penalty. It is kind of interesting, is it not? Now, anyone who suggests that the application of the death penalty is not unevenly applied I think fails to understand what this country is like and where we are at the moment.

But I am prepared to support the death penalty without the racial justice provision. I happen to believe in the racial justice provision, but I believe more strongly in the death penalty.

Now, Mr. President, we all know what the vote is going to be here. The vote we are going to take shortly, I hope, is on racial justice. I am going to make as strong an argument as I can as to why it should stay in the bill, but you are going to hear many arguments about taking it out of the bill.

Mr. President, we voted on this last year. There are not enough votes to keep in the racial justice provision. So that is why I would like very much for us to be able to move to racial justice immediately upon the termination of this period for discussing the bill, at 3 o'clock. I have asked, let us move to racial justice. Let us get this thing up and down, debate it, and vote on it. But I am a realist, Mr. President. I have been here a long time, as have you. I know where the votes are. There are not votes to sustain any position on racial justice. So let us have the vote and let us move on.

My very distinguished colleague from Texas, Senator GRAMM, says the President is entitled to a vote on his bill. Here, hear. The Democratic Chairman of the Judiciary Committee says, yes, let us give the President a vote on his bill, up or down.

The President's bill consists of three things basically: the death penalty, which is in mine; habeas corpus, which is in mine—they are different, but in mine—and the exclusionary rule, which is in mine. They are all different. But that is all his bill is.

Now, interestingly enough, my distinguished colleague from South Carolina, the Senator who has been here a long, long time, Senator THURMOND, has been asking me for 3 days, please give me a vote up or down, no amendments, on the President's bill. He is entitled to that.

So I have spent the last week running around the Democratic side saying, even though you are entitled to amend the President's bill when it is put up as a substitute to mine, please do not. Let us make this clear once and for all so we stop all this malarkey. Let us find out how many votes the President has.

I hear my friend from Texas saying if we vote, at least—I am paraphrasing—if we vote on the President's bill, everybody knows everybody is for the President's bill.

I do not know that but I am prepared to find it out. I am prepared to find it out without any amendment, giving up all the rights under the Senate rules which we have to amend it, vote on it. Let us find out. Folks like my bill or like the President's bill. Let us have a vote.

But now I find my friend from South Carolina after asking me that for over a week has now taken the Biden bill, 95 percent of it or thereabouts, and attached it to the President's bill. I mean this bill, the President's bill, that Republican bill, that was the thing that was going to stand on its own, wanted a vote on it.

What have they done? They have taken all of the Biden bill I am told; they have announced they are going to do this. The Biden bill is 233 pages long. My guess is they have taken 200 pages of the Biden bill and stapled it to the President's bill. So let us have a vote on that now. What is it, Bush-Biden? What is it called now? I am prepared to do that too if they want.

I think it is about time we find out where people stand. Let us find out. Is the President's bill, which only has primarily had habeas corpus reform, the death penalty, and the exclusionary rule in it, is that going to stop crime in the streets? Does anybody believe that?

There are some who do not believe the remainder, what I propose, all that help for local law enforcement, will help either. But my goodness, let us have a vote.

So what I am proposing, I know my colleagues are listening in their offices—I will yield the floor now to my friend from Ohio, or whomever—what I am proposing is the following: Let us vote on racial justice so we can stop talking about it. Let us find out where the votes are. Vote on it, let the Senate work its will. Then let us go, if they want to, immediately to the President's bill and say, Mr. President, we will not lay one glove on it. We will let you have it exactly how you have written it and we will vote.

That is what I propose. I hope that will be considered in the next 40 minutes while we are still talking about this bill so we can get on with real de-

bate in this and find out where the votes are on whatever one acknowledges is a critical issue facing America; that is, the rise of violent crime.

Let me just note once again, as I said earlier this morning, it is not the Congress that has not been tough, it is the President that has not been tough. The President has the authority to put people in jail for life with no probation and no parole if they are drug kingpins. He has only used that four times a year since he has had the authority.

The President has the authority to put to death, if he can get them convicted, get a death penalty for drug kingpins where there is a murder involved. He has only done that one time. That is how tough they are?

He has the authority to put in jail for 5 years, no probation, no parole, anybody who possesses a piece of crack cocaine as big as this quarter I am holding. Yet they will not even prosecute someone arrested with 10 times this amount in New York City, and it requires 100 times the amount I am holding in my hand before they will prosecute it in Miami; Federal, not State—Federal, Attorney General's office downtown, the Bush administration.

They will not even prosecute anybody. They are telling us that we are not tough on crime. We have given them 230 tough laws. Apply them. They have a dealth penalty provision, without racial justice. I wrote to them, I said Justice Department, tell me. Had this been the law for the last year, how many convictions and death sentences would you have been able to get that you did not get? There have been 23,000 murders now, by the way.

Do you know what they told me? They did not say 1,000, they did not say 10,000, they did not say 15,000, they did not say 100, they did not say 50. They said six, s-i-x. So they say that if you pass the President's bill you will have six additional death penalties next year because of it, six. And if you change habeas corpus, you will have zero additional people off the street because they are already in jail. And if you change the exclusionary rule the way they want, it will affect 1 percent of the criminal cases that go to trial. That is their, the President's tough-on-crime, strong, law-enforcement bill.

So let us get on with it, Mr. President. I have heard the President say, 100 days, pass my bill, 100 days, give me a vote. I have heard for 2 years the chairman of the Judiciary Committee is holding up my legislation. The chairman of the Judiciary Committee 2 years ago, 1 year ago, 6 months ago, 100 days ago, 2 seconds ago, and this instant says please, Republicans, give us a vote on the President's bill, allow us to vote on the President's bill. He is asking us. We Democrats are ready to do that. Please, Republicans, do not thwart the President. Give the Republican President a vote on his Republican bill.

Why are they so afraid of that? Why are they so worried about giving the Republican President a vote on the Republican bill from a Republican-controlled, procedurally controlled process now? They will not let us vote on the Republican bill.

So if I were going to be facetious, which I am inclined not to be, I would say I challenge the Republican Senate. I give them 100 minutes, 100 seconds to allow the American people to have the benefit of the President's crime package. Let us vote.

I challenge the Republicans to allow us to vote on the Republican President's, Republican crime bill, that they know will not work. And I know it will not work and does not put one cop on the street, does not do one thing to make it safer for my mother to shop at the Pathmark store on Thursday night.

But let us vote. Give the Republican his due.

I yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, who is the toughest kid on the block? I have a tougher bill than you have. No, we Republicans have a tougher bill than the Democrats have. We are going to all solve the problems about crime.

Let us quit kidding ourselves. I have a lot of respect for my colleague from Delaware. I am on the Judiciary Committee. But I am frank to say neither the Republican's crime bill, the President's crime bill, or the Democrat's crime bill will solve the problem of crime in this country.

Once again we do this. Every 2 years we embark on a right of passage. We have to have a crime bill in the Senate.

As usual every Senator will have a chance to demonstrate to the American people, to his constituency back home, that he or she is opposed to crime. I would have thought having passed crime bills in each of the last three Congresses that we would have proven to the American people that we here in the Congress despise criminals, and condemn criminal conduct.

So what? So what? Unfortunately, we are so obsessed with proving our metal on this issue and so haunted by the specter of Willy Horton that we feel compelled to come down to the floor and rave about how it is time to do something about crime.

Mr. President, the Congress has been trying to do something about crime for two decades. I cannot remember the last time we had a Congress in which we did not debate and pass an omnibus crime or drug bill. We have passed the crime bill in at least each of the last three Congresses. But we have not made a dent in the crime rate.

In the last 10 years the prison population of this country has doubled, but there has been no reduction in the crime rate. We put more people in jail than any other Nation on Earth. But our crime rate is still among the highest in the world. The implementation of the death penalty has risen all around the country.

Yet, the numbers of murders continue to rise. We have increased mandatory minimum sentences, and yet, the number of people committing crimes continues to rise.

So who are we kidding? What are we saying? In short, we have tried a variety of tough-sounding, politically appealing approaches to the crime issue, but have failed to make any progress.

Indeed, the efforts to combat poverty 2 decades ago met with more success than our recent efforts to combat crime. Yet, antipoverty measures are dismissed as unworkable and not worthy of the Senate's time. Meanwhile, we consume thousands of hours recycling the same tired, tough-sounding approaches to fighting crime, which have not worked. They make for fine press releases, but they do not make our streets safer.

If this legislation were passed, or if the President's bill was passed, would it really address the terrible crime problems we face in this country? I could understand the importance of the Congress continually taking up this issue, but this bill is not about fighting crime at all. The truth is, we are engaged in a crass political contest about whether Democrats or Republicans hate crime more.

Let us stipulate in advance that we all hate crime, that we think crime ought to be put to a halt in this country. But we are not involved in a serious political debate about how to deter crime. When you talk about habeas corpus, and the exclusionary rule, and capital punishment for this, that, and every other thing, that does not solve the problem of crime in this country.

Mr. President, there is a comic book quality to our biannual debates about crime. If you do not believe me, look at the way the debate is cast. It is permissible to talk about executing more people, jailing more people for longer periods of time, creating new criminal offenses, adding more law enforcement personnel, and weakening constitutional liberties. If it sounds tough, you can go ahead and advocate it and avoid the dreaded label of being procriminal—soft on crime.

What happens if you suggest that the threat of crime intensifies in communities where poverty is rampant, where families are divided, where housing is scarce, and where opportunity is limited? What happens if you point out that more than half of all prison inmates in this country are considered functionally illiterate? What happens if you suggest that crime also could be deterred by giving some of our citizens better opportunities, or by building up

our educational system in order to prevent kids from turning to crime?

In short, what happens if you suggest that there is a social and economic dimension to the problem of crime? At best, you are branded as being naive and out of touch; at worst, you are labeled as soft on crime, a coddler of criminals.

There is nothing startling about saying there is a social and economic dimension to the problem of crime. Those who are on the frontlines of the battle against crime know that to be true.

For instance, the American Bar Association's report on the criminal justice system quotes one law enforcement official as saying the drug problem "is ultimately a social problem. The problem is that people—for some reason, their life is such that they feel the need to obliterate some of it, to remove the pain of it, or make it more exciting. And you can't attack that from a law enforcement point of view."

Similarly, a trial judge quoted in the ABA report states that, "We are breeding family after family, born into hopeless circumstances, almost predestined to be on the outs in society." As a result, says the judge, "we are going to see a lot more crime."

Mr. President, Americans know that there is a social dimension to crime. One poll shows that by a more than 2-to-1 margin, Americans believe that poverty and lack of opportunity are an important cause of crime in this country. The facts support this view: The average prison inmate was at the poverty level before entering prison; about half of all prison inmates are functionally illiterate; over 70 percent never finished high school; nearly half of all jail inmates were unemployed at the time of their arrest; 48 percent of all inmates grew up with only one parent, or were raised by other relatives.

In short, the facts confirm one police officer's cogent summary of the situation: "While not all poor people are street criminals, almost all street criminals are poor people."

Mr. President, to say that there is a social dimension to the problem of crime does not in any way excuse criminal behavior. That is not my point. But it does help to explain the causes of crime. That is a distinction which seems to have been forgotten in the debate over crime, and it is a shame because we have neglected effective anticrime measures.

That may be stated as being soft on crime, wanting to coddle criminals, caring only about social programs and not worrying about crime in this country. That is baloney. As a matter of fact, the reality is that you cannot solve the problem of crime in this country by just putting more people in prison or causing more people to be subjected to capital punishment.

My point is that we have neglected effective anticrime measures. For instance, the Head Start Program, which provides preschool education and social services support for poor minority childen, has been described by the Milton Eisenhower Foundation as "One of the most effective, cost-effective inner-city crime and drug prevention strategies ever developed."

In 1985, the Committee for Economic Development, composed of American corporate executives, concluded that, "It would be hard to imagine that society could find a higher yield for a dollar of investment than that found in preschool programs for its at-risk children. Every dollar spent on early prevention and intervention can save $4.75 in the cost of remedial education, welfare, and crime further down the road."

Unfortunately, four out of five children who are eligible for Head Start cannot participate in the program because funding levels are too low. We would rather spend huge sums of money jailing people, at a cost of up to $50,000 per inmate each year, after they have committed crimes than invest money up front to prevent them from turning to crime.

The story is the same with respect to drug treatment. The National Association of State Alcohol and Drug Abuse Directors found that every dollar spent on treatment, more than $11 in public expenditures, which includes the cost of processing drug users through the criminal justice system, is saved. A National Institute on Drug Abuse survey showed that drug users are far less likely to engage in crime after treatment and far more likely to be employed.

Unfortunately, only one in eight persons, nationwide, who need treatment are getting it; only one in seven drug addicts in prison received treatment in 1990.

Mr. President, crime is a complicated issue, but you would never know it from reading one of our debates here in Washington. The level of debate on this issue has degenerated so completely that we no longer even bother to try to understand why people commit crimes.

The Nation's top law enforcement official, Attorney General Dick Thornburgh, says that we should not bother "to search for the roots of crime." Can you believe that? The Nation's chief law enforcement official says that we should not even bother to search for the roots of crime.

How can you stop crime, if you do not know what starts it? How can you know that your actions will be effective in deterring crime, if you do not know what causes crime? But the Attorney General is not concerned with such complicated details. He says, "The American people demand action to stop criminal violence, whatever its causes. The debate over the root causes of crime will go on for decades but the carnage in our own mean streets must be halted now."

That just sounds great, and you can wave the flag with that statement, but you will not solve the problem of crime, Mr. Attorney General.

That is some fine tough talk Mr. President, stirring rhetoric spoken like a true candidate. But if you want to understand why our biannual crime bill rituals have failed, you need look no further than that statement. In essence, the Attorney General is saying that we should just go ahead and act without knowing whether or not our actions will be effective in deterring crime.

Look where that kind of thinking has gotten us. Measures which can help stop crime before it occurs—such as the Brady bill, drug treatments, and increased support for programs like Head Start—have been neglected. Instead, we focus solely on devising new ways to punish people after they have committed crimes. There is no balance to our approach, and that is why we have not been effective, and no matter whose bill is passed on the floor of the Senate we will not be effective.

Mandatory minimum sentences are a perfect example, Mr. President. Congress has passed mandatory minimum sentences which require judges to impose a certain sentence once the facts of the case are established. For example, in 1988 we enacted a law that required a 5-year mandatory minimum for first time possession of 5 grams of crack. Hooray, we had solved the problem. Five years with no chance of parole for possessing a teaspoonful of crack weighing as much as 2 pennies. Now I believe crack cocaine is the worst terror on our streets today but mandatory minimums—all of them—work terrible injustices.

Here are two examples: Sylvia Jenkins, a Washington secretary, was sent to prison for 5 years because her son had hidden some drugs in her attic. Even though she had little culpability, the mandatory minimum penalty forced on the judge by one of our mandatory minimums required that harsh sentence. Judge Stanley Harris, a Reagan appointee with a reputation as a tough sentencer, complained about having to impose the sentence. He said:

> It's killing me that I'm sending so many low-level offenders away for all this time.

Judge William Schwarzer, another tough sentencing Reagan appointee, actually cried as he sentenced a first-time offender to 10 years in prison with no parole. Let me quote from an article describing the case:

> The 49-year-old Oakland longshoreman had made a mistake in judgment by taking $5 to drive an acquaintance to Burger King. Little did he know he was participating in an undercover drug deal involving 100 grams of crack. Judge Schwarzer called the sentence "A grave miscarriage of justice which had resulted from rules making judges clerks, or not even that, computers automatically imposing sentences without regard to what is just and right."

It is hard to have sympathy for drug users, and I do not, but maybe this letter from a mother of such a child can move us to think about what we are doing on the Senate floor as we take up this crime bill. A crime bill that creates more mandatory minimums, increases penalties across the board, and provides death for people who have never even committed a murder.

This mother's son was facing a mandatory sentence for his first offense and she wrote to her Senator as follows:

My son is now a casualty in the war on drugs. I need some kind of explanation from you as to just how these laws * * * were passed and how you think putting people like my son in jail for 3 years will help? It will cost taxpayers $20,000 to keep him in jail for 1 year. The Federal Government would never free this much money for him to go to school. Our jails in my State are full. Where will they send him? I am afraid it will be so far away that I will not be able to visit often. Does this make any sense? * * * to lock him away for 3 years is unproductive and wasteful of taxpayers' money. It seems to me that the driving force behind every Congressman is the fear of not being reelected * * * surely there is some basic morality that won't allow our young men to be sacrificed for an election campaign.

If that woman were black she could add that the sacrifice involves one out of every four young black men—who are either in jail, in prison or on parole or probation.

All I can say is, if this is the way we want to wage the war on crime, I will not consider victory to be success.

The crime bills on the floor today are premised on the idea that the way to stop crime is to execute more people, jail more people and weaken constitutional safeguards. Once again, Mr. President, we are on the brink of passing a crime bill which will make for great press releases, but will do precious little to address the root causes of crime.

Indeed, Mr. President, we have outdone ourselves this year. Last Congress, out of fear for being branded procriminal, the Senate embraced a proposal to impose a Federal death penalty for 32 different offenses. In reality, this proposal does not amount to much since only a handful of people ever commit these offenses. In fact the greatest impact is on American Indians who have the misfortune of residing on Federal lands and so are implicated in ways few others are.

Now, in this Congress we have gone quite a bit further. Last year, the Republicans, sensing that they might not be able to pin the procriminal label on the Democrats if we accepted their 32 Federal death penalties, came up with something they thought we would not be able to swallow: 49 new Federal death penalties.

Now I would have thought the Republicans were right, that we could not swallow this new idea. But I was wrong, we quickly put that proposal in our bill and added two more.

No one should think we will only be executing murderers. Our criminal justice system is not infallible; far from it. Since the turn of the century there have been over 350 instances in which defendants in this country were wrongly convicted of homicide and rape and sentenced to death. At least 23 innocent people have been executed by our Government. We know this in retrospect, but once the death sentence is carried out that knowledge is worthless. Once a person is dead at the hands of the State, there is no way to bring that person back to life. Too often we have realized after the fact that we were wrong in imposing a death sentence.

There appears to be no limiting principle; no discipline on this process. I am sure that someone can dream up a crime amendment which will so offend this body that the Senate would reject it, but at the moment I cannot see what that proposal would look like. A majority of this body have pretty much conceded they will vote for any death penalty provision. They have pretty much conceded they will vote for doubling any criminal penalty. They have pretty much conceded they will impose a mandatory minimum for any crime. We are about to undermine habeas corpus protections and eviscerate the exclusionary rule even though most law enforcement officials will tell you that weakening these constitutional protections will do little or nothing to reduce crime. We have done this because we are all afraid that voting against any such proposal will result in our being labeled procriminal.

Mr. President, this has to stop because legislating on crime is not a political game. We are so busy filling our jails with youthful first offenders and non-violent offenders that truly dangerous and violent criminals are being given early release to make room for the new inhabitants. Does that make any sense?

We would do the American people a service if we were honest with them about what causes crime and what will stop it. We could accomplish something if the political game would end. Until it does I will vote against the product of such gamesmanship.

Mr. President, I want to say how much I appreciate the courtesy of my colleague from Massachusetts who was good enough to permit me to proceed. I thank Senator KERRY very much.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the Chair and I thank my colleague from Ohio and I also applaud him. While I do not agree with every single one of these objections, I do agree with the theme he expressed and the sentiment about the charade that is being perpetrated on the American people.

Mr. President, before I talk about an aspect of the crime bill, I wish to say a few words about Pablo Escobar and the deal that was just cut in Colombia.

PABLO ESCOBAR

Mr. KERRY. Mr. President, it seems to me that a funny thing happened to Pablo Escobar on the way to jail. He sued for peace but he may have won the war.

Pablo Escobar long ago declared war not only on Colombians and Americans but really he declared war on civilization. He declared war on all of our notions of decency. And he is one of the world's most notorious, ruthless purveyors in death. Countless American and Colombian lives have been shattered because of Escobar's traffic in drugs. No one has come to more symbolize the focus of our so-called drug war and our scorn for drug trafficking.

Make no mistake about it, Mr. President: he was really at war. He was blowing up buildings and people. He was assassinating police, judges, journalists, and always filling people's veins with drugs and filling his pockets with money—billions of dollars.

Finally, the heat got considerable because Colombia had made a commitment over the years to try to break up this process and to enforce the law and at great risk with the loss of lives on journalists and judges, the supreme court, the Attorney General, a Presidential candidate, all of whom were unwilling to equivocate, all of whom were unwilling to accommodate, and whose memory I believe is called to question in light of this particular arrangement.

But when the heat got considerable on Pablo Escobar, then he finally, as a result of the Government of Colombia being serious, said "I am going to try and cut a deal." And what a deal, the sweetest of sweetheart arrangements. His own luxurious jail cell right near his own home. Like the Ochoa brothers, who are now in jail getting fed daily by their mother's home cooking, he has now cut out his own jailing arrangement with private bath, soccer field, luxurious home furnishings, and a prison that literally has been built for him, with no threat of being extradited to the United States.

During the course of drug hearings that were held in the Foreign Relations Committee, we learned from witness after witness, and I quote the report of the committee: "What the members of the cartel fear most is extradition to the United States."

So a way has been taken, the one tool, the thing they fear the most, that which might hold them most accountable, has now been voted away, in a secret ballot I might add so the people had to vote to take away extradition so that those who might vote against it would not be subject to retribution by the drug lords.

That is indeed testimony to a country that cannot make its own decisions without the impact of what drug lords decide to do by violence.

Well, Mr. President, I am sympathetic to the President of Colombia. I have met him and I have talked to him about this. I am sympathetic to the Colombian people who desperately need a respite from this extraordinary violence. But if the respite comes by virtue of deciding in a war you are not going to do battle on a given day, then indeed you can have fewer body bags, but you may wind up losing the war.

I would respectfully suggest that is a question yet unanswered for Colombia. As I come to the floor today, I do not pretend that is certain. But I would suggest this raises a very significant question.

If indeed a criminal of his magnitude can negotiate a haven—actually a haven is incorrect—can negotiate an oasis away from pursuit of the police and away from extradition and know with certainty he is going to be listed on the Forbes 500 when he gets out in a few years, it seems to me we may well have made a mockery of the notion crime does not pay, because for Pablo Escobar crime is going to pay, and it is going to pay pretty plenty big, a lot bigger than many Wall Street investment bankers might ever dream of having it pay.

I do not think anyone in law enforcement could work 10 lifetimes or 100 lifetimes and hope to earn in those lifetimes what Pablo Escobar can earn in 1 year in jail. Amortized over the entire years he may spend in jail, that is not a bad investment, Mr. President. I would suggest there may be poor people in the United States or in Colombia who might willingly trade places with Pablo Escobar in return for the portfolio that awaits him on return.

Maybe the Government of Colombia has a plan. Maybe he will be prosecuted for more serious crimes and maybe he will be found guilty and maybe he will spend a lifetime in jail. But that is not what the people of Colombia, who have been watching, really believe.

Let me remind people of the record of Pablo Escobar compared to other criminals in this country we have either sentenced to life imprisonment or to death, like Ted Bundy, Charles Manson, Richard Speck. These were terrible murderers, terrible criminals, and each of them deserved their fate or worse. But none of them compares in magnitude to what Pablo Escobar has done. He has been charged with murdering hundreds of Colombians, including judges, prosecutors, and three Presidential candidates. He is accused of having masterminded 300 separate bombings over the past 2 years, including the bombing of a jetliner that killed all 107 passengers and crew aboard. He has hired young killers who murder journalists and publishers. He is a cop killer, a political assassin. He has killed the high and the mighty. And he is responsible for the murders of dozens of poor peasant farmers who also opposed his efforts to convert their areas to coca production. He has used his money to recruit thousands of slum boys as assassins, according to police.

Members of the clergy and others in Medellin say that Pablo Escobar and the violent world he represents have "corrupted an entire generation of youth" in Colombians.

An L.A. Times report said that the Colombian mother, on June 9, this year, said "Around here there is no law. I'll just mourn my boy's death, and move on."

In Medellin today there is a war between the police and the hired assassins, in which off duty police officers are murdered by teenage boys, and the teenage boys have been ordered by Pablo Escobar to shoot policemen. Ten percent of Medellin's policemen, or about 300, were murdered by the cartel in just the first 6 months of last year.

A leader of the liberal party of Colombia's President, Cesar Gaviria, has been quoted as saying, "There is only one word for this, and that is appeasement. The Government has conceded everything, and it will cost the country greatly. It is a catastrophe."

As Colombia newspaper columnist Juan Carlos Botero, wrote recently, the drug traffickers have now achieved "their biggest victory in history" with the end of extradition to the United States.

So Mr. President, I, too, want to see an end to the violence in Colombia, and I am sympathetic to the difficulties they face as a consequence of our habit.

One of the difficulties in criticizing the decision in Columbia is that we do not have clean hands in the United States.

The Senator from Ohio has alluded to that in his comments on the crime bill, and I will have a great deal more to say in my comments on the crime bill. But the simple reality is we do not have a real drug war here. And so how do we deal with the hyprocrisy of turning to the Colombians and saying you are cutting a deal when we are unwilling to have the kind of police presence in our streets that we ought to have, when we are unwilling to have the money allocated for the prisons we ought to have, when we do not have treatment on demand and only 20 percent of the addicts in this country who need and want treatment are getting it.

What do you say to them when we look at our own kids in school and we see that only 55 percent of the kids in our schools are being educated about drugs?

We have had plenty of declarations of war on drugs, Mr. President, but we have not yet had the resource allocation necessary to conduct that war.

VIOLENT CRIME CONTROL ACT

The Senate continued with the consideration of the bill.

Mr. KERRY. Mr. President, I said I wanted to address some of the questions of this bill, and I would like to talk about one aspect of this bill in particular.

IMPORTANCE OF THE POLICE CORPS PROPOSAL

Mr. President, Albert Schweitzer said that, "Truth has no special time. Its hour is now—always." Today we have a truth of special urgency.

The worst part of this truth is that we have allowed the growth in our midst of a dangerous and menacing criminality. Crime and the fear of crime pervade almost every place and part of the Nation. Last year, the New York Times reported that much of the middle class was moving out of Philadelphia. This year, it has reported that much of the middle class appears about to move out of New York. Tomorrow they may be writing about Boston or about almost any other city in Massachusetts or the Nation.

Almost every city has large areas virtually abandoned, their buildings disfigured and gutted, their stores and businesses shattered, their night streets empty and menacing. There are schools from which all learning has almost died, where a quarter of all students report that they carry weapons for protection every day.

I see the distinguished majority leader has arrived on the floor and I know he wanted to make an announcement at 3 o'clock.

(Mr. DIXON assumed the chair.)

Mr. MITCHELL. Mr. President, I ask unanimous consent that the distinguished Senator from Massachusetts be permitted to continue, to complete his remarks, and that following his remarks I be recognized.

Mr. STEVENS. I did not hear the request.

Mr. MITCHELL. Mr. President, if I might explain, under the order, the period for debate only was to expire at 3 o'clock and then the majority leader was to be recognized. I have asked consent now that the Senator from Massachusetts be permitted to complete his remarks and then I be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object, does that mean that general remarks would not be permitted after that time?

Mr. MITCHELL. No, it would not, Mr. President.

I might say to my colleague, we have been attempting to work out an agreement to proceed on this bill and have been continuing the debate for that purpose. However, the situation exists under which a Senator who has the floor at the time of the expiration of the debate period could, under the rule, offer an amendment, although that would, in my view, at least, be a breach

of faith in connection with the discussions we have been having. And I have sought merely to avoid that possibility so we did not get into this difficulty on it under the circumstances.

I have no hesitation about permitting debate to be continued while we try to work this out, so long as it is clear that it is to be for debate only during that time.

Mr. STEVENS. Mr. President, reserving the right to object again, I do not object to the Senator from Massachusetts continuing as long as he wishes to continue.

My inquiry really was, after the majority leader obtains the floor, is there going to be some attempt to limit the debate at that time?

Mr. MITCHELL. No. I was either going to extend the time for continuation of the debate under the current agreement—that is for debate only—or put in a quorum call. I will be pleased, if the Senator wishes to discuss the matter, to permit such discussion as the Senator wishes to occur.

Mr. STEVENS. Mr. President, I am grateful to the leader.

If I may, I would like to have the opportunity to make a general statement before we get to the point where my statement might be restricted. I only am here to protect myself for that purpose at this time.

But I do not object at this time to the leader's request, as I understand it. It is merely that the Senator from Massachusetts is protecting his rights to continue at this time; is that correct?

Mr. MITCHELL. And following his remarks, the majority leader be recognized.

Mr. STEVENS. That is already the order. But there is no order, as I understand it, following the majority leader's statement; there is no limitation on debate?

Mr. MITCHELL. I am sorry, I did not understand the last statement.

Mr. THURMOND. The Senator did not understand.

Mr. STEVENS. My understanding is that following the statement of the Senator from Massachusetts, the majority leader is recognized, and once he is recognized there is still no limitation of debate under the existing agreement. I want to preserve that status.

Mr. MITCHELL. That is correct.

The PRESIDING OFFICER. Is there objection?

Mr. THURMOND. Mr. President, I just want to say, the majority leader spoke something about good faith. There is no bad faith here.

Mr. MITCHELL. No, I know that.

Mr. THURMOND. I talked to the distinguished chairman of the committee before I started. I told him exactly what was going to be in my bill—the President's bill, plus some funds he has in his bill. They were talking about no funds, the President wanting funds, so we put the funds in there. Now, it is the tough bill the President wanted, with the funds of the distinguished Senator from Delaware.

Mr. MITCHELL. I want to assure my beloved colleague, I was not referring to him at all in my remarks.

The PRESIDING OFFICER. Is there objection to the request of the majority leader? Without objection, the Senator from Massachusetts is once again recognized.

Mr. KERRY. I thank the Chair, the majority leader, and my colleagues.

As I said, I was pointing to the devastation that exists in the cities of this country, the buildings that have been destroyed, gutted, empty shells of businesses, the extraordinary fear people have with respect to traffic in the streets, particularly at night.

But as we all know too well, Mr. President, there are schools from which almost all learning in this country has died; where a quarter of all students report that they carry weapons for protection every single day. And many adult citizens do the same, obviously, many of them on our transportation systems in the country.

The danger and destruction of life and property are greatest in the communities of the poor. But there is no one, no community among us in this Nation, that is exempt from burglary and housebreaking or murder.

The first signs of similar crime and disorder have spread relentlessly to an even wider suburban and rural spread of areas. The Department of Justice tells us that 83 percent of all Americans can expect to be the victim of a violent crime; 83 percent of the persons in this Nation can now look forward to the prospect of being the victim of a violent crime at least once in their lives, and maybe more.

A Gannett poll showed that one out of every four New York City households had a member who has been the victim of a street robbery in a recent year. There are areas of American cities where a baby boy being born today stands a greater risk of dying by violence than did the average American GI in World War II.

So, by present rates, 1 out of every 20 black men will die by homicide.

In 1988, according to the FBI, there were reported to the police over 20,000 homicides, 92,000 rapes, 540,000 robberies, and 900,000 felonious assaults. We know for every violent crime that was reported, there was at least one more that was not reported.

So more and more, even the crimes reported by the police do not result in an arrest, let alone a conviction, let alone an imprisonment. The police simply are not able to make an arrest in three-quarters of all reported robberies; in one-half of all reported rapes; and even in 30 percent of the homicides, the police are not even able to make an arrest.

The second fact we have to understand is that for each of these numbers—and they are numbers—but for each of these numbers, there is a personal tragedy. There is a dead son that a mother once loved; there is a daughter weeping for a father; there is a struggling business lost to its neighborhood; there is a teacher who is disillusioned and lost forever to the profession; or there is a police officer crippled or killed.

But for all the individual tragedies, for all of the blighted lives and families, there is even a greater loss. And it is a loss that every single one of us has come to feel in recent years, and that is the loss of something that we hold more dear in this country than anything else: It is the loss of freedom, the loss of the enjoyment of our homes and of our neighborhoods, and of the security of our families.

Worst of all, there is a loss of confidence in ourselves and in each other. Relations between the races become poisoned, and we learn to look at each other not as friends and as fellow citizens, but as alien and foreboding strangers.

This is a loss that every single one of us shares, and it is, in some immeasurable sense, a loss of our country. There can be no higher priority for the American Government today than to do everything that we can to halt and to reverse this inexorable drift toward a kind of chaos; to restore a sense of security, of justice, and of order to every part of the American Nation.

For the unprecedented rise of crime in the last four decades, Mr. President, there are obviously many causes. The dispossessed and largely uneducated rural populations have migrated to the cities, with the attendant social and family dislocation. Too often, the opportunity that they sought in the city has been frustrated by economics, by lack of education, or by racism. Families have literally disintegrated under the blight of modern life and under government policies, especially a welfare system that has produced idle parents, fatherless children, and a tragic loss of self-esteem and citizenship.

We are a rich country, and so we have many goods to steal, and theft has seemed to be an attractive way of life to a lot of people. Children are too often raised on a steady diet of vicarious violence.

It is estimated the average American teenager, by the age of 18, will have seen 16,000 killings simulated on television. And to all of this must be added the effects of a degraded system of criminal justice, which has seemed more interested in the welfare of convicted felons than in assuring justice and protection to honest citizens.

All of these undoubted causes of crime cry out for our attention. But, of all the causes of crime in America today, Mr. President, I respectfully

suggest none is so serious and none requires some immediate attention as the decline in the strength of our police forces themselves. The police have always been, and are supposed to be, at once the symbol and the force of government authority. They are the indispensable foundation on which the life of the community has to be built. And one of the greatest crimes that has really been committed in the last few years against the public order and decent life is what we have done to the police.

A generation ago, one generation ago—which is the last time it can really be said that we enjoyed substantial civic peace in the United States—there were three times as many police officers as there were violent crimes. Today, we have exactly reversed that proportion of police officers to violent crimes.

Instead of 3.2 officers for every violent crime, which is what we had one generation ago, today we have 3.2 violent crimes for every serving officer in this country. In other words, in the Nation as a whole, we are devoting to violent crime one-tenth of the police power that we mobilize one generation ago.

For 40 years, the American people have been subjected to violent and vicious assaults on an ever-increasing scale, and in the midst of this war, we have engaged in unilateral disarmament. We hear a lot about unilateral disarmament on the floor of the Senate, but I will tell my colleagues, as an ex-prosecutor who spent 6 years of his life struggling in the 1970's to deliver justice with 12,000 backlogged cases, which we could only reduce by virtue of the LEA money that we had that allowed us to computerize and put special courtrooms and special prosecutors together, that was the only thing that permitted us, Mr. President. I will say in the last 12 years we have witnessed the disengagement, a unilateral disengagement, with our own rhetoric, and our rhetoric on the floor of the Senate is strong; that our ability to provide the police, the prosecutors, the courtrooms and the judges and the prisons has been the weakest part of any of the so-called declarations of war on crime.

I believe, Mr. President, that one of the most important priorities of this bill and of this country is a massive rebuilding of the strength of the police in this country and the reasons are the following: First, only much larger members of police on patrol in neighborhoods can conceivably begin to reestablish community order and safety. Police patrol is the key to the very survival of neighborhoods. It is also the only guarantor of peace on the street which allows us to meet each other as fellow citizens and in order to be able to enjoy and cherish the freedom of that engagement.

I believe that the overwhelming cause of the kind of ugly racial incidents that have disfigured too many of our cities is fear: Fear of crime, fear of the stranger, fear of those whom we do not know, fear of those whose color is different from our own. And I also believe that if we begin to reestablish domestic peace and order, then we can begin to restore our sense of confidence in one another, and so we can resume our historic march toward the fulfillment of the American promise for all of our people, and so we can end this divisiveness over quotas and over racial justice.

Second, Mr. President, we must begin to deter crime before it is committed. The small and weakened police forces of today cannot hope to catch more than a fraction of the many criminals who have adopted crime as a profitable way of life. Most departments simply do not have the manpower, by any imagination, to be able to investigate the theft of less than many thousands of dollars. Thus, the goods of the poor and of the middle class are constantly in danger, and, though the poor always suffer the most and black households lose more than 50 percent more to crime than do white households, 90 percent of stolen property is never restored to its owners.

Let me repeat that. Ninety percent of stolen property is never returned to its owners. So it is because of the police's incapability of investigating because of the sheer numbers that people say crime pays, crime pays, and they are, indeed, induced to adopt a way of life that we have somehow in our rhetoric eschewed.

Imprisoning more captured and convicted felons has been necessary, but that has not proven the answer, Mr. President. Because of longer sentences and lower parole rates, prisons nationally hold 70 percent more criminals than they did a decade ago, but we do not have less crime. I believe that more police patroling aggressively and investigating and acting against greater proportions of crime will significantly reduce the present terrible levels of crime.

Most of all, more police will give us a shield behind which we can begin to rebuild the structure of decent life in communities across the country. If children grow up in the midst of everyday violence, if to survive in their streets they must adopt the morals and the styles of gangsters, then we should not be shocked if they grow up violent and aggressive and if they then oppress and prey upon those who are even younger. The ultimate way to reduce crime is to teach children to grow up as peaceful and decent citizens, and to do that, we must establish peace and order in their neighborhoods, and to do that, Mr. President, I respectfully suggest that we need a police corps in this country.

We need the police corps for these reasons: Because, first, the police corps is the only proposal on the national agenda that would give us larger numbers of new additional police officers. Under the bill which we will have an opportunity to vote on, we can add 20,000 new officers nationally from every graduating class of our colleges. When the bill is fully implemented, we could increase our police numbers by more than one-sixth, which would increase our hard-pressed police forces by fully one-third.

Second, the police corps is more than simply a law enforcement program. In the deepest sense, it is also an education program because each year 20,000 students will graduate from college with their educational expenses paid. Each year 20,000 young people will enter a postgraduate course in service to the Nation serving as police officers. They will get a priceless education in our country and in its problems. They will learn about themselves, about discipline, about courage, about compassion, and about a contribution to others. And then, Mr. President, whether they remain in the police corps or whether they return to civilian life, they will be able to use all this education to become the leaders that we need in this country in the coming decades and into the next century.

Third, the police corps will be an economical way, one of the only ways, for local police departments to expand their members. Police corps officers would be full members of their local departments, and they would receive regular pay and benefits, but when they complete their 4-year terms and return to civilian life, they would not at that time be eligible for all the pensions that now represent up to one-third of the cost of employing police officers.

Mr. President, a fourth reason I believe so strongly in the police corps is that that corps will assure police departments a ready supply of highly educated and high-quality recruits. Many leading chiefs across the country have expressed enormous concern about the quality of the recruiting pool. That is why such chiefs as Lee Brown, of New York; Joe McNamara, of San Jose; Pat Fitzsimons, of Seattle; and Isaac Fulwood, of the District of Columbia are supporting the police corps and supporting it strongly. A Department of Justice survey carried out principally in the State of Massachusetts has shown that a very large number of students now attending college would be likely or highly likely to join a police corps. And this interest, interestingly enough, is highest among minority students, of whom nearly half might apply. Fifty percent of those expressing interest in the police corps, moreover, had grade point averages of B or better and half had scores of better than 500 on the math proportions of

the scholastic aptitude test, and 53 percent, Mr. President, planned to study for advanced degrees.

A fifth reason for the police corps: I believe, and others share the view, that it would make possible the recruitment of highly qualified and motivated minority officers that almost all departments desperately require, not only for the patrol force but also to give us the base from which to pick a fair representation of superior officers for future selection.

Sixth, Mr. President, the concept of the police corps, which now incorporates Senator GRAMM's bill for in-service training of current police officers, would open up the educational opportunities for those now on the force. Across the country, many of our leading police executives got their college education through the prior LEAA Program. The revival of that kind of effort would make the same program possible for a later generation of officers and would improve the capacity of the delivery of police service.

Finally, Mr. President, and most of all, the police corps will help us to recover the sense of our own neighborhoods and even of our own cities and finally of our own country.

We have come to think, unfortunately, and I think this is a natural instinct for people, but many of us have come to think of law enforcement as something that is only done by police or by criminal justice professionals, but that somehow it does not bear on us, that it is not our personal responsibility. As a result, the police have been isolated, expected to perform the most difficult and unpleasant and dangerous of jobs without the public understanding and support that they deserve and require.

In the police corps, however, thousands of all of the sons and daughters of this country will be helping to enforce the peace, helping to protect our lives together, serving those in need. During their terms of service, and especially after their return to civilian life, they will form an indissoluble bridge between us, between the law enforcement community, between country, and between the effort to have civic peace.

Over time we can look forward, I believe, to a society in which many of the most prominent citizens have served as former police officers, in which more of us, therefore, take a personal responsibility for public peace, for safety, and for justice. This possibility has already appealed to the deans of four of the Nation's leading law schools—Yale, Stanford, Chicago, and Cardozo. These deans have all said that the police corps graduates would have such potential to contribute to American law that they should receive special consideration for admission to these most select and prestigious institutions.

Congressman JOHN LEWIS, a hero to all of us, one of the great leaders of the civil rights movement, told us that the police corps is vital to black Americans because they have been so particularly ravaged by crime and by violence, and he warns us that "in a very real sense, it is crime that has caused poverty, and it is the most powerful cause of poverty today." JOHN LEWIS also says, and we can all echo, that the police corps is not a bill for blacks, not a bill for whites; rather, it is a bill for Americans of all colors and stripes, as its unique collection of sponsors I believe testifies to.

I am proud to be associated with this bill, Mr. President, with Republicans and with Democrats across the entire ideological spectrum, because the police corps, I believe, is a way for us to resume American leadership. It affirms our deepest traditions about self-defense, self-reliance, of personal action, personal responsibility for community. But it also speaks to our best notion about public service, community action, and national strength. It is long past time for us to confront the violence that has disfigured hundreds of communities and the lives of millions of citizens, and as we move to enact this bill I think we can look beyond it to mobilizing the same voluntary spirit in other vital tasks that are before us.

In the years to come, I hope we will call upon the enormous talent and courage and commitment of our own people, and particularly our young people, to help assume command over our lives and to liberate all of our streets from thugs. We have been through some tough times in these recent years, but I believe that we have often in the past turned to our young people for their strength and for their understanding of how to deal with these problems. If we can incorporate that into this crime bill effort, Mr. President, once again we can turn to the young people of this country to help us restore civic order, restore pride, and restore a better sense of how we behave between each other, black and white, poor and rich, whatever our color or stripe as Americans. I believe that could be one of the most important advantages to this crime bill and one of the most important advances we have yet made in the effort to restore order to the streets and communities of this country.

I yield the floor.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the period for debate only under the bill be extended until 4 p.m. and that upon the conclusion of that period, prior to further action on the bill, the majority leader be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I have long suspected that the intentions of some of those who advocate proposals such as those in the bill before us is the registration and the increased control over the acquisition and use of firearms by lawful citizens of the United States. This so-called crime bill before us today intensifies my concerns.

In my opinion, this bill has little to do with controlling crime and much to do with controlling guns.

In fact, if this bill is enacted, it would be the most comprehensive gun control bill since the 1968 Gun Control Act. That would be unfortunate, Mr. President.

I thought, and still hope, that there is room for real compromise. Many proponents of the waiting periods in this bill say their intent is to take the guns that are doing the harm to our society out of the hands of felons. I do not think any of us can help but agree to go along with that, after all it is already against the law for felons to buy or possess handguns.

Real background checks might be a way to enforce existing law. I support a provision for an instant check of the background of handgun buyers to enforce laws to stop felons from actually buying guns. Apparently an actual check will not satisfy the proponents of gun control. What is wanted is more than a way to end a felon's purchase of a handgun from a gun store. Frankly, there is no evidence of that. Most felons know the law and know that if they are caught with a gun, it is an automatic conviction for them.

This bill is not really about stopping felons from purchasing guns in gun stores. To me it is really about the entire gun control agenda of some people who are against our right to have guns.

If the gun-control provisions of this bill are adopted, I think another more Draconian bill will follow. And there is evidence to support this. One of the leading waiting-period proponents in the other body has already announced the next step, having just passed a waiting period over there. He has said he will introduce a bill in this Congress to create a national registry of firearms, not just handguns, all firearms.

This is misguided because there is no correlation between gun ownership rates and crime rates. Let me cite just a few statistics. In the first 30 years of this century, American per capita handgun ownership remained stable. But, the homicide rate increased tenfold. Between 1937 and 1963, handgun ownership rose 250 percent, but the homicide rate dropped 37 percent.

Switzerland has a militia. Switzerland distributes guns, including pistols and machineguns, to all adult males. It requires that they learn how to use them and requires that they be kept ready at the home of every able-bodied person in Switzerland. Rifle sales are unregulated in Switzerland. There is almost no gun crime in Switzerland, the overall crime rate is well below ours. Switzerland's crime rate is well

below the crime rates of most European countries even those with strict national gun control.

We have just learned once again about gun registration, Mr. President. We have all heard, my generation did, about Hitler and how, in country after country, he read the gun registration laws and took the guns away from those who had them. This helped the Nazis take over Europe.

It just happened again when Iraq went into Kuwait. Kuwait had strict gun controls and this was a disaster when Iraq invaded it.

One of the most publicized provisions in this pending bill now is not crime control; it is the national waiting period for handgun purchases.

This is known throughout the country as the Brady bill. Waiting periods are a prior restraint on our right to have guns.

In other areas, proponents of prior restraints, such as under the first amendment, have a heavy burden to carry to satisfy constitutional requirements. But the proponents of this national waiting period, this prior restraint, have not met that burden. And the reason they have not done it is the history of this country shows that waiting periods do not work to control access to guns by those who wish to use them illegally. There is no relationship between violent handgun crime and waiting periods.

One scholar, David B. Kopel, who edited a paper entitled "Why Gun Waiting Periods Threaten Public Safety" had this to say on the question:

> Criminologists of every persuasion have examined waiting periods and not one has found statistically significant evidence that waiting periods are effective. Studies of felony prisoners show that virtually none of them obtain crime guns by personal over-the-counter purchase. * * * There is not a single study published in any academic journal which concludes waiting periods are effective. The results show just the opposite.

But this bill really is not for the purpose of establishing that concept. It is for the purpose of setting the stage for the next gun control legislation.

Mr. President, as I have said, waiting periods do not work. I do not think this one will work.

States with waiting periods have a much higher homicide rate, a much higher crime rate, than States without waiting periods. In waiting-period States, those that have already enacted waiting periods as State law, 67 percent of our homicides occur. The homicide rate in non-waiting-period States is 33 percent of the total. For violent crime the waiting-period States account for 74 percent of all violent crime. The non-waiting-period States account for 26 percent. Waiting periods are not an effective way to control the crime rate or to effectively control felons' access to guns.

Actually, by its own definition the Brady bill will do nothing to reduce handgun availability in the large urban areas of our country. Consider for instance our temporary home here in Washington, the murder capital of the United States, Washington, DC. It has the strongest gun control laws in our Nation.

The laws do not work, will not work, and there is no way to make them work. But we are told that the failure of those laws is the reason we need a national waiting period.

Many people have cited the crime rate in Washington, DC., saying we need a waiting period. They have one here. In fact, they virtually prohibit gun owership. Oh, then they say, they do not work because people bring the guns in from adjacent States, and that is the reason we have to have a national law. The fact is that Maryland has restrictions on handgun ownership. It has a 7-day waiting period. Virginia has an instant check on all criminal backgrounds, and it is the most effective one in the Nation. Furthermore, if they want a check, it is currently a crime to bring a gun into the District of Columbia, that is, for a D.C. resident to buy one and bring it in from anywhere else.

Now felons cannot legally buy guns in the District of Columbia, Maryland, Virginia, or anywhere else. Yet the rate of felons possessing guns in this city is the highest in the Nation.

These restrictions that exist here have not affected the crime rate in the District of Columbia. Waiting periods have not prevented access to handguns and, God knows, the District of Columbia exceeds the national crime rates.

New York City is suggested as another reason we need a national waiting period. We are urged to help New York City by enacting a national waiting period. That city also has what they tout as the strongest gun controls in the Nation. And the States of New York, New Jersey, Connecticut, and Pennsylvania, all of which surround the city of New York, have waiting periods. They also have background checks. None of them are working, they don't keep guns out of the hands of felons.

All of these areas have prohibitions on gun ownership, or waiting periods, or background checks. But by logic, if waiting periods are the answer, then New York ought to have the lowest violent crime and homicide rates in the country because it is surrounded by protections of those same solutions sought in this bill.

I ask any Senator to tell me how a national waiting period will reduce crime. It will interfere with the ability of a person who is not about to commit a crime to buy a gun, someone who comes to my State, for example, Mr. President, and finds that his luggage has been lost. He is going hunting. He got a week off. It takes a day to get to my State. He is told, oh, well, you can buy a gun, but wait 7 days, will you?

I had somebody tell me, "Why do you Alaskans need handguns anyway?" The next time you come up, Mr. President, I will let you catch a 200-pound halibut, and you bring it on board without a handgun. All right? You can go fishing with me out in the river. And stand there, catch a nice big salmon, and have a brown bear standing on the other side and decides he wants your salmon—and maybe you, too. You cannot very well carry a shotgun or a rifle over your shoulder and use your pole, but that is what people want you to do.

Handguns are still a necessity in many places in this country. What is more, possession of them is a right. That is what people are forgetting. This is a prior restraint on your right and my right to buy a gun, and to use it legally.

We will help put restrictions on those who use guns illegally. I would cosponsor a bill to say that anybody that kills another person with a gun would automatically get the death penalty.

That is not the point. Laws do not stop people from perpetrating crimes if they are determined to do it. And if they want a gun to do it, they will go steal one. Most of the felons that have guns in this country steal them or use other illegal means. This proposal will do nothing to change the ways felons obtain guns to commit crimes in urban areas. It does not address urban crime.

I do not want to say that the waiting-period provision is the only offensive provision of gun control in this bill.

I do not want to imply in any way a lack of great affection for my friend, a person that I have known many years, Jim Brady. I understand what he is doing. I understand his family's reaction to the crime that he was injured in. I even understand the former President coming to the aid of his former assistant who is pursuing this goal. If waiting periods would work, if it would do anything to reduce the availability of handguns to prohibited persons, we would help.

We want instant checks. We want to stop felons from purchasing guns.

I do not know what it would do to stop this waiting period for anyone that is about ready to commit a crime, as I have said.

I am told, well, if they just have a waiting period, people who might have some mental defect will forget about it and go away. They do not know people with mental defects if that is the reason, I just do not understand the concept that somehow or another, if you just wait a while, the urge to acquire a gun for an illegal purpose will disappear.

There are three other provisions in this bill that require or encourage gun registration by the local police and the Federal Government. These provisions also give wide latitude to Government officials to deny law-abiding citizens the right to buy firearms.

This bill has a ban on certain semiautomatic firearms, and yet, the way it is drafted, there is no functional difference between those firearms and tens of millions of honestly owned and used shotguns in this country, and other firearms owned by American sportsmen.

Actually, I am told that the semiautomatics banned under this bill have been used in less than .008 percent of all serious crime. Virtually all are possessed—those used illegally—by criminals who have acquired them illegally. The impact of this semiautomatic provision, again, will have no serious deterrent in it, as far as the ability of these people to acquire and use semiautomatics. But it will have, again, ultimately, a serious effect on the honest sportsman who buys a semiautomatic gun for his own purpose. And shotguns are semiautomatic.

I believe that the pressure is on us as a Nation to join the nations that prohibit the ownership of guns, as even the District of Columbia has done, and as many States now are trying to do. It bothers me considerably, because of the history of this country, and because I think it is one of the rights we ought to protect—the right to have firearms, not only for use in sports but for your own protection, if you wish.

There is another provision that would encourage local police to compile lists of handgun buyers. As I have indicated, it is shown that criminals do not buy guns at these gun stores. These are lawful people, people who do not mind disclosing their own names, Social Security numbers, home address, telephone number; it is all there. But why would this bill require local police to register sportsmen who lawfully use handguns, or with registered gun collectors? I have never understood that. Unless, as I say, it is the first step toward the conclusion urged by the gentlemen in the other body that we do have national registration with the intent of confiscation of guns.

Another provision bans ammunition clips and magazines, and requires a national registration of all gun owners that have them. The real prospect of an ever expanding cycle of that kind of provision is what disturbs me. It diverts our attention from real crime solutions, from the provisions of this bill that many of us would like to deal with. I hope that it is possible for me to vote for real crime control legislation.

Another set of gun restrictions from the advocates of gun registration and gun confiscation is not going to do the trick. These people will be back immediately after passage, as they have in the House, for another bill. I just do not believe that it is time for us to cross that bridge.

We have had a marathon of gun control bills since I have been in the Senate. We have had very little real anticrime control legislation. Gun control bills detract from real crime control bills. They have the appearance of action, and they are seized upon by the purveyors of publicity.

We should focus on the tools that are needed to get violent criminals off of our streets, to prevent felons from acquiring guns, to prevent the use by anyone of a gun in an illegal way. The President originally asked for the tools for crime control, and we should give them to him. I hope that by the time we work out this crime bill, we will have stripped the provisions of gun control from the bill and passed a bill that will help the police and the law enforcement agencies carry out their war on crime. That is one war I would like to win.

You cannot win the war on crime by attacking honest citizens, Mr. President. This bill attacks those of us who legitimately own guns and use them for lawful purposes. I do not intend to support this bill, and I urge Senators to join me in opposing it. I will oppose this bill, as long as those provisions are in it.

Thank you, Mr. President.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I would like to associate myself with the remarks of my colleague from Alaska. I think the problem we should be addressing today is violent crime. The bill that we have before us to debate, S. 1241, ignores the real solutions to the kinds of problems that have been so articulately outlined by my colleague.

S. 1241 is not a crime bill in the true sense that we would want to have a crime bill before the American people. As has been so clearly outlined, it is largely a wish list by the antifirearms rights movement in this country that has drawn a considerable amount of public attention in the last several years. In my opinion, it is a wholesale theft of the rights of the American people to keep and bear arms. It does not attack crime; it attacks the second amendment of the law-abiding citizens and gun owners of this country. It represents the ludicrous suggestion that 65 million—I repeat—65 million law-abiding American gun owners are somehow collectively responsible for the crimes of violent law breakers, whom S. 1241, irresponsibly in this process that it sets forth, ignores.

I am surprised; in fact, I am amazed by the rush of some in this Chamber to embrace the legislation that is before us, the most oppressive assault on the civil rights of the American people in two decades, since the Gun Control Act of 1968.

Among its supporters are some in this Chamber who, in another context, consider themselves to be great champions of civil liberty, Mr. President. They would condemn any similar attack on any other part of the Bill of Rights. Yet, today and tomorrow, and for the balance of this week and next week, they will be up here attacking second-amendment rights. While they might hold other of those rights reverently, they will turn to anger in their statements as they speak about the second amendment, and what it may or may not provide for the citizens of this country.

In recent weeks, Mr. President, antifirearm activists have claimed that they have taken, "the first step toward their ultimate goal," and they have issued, "a declaration of war." That is what we heard on the floor of the other Chamber a few weeks ago, a declaration of war against the NRA, not violent crime, but against some organization in this country. A declaration of war not against criminals, Mr. President, not even against the social, cultural, or economic problems that oftentimes contribute to crime, but against the NRA.

What is the NRA? I think we all know what I am referring to: the National Rifle Association of America to which the President of the United States and many of us in Congress, including myself, and 2.5 million Americans and other law-abiding citizens are members of. It is the same NRA which has served this country by training literally millions of citizens, law enforcement personnel, and former and future members of the Armed Services in safe and responsible use of firearms during its 120-year history.

This war, as I so quoted, this war against the National Rifle Association is justified, we are told, because the NRA, its members, and 65 million law-abiding American gun owners, are no better than criminals. We have heard surprising accusations that these decent Americans are in league with drug dealers and that they are "accessories to murder."

Mr. President, antifirearms activists have made this political pornography the central theme, if you will, of their efforts to abolish Americans' firearms ownership rights—although crime data from the Government and historic evidence clearly refutes those claims and unquestionably supports the right of individual Americans to own firearms.

That is why my colleague from Alaska and I stand before you today, to argue that S. 1241 is no crime bill.

I wonder how long this Nation will tolerate Congress abandoning the responsibility to make American streets safer from criminals, in order to pursue instead the obsessive campaign against American traditions of firearms ownership, a tradition proven and tested by millions of law-abiding American firearms owners over our long history, and a campaign against those who continue in that tradition today, owning firearms, being law-abiding and sensible Americans, and believing in the second

amendment and believing in the fact, as our Founding Fathers intended it, assured some basic and fundamental rights in this country.

On the strength of preposterous accusations against law-abiding Americans, we have seen the antifirearms side take what it has called its first step. My colleague from Alaska referred to that. Passage of the Brady bill in the U.S. House of Representatives was that step.

Supporters of the Brady bill in that Chamber stated it would not stop crime. They admitted that. But they voted for it anyway. They are going to take away second-amendment rights even though they agree that in taking them away they were not going to do something that was better for America. Mr. President, they said they would vote for it anyway.

I ask you, Mr. President: Is that how this Congress should carry out the responsibilities given to it by the American people? Again, I wonder how long the American people will tolerate this taking away of basic constitutional rights in this country, all in the name of something else—and let me suggest to you it is all in name of politics, not good law, not safety in the streets, not safety in the home, not justice, but politics. And that is what this bill is all about.

Now we come to the next order of battle in the antifirearms movement. That order of battle is S. 1241. In addition to mandating a national wait on handgun purchases, this bill would ban semiautomatic firearms which the FBI and Bureau of Alcohol, Tobacco and Firearms indicate are rarely used in crimes. We see them on television and see them dramatized in American television creation today, but on the streets of America they are seldom ever used.

This bill would ban ammunition magazines and replacement parts of guns and the magazines of guns. The bill would require registration of semiautomatic firearms and these magazines already owned by millions of Americans.

Mr. President, before jumping into disaster, we should take heed of events in California and New Jersey. When the citizens of those States were required by law to comply with measures nearly identical to those provided in S. 1241, half a million gun owners in those States, law-abiding Americans in every respect of their lives, judged the Constitution supreme over the Government. When told to register their guns or their parts of guns, these Americans decided an evil law is no law. They did not register their firearms in California or New Jersey, and they will not in my home State of Idaho or Texas or Alabama or Tennessee or Alaska or Arizona, or any other State in the Union.

Congress cannot arbitrarily ignore the Constitution of this country and expect the citizens to do the same by complying like lambs to a law that violates it.

Those gun owners did not ask to be forced to choose between complying with a bad law and remaining true to the constitutional principle which have been with them from the very beginning of this country. The American people understand—if we do not, they do—that the Constitution and not the ideological whim of politicians who pass through this Chamber over centuries is the supreme law of the land.

Ban guns, magazines bans, waiting periods, national gun registration, other unprecedented threats to the civil rights of American gun owners is what we are doing.

A war against the NRA, never; will not work; has not in the past.

S. 1241 is, in my opinion, just a brief flirt with insanity, Mr. President. S. 1241 accomplishes nothing. It is verging on tyranny because we have failed to bring justice to this country.

The American people do not want a war against the second amendment. They want a war against violent criminals. They do not want a war for gun control. They want criminals under control, behind bars.

Those who support S. 1241 for some reason want your civil liberties removed. And I quote only one section of the provision of this proposed law, section 1223, Mr. President, where it changes the standards for holding an individual without bail pending trial.

Are you prepared to do that? Are you prepared to say to a law-abiding citizen who by some technical violation of the law has been denied his or her civil liberty—and that is called bail before trial? That is what you are going to be asked to vote for in S. 1241.

I call on my colleagues to join in denouncing once and for all the foolish notion that firearms restrictions against law-abiding citizens brings in an effort to stop crime. I call upon you to help pass criminal justice reform. An overwhelming majority of Americans are demanding it and we ought to provide it to them. That is what this law should be. That is what is important in the legislation before us.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Idaho yields the floor.

The Chair recognizes the majority leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senator from Massachusetts be recognized for debate only on the pending bill until 4:15 p.m.; and that at 4:15 p.m., before any further action on the bill, the majority leader be recognized.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from Massachusetts is recognized.

Mr. KENNEDY. Thank you very much, Mr. President. I appreciate the courtesy of the majority leader and also the courtesy of the Senator from Florida [Mr. GRAHAM] who I understand is about to offer an amendment to strike the provisions of Senator BIDEN's crime package which include the Racial Justice Act.

I rise now to speak in opposition. It is my understanding that there will be a time agreement proposed, and at the appropriate time, I would ask that the time I use be deducted from the time allotted to those that are in opposition to the Graham amendment.

So I believe, hopefully, we will begin the opportunity for substantive debate and discussion on some of the provisions of the Biden crime package.

Mr. President, I rise in opposition to the amendment of the Senator from Florida [Mr. GRAHAM] to strike the Racial Justice Act.

It is no secret that I am against the death penalty. But that issue has been resolved by the Congress. The death penalty has been reinstituted. Indeed, it has been expanded and this crime bill would further expand the death penalty.

The Racial Justice Act provisions that this amendment would strike from the crime bill speak to a different issue. The issue is racism and the death penalty—discrimination and the application of the death penalty.

As someone who has served in this body for 28 years, I have had a number of opportunities to vote and to speak in support of our efforts to eliminate discrimination in our society. Discrimination in the context we discuss it today is the most important because it applies to the ultimate penalty—the issue of life and death.

Mr. President, we found in the early 1960's that there was discrimination in employment, Federal programs, and public accommodations, and we took action here in the U.S. Senate to deal with that. We found discrimination in voting, so we took corresponding action to deal with that. We found discrimination in housing and we acted on that, passing the 1968 and 1988 Fair Housing Acts. In 1973, we found discrimination against those with disabilities and we acted on that last year with the Americans With Disabilities Act.

To determine the presence of discrimination in just about every one of those cases, Mr. President, we built into the system the same kind of process and procedure that exists in the Racial Justice Act.

So, when we question at the outset whether the use of statistical evidence is appropriate—whether statistics provide a useful measure—we should understand that we are using the very same models, Mr. President, that we use in just about every other piece of legislation to eliminate discrimination. That is what this is about.

Justice Harry Blackmun brought this issue into sharp focus in his minority opinion in the McCleskey case, decided by a 5–4 majority of the Supreme Court in 1987. Justice Blackmun wrote:

> The court today seems to give a new meaning to our recognition that death is different. Rather than requiring a correspondingly greater degree of scrutiny of the capital sentencing determination, the Court relies on the very fact that this is a case involving capital punishment to apply a lesser standard of scrutiny * * *.

We use the various modalities to determine discrimination in housing, in employment, in public accommodations, with regard to the disabled, and even, Mr. President, in the criminal trial process with the selection of juries. But, as Justice Blackmun noted in McCleskey:

> The Court relies on the very fact that this is a case involving capital punishment to apply a lesser standard of scrutiny * * *.

The Racial Justice Act addresses that concern. The case is clear that in many, many jurisdictions the death penalty is applied in a discriminatory manner. The Racial Justice Act provisions have had longstanding bipartisan support. Race discrimination is unacceptable everywhere, and it is particularly unacceptable in capital punishment—the awesome decision by a free society of those whom Government can legally kill. If that decision is to be made at all, it must be made without racial bigotry.

There is compelling evidence that race discrimination infects capital sentencing decisions in jurisdictions throughout the country.

In study after study, experts have found that defendants who kill whites are more likely to receive the death penalty than those who kill blacks and that black defendants are more likely to be given a death sentence than white defendants.

An illustrative example, and by no means the only example, is the evidence in McCleskey versus Kemp, decided by the Supreme Court in 1987. Warren McCleskey, the defendant in that case, was a black man charged with murder for killing a white police officer in Fulton County, GA.

Without question, McCleskey's was a brutal crime. In fact, between 1973 and 1980, 17 defendants were charged with killing police officers in Fulton County, GA, but McCleskey was the one defendant who received the death sentence. In only one other murder was the death penalty sought and in that case the defendant was convicted of killing a black police officer and received a life sentence.

In challenging his death sentence, McCleskey placed into evidence two studies conducted by teams led by Prof. David Baldus of the University of Iowa College of Law, which analyzed over 2,400 homicide cases in Georgia between 1973 and 1979.

From official State records, the Baldus studies collected data about more than 500 factors in each case, such as the characteristics of the defendant and the victim, the circumstances of the crime, the strength of the evidence, and a range of mitigating and aggravating factors in each case. Using sophisticated statistical techniques, the studies took account of the effects of up to 230 nonracial sentencing factors.

The conclusions of that study are striking. When the characteristics of the crime and the defendant were controlled for, those who kill whites were 4.3 times more likely to receive the death penalty than killers of blacks. The importance of that data was well summarized in a dissenting opinion by Justice William Brennan, and I quote:

> At some point in this case, Warren McCleskey doubtless asked his lawyer whether a jury was likely to sentence him to die. A candid reply to this question would have been disturbing. First, counsel would have to tell McCleskey that few of the details of the crime or of McCleskey's past criminal conduct were more important than the fact that his victim was white.
>
> Furthermore, counsel would feel bound to tell McCleskey that defendants charged with killing white victims in Georgia are 4.3 times as likely to be sentenced with death as defendants charged with killing blacks.

Commenting on McCleskey's death sentence, Justice Brennan wrote:

> [T]he Baldus study indicates that, after taking into account some 230 nonracial factors that might legitimately influence a sentencer, the jury more likely than not would have spared McCleskey's life had his victim been black.

This pattern of racial discrimination in sentencing is repeated in jurisdiction after jurisdiction around the country.

In Florida, a study published in the Stanford Law Review found that defendants convicted of killing whites were eight times more likely to receive a death sentence than those convicted of murdering blacks. Another study found that blacks who kill whites received the death penalty 22 percent of the time, while whites who kill whites received the death penalty only 4.6 percent of the time.

In Georgia, blacks who kill whites received the death penalty 16.7 percent of the time, while whites who killed whites received the death penalty only 4.2 percent of the time.

In Illinois, that same study found that killers of whites were six times as likely to receive a death sentence as killers of blacks.

In Maryland, defendants convicted of murdering whites received the death sentence eight times more frequently than killers of blacks.

In Ohio, a 1980 study found that blacks who kill whites received the death penalty 25 percent of the time, while whites who kill whites received the death penalty only 4.6 percent of the time.

In Texas, a 1980 study found that killers of whites were twenty times more likely to receive a death sentence than killers of blacks, while a 1985 study found that they were over four times more likely to do so. Blacks who kill whites received the death penalty 8.7 percent of the time, while whites who killed whites received the death penalty only 1.5 percent of the time.

This pattern also appears in California and Pennsylvania, and nationally as well. A 1985 study of capital sentencing conducted by a Dallas newspaper found that killers of whites were nearly three times more likely to receive the death sentence than killers of blacks.

An ongoing study in Columbus, GA, was recently reported on in Time magazine, as follows:

> Nowhere is that point more starkly illustrated than in Columbus, Georgia. Since Georgia adopted its current death penalty law in 1973, four white men in the Columbus district attorney's office have decided which murders will be prosecuted as capital crimes. To date, 78% of their cases have involved white victims, although blacks are the victims in 65% of the community's homicides.

The Senate had that and other evidence before it in 1988, when we first debated a similar proposal. Rather than adopting the proposal, however, the Senate passed legislation requiring the General Accounting Office to conduct a study of race discrimination in capital sentencing.

The GAO released its study early last year. After exhaustively reviewing the research literature, the GAO carefully reviewed all 28 studies of the issue whether race has played a role in capital sentencing since the Supreme Court's 1972 decision in Furman versus Georgia. The GAO conclusion last year was clear. Its report stated:

> Our synthesis of the 28 studies shows a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the Furman decision.
>
> In 82 percent of the studies, race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty—those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks.

This is a GAO report, Mr. President. This is a GAO report that reviewed all of the various studies. Here is the clear, unvarnished conclusion that those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks.

This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques.

The race of victim influence was found at all stages of the criminal justice process.

Legally relevant variables, such as aggravating circumstances were influential but did not explain the racial disparties researchers found * * *.

After controlling statistically for legally relevant variables and other factors thought to influence death penalty sentencing * * * differences remain in the likelihod of receiving the death penalty based on race of victim.

The conclusions of the GAO's independent, unbiased appraisal of the studies of race discrimination in capital sentencing are clear: There is a pattern of evidence indicating racial disparties in the charging, sentencing, imposition of the dealth penalty in jurisdictions throughout the country. That pattern should be unacceptable to each and every Member of the Senate.

Unfortunately, the Supreme Court did not throw out McCleskey's death sentence. Instead, the Court rejected the statistical evidence of discrimination did not dispute the accuracy of the Baldus studies. The court majority in McCleskey admitted that statistical evidence of the kind contained in the studies would be sufficient to prove intentional race discrimination in other areas, such as housing and jury selection, and sufficient to establish employment discrimination claims under title VII of the Civil Rights Act of 1964.

In essence, the Supreme Court concluded in McCleskey that no statistical evidence should be accepted in death penalty cases unless legislation is adopted to provide for such admission. That means, without legislation such as the Racial Justice Act, no statistical evidence of discrimination in capital sentencing is admissible, even if that evidence is comprehensive, compelling or irrefutable.

But the majority concluded that the death penalty is different, because juries and prosecutors make capital punishment decisions on the basis of individual defendants, not on the basis of statistics, and because it would be inappropriate to require States to call on their juries and defendants to rebut showings of discrimination. The Court took the position that the evidence of widespread race discrimination in capital sentence is best presented to the legislative bodies.

In other words, Mr. President, a majority of the Court held that if the plaintiffs had alleged discrimination in one of the other civil rights areas where Congress acted, a court could use these statistics to make a finding of intentional discrimination. But, the Court said, unlike these other areas, Congress has not acted to remedy discrimination in capital sentencing.

We have an opportunity to act now, Mr. President. The Racial Justice Act has been included in the Biden bill, having been voted on by the Judiciary Committee members and found by a majority of the members of the Judiciary Committee to be a vitally important mechanism to guard against racism and safeguard rights guaranteed by the equal protection clause of the Constitution.

I believe that the McCleskey decision was a mistake. The compelling evidence that McCleskey's sentence was affected by racial considerations should have been sufficient to set aside his sentence. In its zeal to expedite proceedings in capital cases, the Court failed to recognize a glaring injustice that Congress should not tolerate, even if five Justices of the Supreme Court are willing to permit it.

Race discrimination is pervasive in capital punishment. The facts are irrefutable, and they should be unacceptable to each and every Member of the Senate.

I oppose the death penalty in all cases, but that is not the issue here. The Members of the Senate have the authority, and the responsibility, to ensure that racial disparities do not occur in State or Federal death penalty cases.

The Racial Justice Act is intended to meet that responsibility. The act prohibits the imposition of the death penalty under State or Federal law if the sentence is part of a racially discriminatory pattern.

Under the Racial Justice Act, if such a pattern exists—if a defendant can establish that the race of defendants or victims is playing a role in sentencing—then the Government must show by clear and convincing evidence that the racial disparities are not the result of discrimination, but reflect nonracial factors, such as the presence or absence of mitigating or aggravating circumstances.

The burden of proof on a capital defendant who seeks to challenge a death sentence under the Racial Justice Act will be quite high. For example, if a defendent offers statistical evidence demonstrating that blacks receive death sentences in a particular state at a rate higher than whites, and the defendant shows that the death sentence was imposed in furtherance of this racially discrimnatory pattern, then the State must show by clear and convincing evidence that the statistical disparity results from other, nonracial factors, such as differences in the nature of the crimes or in the conviction records of the defendants.

If the Government cannot meet that burden, the death sentence must be vacated. If we are serious about ending race discrimination in capital sentencing, no other result is acceptable.

By permitting statistical evidence of a pattern of racial disparities to be used to establish a claim of race discrimination, the act makes the standard of proof in capital sentencing cases analogous to that under other Federal antidiscrimination statutes, and standards of proof approved by the U.S. Supreme Court for use in demonstrating the presence of discrimination in the selection of juries in criminal proceedings.

In order to ensure that adequate data are available to determine whether or not race discrimination exists, the amendment also requires jurisdictions which have the death penalty to collect and maintain data about the nature of crimes for which the death penalty may be imposed, the details of those crimes, and the demographic characteristics of the victims and the defendants.

The mere fact that blacks may receive the death penalty more frequently than whites would not create a prima facie case of discrimination under the act. To establish a prima facie case, a defendant must show, for example, that blacks receive the death penalty with a fequency that is disproportionate to their representation among those arrested, or charged with, or convicted of capital crimes.

Contrary to arguments made by opponents of the Racial Justice Act, the measure will not result in quotas in death sentencing. Members of the Senate on both sides of the death penalty issue should be offended by the possibility of racial bias in capital sentencing in any form. That is the issue to which the act addresses itself.

Under the act, the mere fact that blacks may receive the death penalty more frequently than whites would not even create a prima facie case of discrimination.

To establish a prima facie case, a defendant must show that blacks, or killers of whites, for example, receive the death penalty with a frequency that is disproportionate to their representation among those arrested, or charged with, or convicted of capital crimes under the bill. Even if a prima facie case is established, the Government can rebut such a claim by showing by clear and convincing evidence that any disparity is the result of nonracial factors.

Nothing in the act requires any kind of quota in capital cases. All it does is guarantee that racial discrimination does not unfairly influence these life or death decisions.

Any attempt to use quotas in the process would violate the Racial Justice Act, precisely because the decisions would be so clearly founded upon race and not upon legitimate factors.

The Racial Justice Act is intended to eliminate racism in capital sentencing. It would not create quotas of any kind. I will ask unanimous consent that a letter, dated June 17, 1991, from University of Iowa Professors David Baldus and George Woodworth and Arizona attorney Charles Pulaski, all of whom are widely recognized experts on this issue, be included in the RECORD. They conclude, and I quote:

The argument that the Racial Justice Act would lead to racially discriminatory charging and sentencing practices and quotas is misleading in the extreme. The decline in racial discrimination that we have generally observed in this Nation's criminal justice system is most plausibly explained by expanded protection of Federal and constitutional law and a growing perception of the importance of nondiscriminatory and evenhanded treatment of criminal defendants. Any suggestion that this development has somehow produced quotas is completely implausible.

They go on to note:

While Congress may want to outlaw quotas in death sentencing, to equate quotas with statistical tests is absurd.

Mr. President, I ask unanimous consent the GAO study dated February 1990 on death penalty sentencing be printed in the RECORD, and that a letter dated June 17, 1991, from Professors Baldus and Woodworth and an Arizona attorney, Charles Pulaski, be printed in the RECORD, and finally a memorandum dated November 1989 from Prof. Larry Tribe, all be printed in the RECORD.

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

[U.S. General Accounting Office, Report to Senate and House Committees on the Judiciary]

DEATH PENALTY SENTENCING—RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES

GENERAL ACCOUNTING OFFICE,
GENERAL GOVERNMENT DIVISION,
Washington, DC, February 26, 1990.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate.
Hon. STROM THURMOND,
Ranking Minority Member,
Committee on the Judiciary,
U.S. Senate.
Hon. EDWARD M. KENNEDY,
Chairman, Subcommittee on Immigration and Refugee Affairs, Committee on the Judiciary, U.S. Senate.
Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives.
Hon. HAMILTON FISH, Jr.,
Ranking Minority Member,
Committee on the Judiciary,
House of Representatives.

The Anti-Drug Abuse Act of 1988 (Public Law 100-690) requires us to study capital sentencing procedures to determine if the race of either the victim or the defendant influences the likelihood that defendants will be sentenced to death. We did an evaluation synthesis—a review and critique of existing research—on this subject to fulfill the mandate. This report provides a summary of our findings and a discussion of our approach and data limitations.

APPROACH

An evaluation synthesis is a critical integration of findings from existing empirical research on a given topic—in this case death penalty sentencing after the *Furman* decision.[1] First, we identified and collected all potentially relevant studies done at national, state, and local levels from both published and unpublished sources. Computer-generated bibliographic searches and manual reviews of the bibliographies of studies that we obtained contributed to our list of potentially relevant materials. We also surveyed 21 criminal justice researchers and directors of relevant organizations whose work relates to death penalty sentencing to identify additional research. We screened more than 200 annotated citations and references to determine relevance to our review. We excluded studies that (1) were based primarily on data collected prior to the *Furman* decision and (2) did not examine race as a factor that might influence death penalty sentencing. From this initial screening we obtained 53 studies that we determined to be relevant.

We then reviewed each of the 53 studies to determine both appropriateness and overall quality of the research. We excluded studies that did not contain empirical data or where duplicative (a few researchers published several articles, with the most current including data and findings cited in earlier versions). Twenty-eight studies remained after this assessment. The information included in these studies forms the basis for our findings.

Next, we rated the 28 studies according to research quality. Two social science analysts independently rated each study in five dimensions: (1) study design, (2) sampling, (3) measurement, (4) data collection, and (5) analysis techniques. A rating for overall quality was also given. A third analyst reviewed the rater's assessments to ensure consistency. In addition, a statistician reviewed the studies that used specialized analytic techniques to assess whether the techniques were applied correctly and whether the analyses fully supported the researcher's conclusions.

Finally, we extracted all relevant information on the relationship of race to death penalty sentencing from each of the studies. This information was compared and contrasted across studies to identify similarities and differences in the findings.

Evaluation synthesis has benefits and limitations. The major benefit is that evidence from multiple studies can provide greater support for a finding than evidence from an individual study. The major limitation is that this approach depends on the quantity and quality of the design and methodology of available studies and the comprehensiveness of their reporting. In this case, the body of research concerning discrimination in death penalty sentencing is both of sufficient quality and quantity to warrant the evaluation synthesis approach.

DESCRIPTION OF THE STUDIES

We evaluated 28 studies which were done by 21 sets of researchers.[2] The studies covered homicide cases for different time periods through 1988, many states that have the death penalty, and different geographic regions of the country. In three instances, two or more articles were generated from a single database, with each article focusing on a different aspect of the sentencing process. A few researchers used data from other studies in their analyses. Overall, the 28 studies constitute 23 different data sets.

We rated almost half of the studies as high or medium quality; the remainder were rated as low. It is important to evaluate research quality for two reasons; (1) the results of the synthesis should be based on a sufficient number of medium or high quality studies; and (2) it is important to note differences in studies' findings, if any, by the quality of the studies. By quality we mean the strength of the design and the rigor of the analytic technique that leads to a level of confidence we have in the study findings. We judged a study to be high quality if it: was characterized by a sound design that analyzed homicide cases throughout the sentencing process; included legally relevant variables (aggravating and mitigating circumstances); and used statistical analysis techniques to control for variables that correlate with race and/or capital sentencing.

We judged a study as medium quality if we found it to be lacking in one or more of the above characteristics. However, the medium quality studies generally were more similar to high quality studies than to low quality studies. Low quality studies typically had weak or flawed designs, relied on less reliable statistical analysis, and were simplistic in interpretation of the data. Studies published before 1985 comprised a larger proportion of lower quality studies than those published subsequently. This coincides with the relatively recent development and use of a more sophisticated statistical technique appropriate for use with data such as those in death penalty studies.

LIMITATIONS OF THE STUDIES

We critiqued all of the studies to identify methodological limitations in the design and analysis of the research. We identified three major limitations among these studies: (1) the threat of sample selection bias, (2) the problem of omitted variables, and (3) the small sample sizes.

Sample selection bias implies that the cases under consideration are not representative of all the cases of interest. The criminal justice system is characterized by discretionary processes of selection at different points in the system. Racial factors may influence decisions at different stages of the process. A study that considered only whether persons convicted were sentenced to death was especially prone to the biasing effect of sample selection. Racial factors may have influenced decisions earlier in the process, such as whether the prosecutor requested that an offender be charged with capital murder. This discretion exercised early in the process may have the effect of concealing (masking) race effects if analysis is limited only to the later stages.

We found sample selection bias in more than half of the low quality studies; these studies typically analyzed only those cases in which the defendant was convicted of capital murder or received the death penalty. Studies that included all reported homicides and followed the disposition of these defendants from initial charge through subsequent states of the judicial process are not likely to have been affected by this bias. More than two-thirds of the studies we rated high or medium quality picked up cases prior to conviction and followed these cases through the judicial process.

Another limitation is the problem of omitted variables. This limitation is especially important in studies examining racial discrimination. This is because the effect of race is considered the residual—after all relevant and important variables have been controlled, the effect that remains, the residual, is interpreted to be racial disparity. Omitting relevant variables can affect results by failing to reduce the residual appro-

[1] In *Furman* v. *Georgia*, 408 U.S. 238 (1972), the Supreme Court found unconstitutional death sentences imposed under state statutes which allowed juries to impose these sentences in an arbitrary or capricious manner. In response to this decision, states adopted new statutes that addressed the concerns raised by the Court.

[2] Appendix I includes a list of the studies we used in the synthesis.

priately, thus enhancing the perceived racial disparity. Omitted variables in death penalty research are potentially of two types: (1) variables that were known and were believed to be correlated with race or the death penalty and (2) variables that were not known and may be correlated with race or the death penalty outcome.

Several of the higher quality studies controlled for many variables. For example, one high quality study controlled for more than 200 variables. Only a few variables are shown to be highly explanatory. Most of these are controlled for in the better quality studies. However, there are variables such as strength of evidence or socioeconomic status of the victim and defendant which are difficult to measure or obtain. If there are important omitted variables (either because they are difficult to measure or because they are unknown), other explanations for the differences in death penalty outcomes cannot be excluded. But for another variable to influence the existing disparity it would have to (1) be jointly correlated with both race and the death penalty outcome and (2) operate independently of the factors already included in the analysis.

A third limitation relates to the consequences of the small sample sizes in the analyses of death penalty imposition. The imposition of the death penalty is a relatively rare event. As such, in most studies there were very few cases at the end of the process—the sentencing and imposition stages. The small sample size places limits on the usefulness of statistical techniques for analysis at these final stages and thus limits the rigor of analyses at these stages.

While the severity of the limitations varied, as reflected in the studies' ratings, these limitations do not preclude a meaningful analysis of the studies. We have considered quality in evaluating the studies and arriving at our findings.

Our synthesis of the 28 studies shows a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the *Furman* decision.

In 82 percent of the studies, race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks.[3] This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques. The finding held for high, medium, and low quality studies.

The race of victim influence was found at all stages of the criminal justice system process, although there were variations among studies as to whether there was a race of victim influence at specific stages. The evidence for the race of victim influence was stronger for the earlier stages of the judicial process (e.g., prosecutorial decision to charge defendant with a capital offense, decision to proceed to trial rather than plea bargain) than in later stages. This was because the earlier stages were comprised of larger samples allowing for more rigorous analyses. However, decisions made at every stage of the process necessarily affect an individual's likelihood of being sentenced to death.

Legally relevant variables, such as aggravating circumstances, were influential but did not explain fully the racial disparities researchers found. In the high or medium quality studies, researchers used appropriate statistical techniques to control for legally relevant factors, e.g., prior criminal record, culpability level, heinousness of the crime, and number of victims. The analyses show that after controlling statistically for legally relevant variables and other factors through to influence death penalty sentencing (e.g., region, jurisdiction), differences remain in the likelihood of receiving the death penalty based on race of victim.

The evidence for the influence of the race of defendant on death penalty outcomes was equivocal. Although more than half of the studies found that race of defendant influenced the likelihood of being charged with a capital crime or receiving the death penalty,[4] the relationship between race of defendant and outcome varied across studies. For example, sometimes the race of defendant interacted with another factor. In one study researchers found that in rural areas black defendants were more likely to receive death sentences, and in urban areas white defendants were more likely to receive death sentences. In a few studies, analyses revealed that the black defendant/white victim combination was the most likely to receive the death penalty. However, the extent to which the finding was influenced by race of victim rather than race of defendant was unclear.

Finally, more than three-fourths of the studies that identified a race of defendant effect found that black defendants were more likely to receive the death penalty. However, the remaining studies found that white defendants were more likely to be sentenced to death.

To summarize, the synthesis supports a strong race of victim influence. The race of offender influence is not as clear cut and varies across a number of dimensions. Although there are limitations to the studies' methodologies, they are of sufficient quality to support the synthesis findings.

We are sending copies of this report to cognizant congressional committees, the Attorney General, and other interested parties.

Major contributors to this report are listed in appendix II. Please call me at 275-8389 if you have any questions.

LOWELL DODGE,
Director, Administration of Justice Issues.

APPENDIX I—LIST OF STUDIES

Arkin, Stephen. "Discrimination and Arbitrariness in Capital Punishment: An Analysis of Post-Furman Murder Cases in Dade County, Florida, 1973-1976." Stanford Law Review, Vol. 33 (November 1980), 75-101.

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[3] When we refer to a finding of racial disparities at the sentencing and imposition stages we are, in fact, including disparities that occurred in earlier stages of the judicial process, e.g., charging and decision to proceed to trial.

[4] About two-thirds of these studies were of high or medium quality.

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Zeisel, Hans. "Race Bias in the Administration of the Death Penalty: The Florida Experience." Harvard Law Review, Vol. 95, No. 2 (December 1981), 456-468.

APPENDIX II—MAJOR CONTRIBUTORS TO THIS REPORT—GENERAL GOVERNMENT DIVISION, WASHINGTON, DC.

Laurie E. Ekstrand, Chief Social Scientist.
Harriet C. Ganson, Analyst-in-Charge.
Lisa Cassady, Social Science Analyst.
James L. Fremming, Consultant.
Douglas M. Sloane, Statistical Consultant.

THE UNIVERSITY OF IOWA,
Iowa City, IA, June 17, 1991.

Re S. 1249, Racial Justice Act of 1991.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Dirksen Building, Washington, DC.

DEAR SENATOR KENNEDY: We have been asked to comment upon whether S. 1249, the Racial Justice Act of 1991, would have the practical effect of either abolishing the death penalty in the United States or resulting in the use of racial quotas to avoid the application of the Act. We believe that neither of these outcomes would follow from the enactment of the Racial Justice Act.

The de facto abolition argument appears to rest upon the assumption that it will be very easy for capital defendants to establish a prima facie showing of a "discriminatory pattern" under the Act and very difficult for the states to rebut that showing. The argument also appears to assume that successful prosecution of a claim under the Racial Justice Act by one death-sentenced offender would entitle all death-row inmates in the state to relief from their death sentence. We believe that both of these propositions are false.

The establishment of a prima facie case under the Racial Justice Act requires racial disparities of a magnitude which strongly suggest that capital punishment is being used in a racially discriminatory fashion. Small statistical disparities are not enough to support such an inference. It is said nevertheless that minor numerical differences in the numbers or percentages of death sentences which a state has imposed will require the state to shoulder a troublesome burden of disproving discrimination. More specifically, it is argued that such evidence would be sufficient to demonstrate that the death penalty is being imposed "more frequently" in cases of one race than another under section 2921(1) of the Act and/or to show a racially "disproportionate" frequency which constitutes a prima facie case of discrimination under section 2922(c)(1) (A) and (B).

This argument is simply wrong. When an observed racial disparity in death-sentencing rates in a State is small or is based on small numbers of cases, it is not sufficient to put any burden of disproving discrimination on the State. Consider, for example, a State with a death-row population of 6 inmates, 4 of whose cases involved a white victim, while only 40% of these and all other death-eligible cases in the State involved a white victim. Or consider a State with a death row of 100 prisoners, 43 of whose cases involve a white victim while 40% of the death-eligible cases from which they were selected have a white victim.

Common sense suggests that neither of these patterns represents a situation in which the death penalty is being imposed "more frequently" upon killers of white victims within section 2921(1) or in which there is a "disproportionate" racial frequency within section 2922(c)(1). And we can assure you that any sort of responsible statistical analysis will produce exactly the same result: numerical differences as small as the ones described above would not lead any scientific researcher to conclude that racial discrimination is at work.

The reason is that small numerical differences like these could readily occur by chance in a criminal justice system that was not discriminating on the grounds of race. Ordinary statistical procedures do not allow conclusions of discrimination to be drawn from racial disparities based on small sample sizes (like 4 out of 6 cases) or from small differences in death-sentencing rates between racial groups even when the sample size is not small (like 43 instead of 40 out of 100 cases). To the contrary, a major function of statistics in research is precisely to ferret out disproportions that are real and to distinguish them from disparities that may be simply happenstance numerical differences that are attributable to chance.

All this leads one to ask—what type of disparities are we likely to observe in the various states? On the basis of the studies done to date, we are unlikely to see strong statewide racial disparities in many states, especially disparities concerning the defendant's race. We are much more likely to see the disparities concentrated in specific localities. For example, our research from Georgia showed no significant statewide evidence of race-of-defendant discrimination. Those overall results masked, however, data from one judicial district that showed a strong race-of-defendant effect. The data also showed evidence of race-of-defendant discrimination among a number of rural prosecutors. It is in areas like these that we will be likely to see a prima facie case established.

The de facto abolition argument further assumes incorrectly that states will be unable to rebut any inferences of discrimination by showing with "clear and convincing evidence that identifiable and pertinent nonracial factors persuasively explain" the racial disparities. Section 2922(c)(2). In fact, a variety of accepted statistical techniques are available for use by the State in making its rebuttal case whenever it appears that an observed racial disparity in a state's death-sentencing rates is more likely the product of differences in the distribution of pertinent nonracial characteristics than the product of racial discrimination. For example, in considering data simply showing that killers of white victims are more often sentenced to death than killers of black victims, one might legitimately wonder whether this observed disparity reflects the fact that the white-victim cases were more aggravated than the black-victim cases. But here also, there are available generally accepted statistical procedures designed to avoid this inferential pitfall. Specifically, they estimate racial disparities in death-sentencing rates and executions after taking into account or controlling for such nonracial factors. These procedures provide a solid basis for estimating the likelihood that the racial disparities that finally emerge from analysis are in fact the product of racial discrimination and are not explained by the fact that one racially defined subgroup of cases is more aggravated than another with which it is compared. And it is just such procedures that have been used in the more thorough empirical studies that show significant evidence of race-of-victim discrimination in this country, i.e., the race-of-victim effects persist after adjustment has been made for racially neutral factors such as the presence of torture or contemporaneous offenses like robbery or sexual assault.

Generally accepted statistical procedures of the type that will be used to evaluate racial disparities under the Racial Justice Act are used in a wide variety of other legal and nonlegal contexts in which it is important to distinguish between what is apparent and what is real. For example, such procedures provide the principal proof of a causal connection between cigarette smoking and cancer and between cholesterol and heart attacks. These procedures are also routinely used by pharmaceutical firms to establish the safety of new drugs.

Moreover, similar procedures are widely used in lawsuits, particularly in employment-discrimination cases involving claims of purposeful and intentional discrimination in employee hiring, promotion, and discharge. In those settings, the use of generally accepted statistical methods of proof has been explicitly and unanimously endorsed by the United States Supreme Court. These procedures have routinely provided an indispensable basis for the valid and just assessment of claims of race and gender discrimination. Moreover, defendants in discrimination cases are often successful in rebutting the plaintiff's prima facie case with objective and relevant nonracial factors. We fully expect such defenses will be similarly used in the context of the Racial Justice Act, often with considerable success.

In comparing the Racial Justice Act with comparable Title VII cases, i.e., those involving special qualifications for hiring or promotion, it is worth noting that the plaintiff carries the burden of accounting for the most important nonracial factors on which data are available as part of her prima facie case. So long as the relevant data are available to the parties, this requirement is appropriate and imposes no undue hardship on the plaintiff. Accordingly, under the Racial Justice Act the imposition of a similar burden on offenders presenting claims under the Racial Justice Act would be appropriate as long as data were available on the relevant aggravating and mitigating factors. This appears to have been the thinking behind the House version of the Racial Justice Act, which provides for an equivalent of a prima facie case on the basis of disparities that "take into account, to the extent it is compiled and publicly available, evidence of the statutory aggravating factors of the crimes involved."

The argument that claimants will always prevail in claims brought under the Racial Justice Act overlooks a simple fact. It is that after taking into account pertinent nonracial factors, it will be extremely unlikely to ever see any evidence of racial discrimination unless racial factors are in fact exerting a significant influence on capital sentencing in the jurisdiction under evaluation. As a result, it is by no means the case that states will usually lose these cases. For example, the existing literature suggests it is quite unlikely that claims of race-of-defendant discrimination will be successful at the statewide level, although the picture may be quite different in particular subdivi-

sions of the states. Moreover, we expect that over time fewer and fewer claims of any type will be successful as prosecutors become more aware of their obligation to treat capital cases in an evenhanded fashion. On this point, we note that our evidence from Georgia showed quite strong evidence of statewide discrimination against black offenders before *Furman v. Georgia* (1972). In the period from 1973 to 1980, however, we observed no significant statewide evidence of race-of-defendant discrimination. The most plausible explanation for this change is that prosecutors and juries have become more sensitive to the problem of racial discrimination and most have generally sought to treat all offenders in a more evenhanded fashion. If the Racial Justice Act becomes law, we expect a similar development would occur over time with respect to the race of the victim.

It is also important to note that the statistical analyses required to refute claims of discrimination involve information on relatively few pertinent nonracial circumstances of the cases beyond the statutory aggravating and mitigating circumstances (and those would usually constitute a total of 10 to 20 variables). This fact belies any claim that the Racial Justice Act would require the states to collect and maintain massive statistical data files. Another relevant point is that once the required data base for evaluating the system is in place, it will be available for use with no further expense beyond routine updating. The suggestion that each claim brought under the Racial Justice Act will require the development of a new data base for analysis from scratch ignores this fact.

The de facto abolition argument also appears to assume that a single successful claim under the Racial Justice Act will block execution in all other death-sentenced cases in the state involved. This assumption completely overlooks the language of 2922 of the Act, which bars executions only if that person's death sentence and execution would "further a racially discriminatory pattern." As a result, only defendants whose cases fall within categories of death-eligible cases where racial effects are observed would be entitled to relief. For example, in Georgia, our research indicated that in cases highly aggravated with factors such as torture or multiple victims, there were no race effects related to either the race of the defendant or the victim. Those death sentences clearly do not further a racially discriminatory pattern and therefore would be unaffected by the law. And as noted earlier, our research from Georgia also indicates that the levels of racial disparities in capital sentencing vary significantly from one judicial district or county to the next. Thus, a finding of discrimination in district A would provide no basis for relief in other jurisdictions where there is no evidence that race is influencing the system.

The argument that the Racial Justice Act would lead to racially discriminatory charging and sentencing practices and quotas is misleading in the extreme. The decline in racial discrimination that we have generally observed in this nation's criminal justice system is most plausibly explained by expanded protection of federal and constitutional law and a growing perception of the importance of nondiscriminatory and evenhanded treatment of criminal defendants. Any suggestion that this development has somehow produced quotas is completely implausible. Similarly, in the employment discrimination context, the United States Supreme Court has for years authorized methods of proof for proving classwide purposeful discrimination that are comparable to those contemplated by the Racial Justice Act. Plaintiffs in those cases have both won and lost such cases, but there has never been any serious contention that either the right to challenge classwide purposeful discrimination in an employment context or the methods of proof employed for the task have led to racial or gender quotas in employment. The dispute over quotas recently raised by the 1991 Civil Rights Act relates strictly to disparate impact claims (which require no proof of purposeful discrimination) and not to claims of classwide purposeful discrimination.

Finally, an observation about the provision in the administration's Equal Justice Act that prohibits the use of "statistical tests" as a means "to achieve a specified racial proportion" of offenders, etc. S. 635 section 1002(b)(3) (A & B). The provision completely misconceives the function of statistical tests. They are used to compare differences in the rates at which characteristics of all types occur in different populations (e.g., the rates at which cancer develops in people who smoke versus those who do not), and to provide a basis for making causal inferences (e.g., that smoking causes cancer). In the context of death-sentencing research, statistical tests are merely an aid to determine whether different racial groups are being treated differently and whether those differences are a product of chance, different distributions of nonracial factors among different racial groups, or racial discrimination. Those tests have nothing whatever to do with achieving "a specified racial proportion relating to offenders" or anyone else. While Congress may want to outlaw quotas in death sentencing, to equate quotas with statistical tests is absurd. Moreover, the enactment of such a provision could unintentionally limit the capacity of state courts to monitor their own capital-sentencing systems to ensure that they are subject to no racial discrimination.

Sincerely,

DAVID C. BALDUS,
Joseph B. Tye Professor of Law.
GEORGE WOODWORTH,
Associate Professor, Department of Statistics and Actuarial Science.
CHARLES A. PULASKI, Jr.,
Partner,
Snell & Wilmer, Phoenix, AZ.

HARVARD UNIVERSITY LAW SCHOOL,
Cambridge, MA.

To: Senator Edward M. Kennedy.
From: Laurence H. Tribe.
Subject: Congress' Constitutional Authority to Enact the Racial Justice Act of 1989, S. 1696.
Date: November 3, 1989.

Here are my views about whether Congress has the constitutional authority to enact S. 1696, the Racial Justice Act of 1989. My conclusion is that Congress has this authority, based on its broad remedial powers under §5 of the Fourteenth Amendment and §2 of the Thirteenth Amendment.

Congress' authority embraces the ability to identify situations that require appropriate legislation to remedy, or to prevent, violations of the Thirteenth and Fourteenth Amendments. In *Katzenbach v. Morgan*, 384 U.S. 641 (1966), the Supreme Court held that Congress could, in the exercise of its recognized fact-finding capacity, discover patterns of discrimination not discerned by the Court. This interpretation of *Morgan* appears to be widely accepted. Thus, last Term, in *City of Richmond v. J.A. Croson Co.*, 109 S. Ct. 706, 719 (1989), Justice O'Connor reaffirmed that "[t]he power to 'enforce' [the 14th Amendment] may at times also include the power to define situations which *Congress* determines threaten principles of equality and to adopt prophylactic rules to deal with those situations." (emphasis in original). *See generally* L. Tribe, *American Constitutional Law* §5-14, at 345-46 (2d ed. 1988).

Congress having found that "the death penalty is being administered in a pattern that evidences a significant risk that the race of the defendant, or the race of the victim against whom the crime is committed, influence the likelihood that the defendant will be sentenced to death," (b)(3), S. 1696 fits within the contours defined by *Morgan*.

Likewise, for purposes of identifying violations of the 13th Amendment, Congress can "rationally [ ] determine what are the badges and the incidents of slavery." *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 440 (1968). Indeed, the Court has accepted the view that racial disparity in criminal penalties bears the emblem of slavery. *Civil Rights Cases*, 109 U.S. 3, 22 (1883). Here, Congress has concluded that "the interest in ensuring equal justice under law may be harmed, not only by decisions motivated by explicit racial bias, but also by government rules, policies, and practices that operate to reinforce the subordinate status to which racial minorities were relegated in our society," (b)(6). *See also McCleskey v. Kemp*, 481 U.S. 279, 1786 (1987) (Brennan, J., dissenting).

The Court's ruling in *McCleskey* that the defendant had failed to prove discriminatory intent forbidden by the Fourteenth Amendment presents no constitutional obstacle to Congress' authority. While a showing of discriminatory intent in a particular instance is required by a court that is asked to find an outright violation of the Fourteenth Amendment, Congress need not make any such finding in order to *enforce* the Amendment in its own right.

This proposition appears clear under any reading of *Morgan*. In *Morgan*, the Court upheld a section of the Voting Rights Act of 1965 that overrode an English literacy voting requirement notwithstanding the fact that the Supreme Court had previously ruled in *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959), that such a requirement did not in itself violate the Fourteenth Amendment. In short, "congressional authority extends beyond the prohibition of purposeful discrimination to encompass state action that has discriminatory impact perpetuating the effects of past discrimination." *Fullilove v. Klutznick*, 448 U.S. 448, 477 (1980). *See generally* L. Tribe, *supra*, §5-14 at 337.

Indeed, the *McCleskey* opinion can be read as having invited Congress, in the exercise of its enforcement power under §5 of the Fourteenth Amendment, to regulate death penalty procedures that discriminated against black murderers of white victims and against black victims of white murderers. As the Court stated, "[i]t is not the responsibility of this Court to determine the appropriate punishment for particular crimes." Such a role belongs to "the legislatures, the elected representatives of the people." *McCleskey* at 1780. Moreover, "[l]egislatures also are better qualified to weigh and 'evaluate the results of the statistical studies . . .'" *Id.* (quoting *Gregg v. Georgia*, 428 US at 186).

Insofar as the remedial aspect is concerned, S. 1696 also clearly falls within the boundaries of Supreme Court precedent. The

requirement that Congress enact "appropriate legislation," *Morgan* at 651, is a loose one. As stated by the Court, "[w]hatever legislation is appropriate, that is, adopted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibition they contain and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against state denial or invasions, if not prohibited, is brought within the domain of congressional power." *Ex Parte Virginia*, 100 U.S. at 345–46. *See also Morgan* at 653. The same standard applies in the Thirteenth Amendment context where §2 "clothed 'Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States.'" *Jones*, 392 U.S. at 439.

Again, the Court's ruling in *McCleskey* does not bar Congress from acting. The proposed bill targets official behavior that even the Court's most conservative members agree falls within suitable legislative reach. Although there is disagreement regarding the scope of Congress's authority to make its own interpretation of the *substance* of a constitutional violation, it is undisputed that Congress may choose its own broad *remedial scheme* to root out, and minimize the risk of, what the Court would concede are constitutional violations.

The question that has divided the Court is whether Congress has the authority to prohibit practices that have a discriminatory impact notwithstanding a judicial determination that only discriminatory intent violates the Constitution. For instance, in *City of Rome v. United States*, 446 U.S. 156 (1980), the majority held that given the "risk of purposeful discrimination, it was proper [for Congress] to prohibit [electoral] changes that have a discriminatory impact." *Id.*, at 177 (footnote omitted.). In his dissent, then Justice Rehnquist objected that Congress had in effect established an "irrebuttable presumption" of discriminatory purpose which, he claimed, would amount to a substantive change in the law. *Id.*, at 215 (Rehnquist, J., dissenting).

In contrast, the proposed bill is immune to such criticism. The bill does not suggest that discriminatory effects in sentencing amount to constitutional violations *per se*. The bill falls squarely within the bounds of the Court's ruling in *McCleskey* that only "purposeful discrimination" is unlawful. *McCleskey* at 1766 (citation omitted). Simply, following a finding of discriminatory impact, the bill attacks deliberate discrimination by establishing a *rebuttable* presumption that death penalty practices were undertaken for discriminatory reasons. The bill does not establish a conclusory presumption of intent but circumvents a problem of proof peculiar to the judicial setting. It thus satisfies Chief Justice Rehnquist's objections to congressional attempts to identify as violative of the Constitution practices which the Court does not view as such. In sum, S. 1696 does not put Congress in conflict with the Court's reading of the Fourteenth Amendment.

The nexus between Congress's finding of discriminatory enforcement that is likely to be the result of discriminatory motivation, and Congress's prophylactic rule—as it were, an evidentiary shift in the burden of proof—is sufficient under *Morgan* and its progeny. Where individuals are being sentenced to death based on their race or of that of their victims, Congress may properly decide—precisely *because* courts find it institutionally difficult to discern racial motivation and to fashion adequate relief even if they do discern such motivation—to act legislatively to remedy the inequity.

Of course, the Supreme Court remains divided over the scope of congressional power regarding certain types of discriminatory practices. Some Justices reject the view that Congress may expand the guarantees secured by the Fourteenth Amendment beyond those recognized by the Supreme Court. For example, in *Oregon v. Mitchell*, 400 U.S. 112 (1970), four Justices concluded that Congress could not determine independently that a state's disenfranchising of 18-year-olds violated the Equal Protection Clause. To grant Congress this authority, they believed, would improperly allow Congress "to determine as a matter of substantive constitutional law what situations fall within the ambit of the [Equal Protection] Clause," *id.*, at 296 (opinion of Stewart, J). Likewise, in *EEOC v. Wyoming*, 460 U.S. 226 (1983), four Justices viewed Congress's extension of the Age Discrimination in Employment Act to cover state and local governments as an improper legislative attempt to expand the reach of the Equal Protection Clause because the Supreme Court had never found that age discrimination was proscribed by the Fourteenth Amendment. *Id.* , at 259–65 (Burger, C.J., dissenting). *But see Mississippi University for Women* v. *Hogan*, 458 U.S. 718, 732–33 (1982) (stating that in assessing Congress's §5 power, the Court "give[s] great deference to congressional decisions and classifications," so long as Congress does not "validate a law that denies the rights guaranteed by the Fourteenth Amendment").

On any of the theories of congressional power under the Fourteenth Amendment, however, the Racial Justice Act is an appropriate exercise of Congress's authority. No case has ever challenged the view that Congress may fashion its own *remedies* to shield individuals from violations of a federal right on the basis of *race*. Both Justice Black's opinion in *Oregon* and Chief Justice Burger's dissent in *EEOC* contrasted legislative actions regarding age discrimination—which they found improper—with actions concerned with constitutionally protected classes—which they found legitimate. Although "[t]he Fourteenth Amendment was surely not intended to make every discrimination between groups of a constitutional denial of equal protection . . . the Civil War Amendments were unquestionably designed to condemn and forbid every distinction, however trifling, on account of race." *Oregon*, at 127 (opinion of Black, J.); *see also id.*, at 128–30; *EEOC*, at 260–62 (Burger, C.J., dissenting). Within this frame of reference, there are three separate rationales justifying S. 1696.

The *first* is that the criminal justice system discriminates against *black defendants* who, under the equal protection clause of the Fourteenth Amendment, are entitled to redress. This basis is suggested in §2922, (c)(A).

The *second* rationale focuses on the race of *the victim*. §2922, (c)(B). Where a specific "public good" is being unevenly distributed on the basis of race, Congress has a Fourteenth Amendment mandate to remedy the situation. In this instance, the relevant public good can be viewed as the capital sentence, seen by many as a useful deterrent to the most serious crimes. As Professor Randall Kennedy writes, "blacks . . . are quite literally being denied the equal *protection* of the laws." Kennedy, McCleskey v. Kemp: *Race, Capital Punishment, And The Supreme Court*, 101 Harv. L. Rev. 1388, 1422 (1988). No such claim of black *victims' rights* was rejected by *McCleskey*—nor could it have been, since no party had standing to press any such claim there.

This rationale suggests a *third* powerful justification for the proposed congressional remedy. The unevern enforcement of the death penalty depending on the race of the victim manifests society's demeaning vision of blacks as second-class citizens. Such unequal treatment must in turn "generate[] a feeling of inferiority as to their status in the community." *Brown* v. *Board of Education*, 347 U.S. 483, 494 (1954). *See also* L. Tribe, §16–21,at 1515–16. This situation provides a strong argument that Congress may constitutionally intervene to prevent this debasing image of a minority group from having gravely debilitating effects in other spheres of life.

The *Morgan* opinion suggested precisely this type of justification when it stated that congressional activity may be necessary to provide "enhanced political power" to "gain[] nondiscriminatory treatment . . . for the entire community." *Morgan* at 652. In a similar vein, the Fourteenth Amendment must confer on Congress the power to enhance the currently inferior status of blacks in the most dramatically visible of criminal contexts if they are ever to gain a full measure of human dignity in all realms of social life.

In sum, there is ample reason to believe that Congress has constitutional authority to enact S. 1696.

LAURENCE TRIBE.

Mr. KENNEDY. Mr. President, I ask unanimous consent the period for debate only be extended until 4:30 p.m., and the majority leader be recognized at the conclusion of that time.

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

Mr. KENNEDY. Mr. President, we have done much over the past 20 years to help law enforcement officers across the country do a more effective job of fighting crime in our society. These steps have made a difference. We have strengthened literally hundreds of our criminal laws—some 232 new penalties in the past 3 years alone. We have reformed our sentencing statutes. We have strengthened our narcotics laws. We have appropriated additional resources for law enforcement.

Since so much of the crime in most communities is drug related, we have also put into place a number of reforms, ranging from law enforcement improvements to enhanced drug education and drug treatment programs to help the Nation win the war on drugs. But the tens of thousands of Americans who fall victim to crime each day know that more must be done.

The crime package developed by Senator BIDEN reflects a more effective approach to crime than the Bush alternative. Although the Biden package includes death penalty and habeas corpus provisions that I oppose, it contains many other worthwhile reforms to upgrade all aspects of Federal, State, and local law enforcement. In addition, on the death penalty, the Biden package also contains the Racial Justice Act, a response to the overwhelming evidence that racial discrimination affects capital sentencing decisions in many jurisdictions. The act would prohibit the application of the death penalty where

imposition of a capital sentence is tainted by such discrimination.

In contrast to the comprehensive nature of the Biden package, the central focus of the Bush administration proposal is the death penalty. In my view, that focus is a sham, designed to address the politics, not the substance, of the crime issue in communities across America. Clamoring loudly for the death penalty and doing so little else is unacceptable, when we ought to be helping local police and all other aspects of the law enforcement and civil justice system to obtain the resources and other support they so adequately need.

The Bush alternative proposes little more than the further enhancements to existing Federal penalties, many of which we have previously increased and which will have no effect on the vast majority of crime at the State and local level. Even the administration's proposal to expand the death penalty is largely toothless. Its principal impact will be largely confined to murders committed on Indian reservations.

Habeas corpus reforms in the Bush proposal may achieve the desired goal of speeding executions, but make no mistake; the inevitable result will be to increase the numbers of individuals who are executed in violation of their constitutional rights. Most of the victims of these misguided reforms will be citizens without sufficient means to obtain decent legal representation.

To their credit, the sponsors of the administration package have deleted the bad idea of secret INS proceedings to deport foreign nationals from the United States.

The administration's proposal on this issue violated fundamental principles of due process and would be a serious embarrassment to the United States. We oppose secret proceedings and judicial travesties in Kuwait and other nations, and we should not copy them in the United States. We can support our local police and deal with foreign terrorists without turning America into a police state, and without destroying the fundamental civil liberties and constitutional guarantees that make this Nation truly free.

Just as we need more drug treatment and prevention programs to turn individuals away from drug abuse and drug-related crimes, so do we need more police on the streets of our communities with more resources to carry out their mission to combat crime.

Tough law enforcement is not inconsistent with the Constitution. But I am increasingly concerned that the administration's distorted battle plan in the war on crime and drugs has begun to undermine the freedoms in the Bill of Rights.

The administration's willingness to trash habeas corpus and the exclusionary rule, and limit the right to public trials, suggests that the Justice Department has decided it is easier to wage a political war on the Constitution than to wage a real war on crime.

Our greatest challenge is to use our limited resources most effectively. Efforts in recent years have increased penalties, without regard to the fact that the criminal justice system is already bursting at the seams. Today, there are 1 million offenders in prison, and over 2.5 million offenders free on probation or parole.

What the administration proposal clearly lacks is funding and other assistance for State and local law enforcement, who represent the front line against crime. Senator BIDEN has drawn this distinction clearly in his bill and his proposal is far better than the Bush alternative.

Both the President's crime bill and the Biden crime bill create new mandatory minimum sentences and increase old ones. But these sentences are becoming an increasingly serious obstacle to the success of the sentencing guideline system which Congress created in 1984.

Congress has persisted in enacting mandatory minimums in recent years for political reasons, despite the fact that such sentences seriously undermine the Sentencing Commission's mandate to devise a rational sentencing system. The commission's guidelines also limit judicial sentencing discretion, but they offer a far more effective way to achieve the goals we share.

Mandatory minimums inevitably lead to disparities in sentencing, because different defendants with different degrees of guilt and different criminal records receive the same sentence. The guideline system permits the court to consider the aggravating and mitigating circumstances relevant to each offense and each offender, but mandatory minimums prevent such individualized sentencing.

Some advocates of mandatory sentencing believe that coerced uniformity is appropriate. But the mandatory statutes do not produce uniformity; they merely transfer discretion from judges to prosecutors, who decide whether defendants will be charged with an offense carrying a mandatory penalty, and whether to insist on a plea to that count of the indictment. A guideline system makes judges accountable for the discretion they exercise; mandatory sentencing laws impose no similar check on prosecutors.

The commission has attempted to incorporate the congressionally mandated minimum penalties into the guidelines, but the effort is impractical. Such penalties have been enacted with little appreciation for the new sentencing system, and their passage has unnecessarily complicated the commission's work.

Both the Sentencing Commission and the Judicial Conference have criticized mandatory penalties. In the next few months, the commission and the General Accounting Office are expected to issue reports on mandatory minimums, and Congress will have an opportunity to review and act on their findings. These reports will suggest ways in which Congress can formulate sentencing policy without undermining the guidelines. For example, Congress might provide flexible statutory directions to the commission.

The Biden bill contains two other worthwhile reforms that deserve the Senators' strong support—the Brady handgun waiting period and the police corps. In fact, these two provisions may turn out to be the most innovative ideas of all, and both proposals are included in the Biden bill.

The police corps provision creates a new corps of young men and women willing to commit their talent and energy to law enforcement. Too often, as we have heard in debates on crime legislation, police forces in communities across the country are increasingly outnumbered in the war on crime. Today, strong law enforcement requires more police on the beat, which is exactly what the police corps provision is designed to achieve. It provides for 20,000 new police officers each year. The police corps will operate in much the same way as the Reserve Officers' Training Corps functions for the Armed Forces. In return for Federal aid to pay for their college education, young men and women will agree to serve in local and State police departments for 4 years after graduation, and will receive the same salary as regular law enforcement officers.

The police corps thus serves two important purposes. It encourages the united young Americans to make their careers in law enforcement, and it upgrades the quality of State and local enforcement in all parts of the country.

With respect to the Brady handgun waiting period is long overdue to stop the arms race on the streets of our communities. The waiting period will have a significant impact on the problem of violent crime and it should be enacted with or without the crime package.

Over two decades ago, in 1968, Congress enacted major legislation ensuring that firearms are sold only to law-abiding citizens. The Brady legislation, as modified by Senators MITCHELL, KOHL, and GORE, will put real teeth in the 1968 Gun Control Act, too many of whose provisions have been easily evaded for too long. Similar waiting periods have reduced the flow of handguns to individuals with felony convictions in States ranging from New Jersey, Georgia, Tennessee, and Florida to California. The success of these State initiatives is overwhelming. Felons are being caught by the thousands in States which have waiting periods and background checks. The Mitchell-Kohl-

Gore proposal is a simple and vital step toward reducing firearm violence and protecting the lives of our citizens.

Finally, law enforcement has an indispensable role to play in combating drug abuse. But it cannot do the job alone. Enduring victories will not be gained until students are persuaded that drugs are harmful, until communities create a climate in which drugs are unacceptable, and until drug treatment is available to all who want to kick their habit.

Excessive reliance on the criminal law to solve this deeply rooted social problem is not only doomed to failure—it threatens to distort our criminal justice system. We are willing to spend vast resources to build prisons and warehouse drug offenders. We are willing to ask clogged courts to administer assembly line justice to a mushrooming rag-tag army of addicts. Yet we are unwilling to invest needed resources in the treatment and education programs that could stop these crimes from happening in the first place and reduce the overwhelming logjam in the courts.

We are fighting a war on crime in which one of the principal weapons is bankrupt policy for prevention, education, and treatment of drug abuse, and those priorities are unacceptable.

Getting tough on crime means more than increasing penalties three or four times in as many years. Getting tough on crime means equipping our law enforcement system with enough police, prosecutors, and judges. It means investing in programs that are proven capable of preventing crime. To build a new prison costs the Federal Government as much as $85,000 per inmate. A place in a Head Start facility costs only about 5 percent as much, and it cuts the teenage arrest rate by nearly half. It is penny-wise and dollar-foolish for Congress and the administration to pay vast sums for new prison cells, yet refuse to allocate a fraction of that amount for new places in preschool classrooms.

It is time to get our priorities straight on crime, and this Senate legislation is the place to begin.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, let me define what the Racial Justice Act is and what it is not. I will start with what it is not. This act is not about the death penalty. This act is not about quotas. This act is about fairness and equality. This is a basic civil rights issue. This act is about civil rights, and it is all about; whether or not the U.S. Senate will come to grips with the fact that race and crime has become the polarizing issue in our country and that where there is discrimination in our society, where there is discrimination in the criminal justice system, we must act to eliminate that discrimination.

Leadership is not appealing to the fears of people. Leadership is inspiring people to be their own best selves.

There are two fundamental but separate issues here in this crime bill. The first is whether or not we should have a death penalty. But that is not what the Racial Justice Act is about. The second issue is, if we are going to have a death penalty, should we not do everything possible to make sure that it is imposed in a fair and equal manner. That the Racial Justice Act makes sure that that happens is why it is such an important act.

Many States already have the death penalty. I do not like that. From my own, honest point of view, the death penalty is wrong: intellectually, constitutionally, morally. I think people should be locked up for life when they commit heinous crimes, never again to get out of prison. But I do not believe the State should take a life. That is my own view. But in both crime bills before us in this body, in both versions, there are a number of death penalty provisions. Indeed, both crime bills expand the number of death penalty provisions.

But if there must be a death penalty in this country, then it must not be applied in such a way that it discriminates against people by virtue of the color of their skin. And make no mistake, discrimination is exactly what we have in the current application of the death penalty in our country today. Death penalty proponents and death penalty opponents have both sided in supporting this act, because all of us are offended by the existence of this racial bias in sentencing.

In 1987 in the McCleskey versus Kemp case, the Supreme Court of the United States of America upheld that statistical evidence, no matter how comprehensive or compelling, could not be accepted in death penalty cases absent some legislative directive. Is that what our justice system is about, ignoring evidence, ignoring discrimination? Our judicial system and its rules are supposed to be honest, supposed to be evenhanded, supposed to be unbiased, but right now that is not the way it is in all too many of our States.

Nobody on the floor of the Senate is here to argue that a problem does not exist. This is not a serious debate about whether a problem exists. The old maxim is absolutely true and I wish I did not have to say this, Mr. President: Capital punishment is all too often for those who do not have the capital.

Congress recognized that there was a problem and that we needed to closely examine it, and that is why we authorized the General Accounting Office to study the pattern of racial sentencing. The GAO did its study and the General Accounting Office released its study in February 1990, and the results are clear. They found "a pattern of evidence indicating racial disparities in the charging, sentencing and imposition of the death penalty."

In 82 percent of the cases examined, the race of the victim was found to be a factor in influencing the sentencing—82 percent of the cases. The GAO does not work for the American Civil Liberties Union. The GAO does not work for a death penalty project. The General Accounting Office works for us and they say there is a clear pattern of discrimination. That is an unpleasant truth, but that is an unpleasant truth that we must face up to. Leadership is having the courage to deal with basic problems, and this is a fundamental problem in our society: Discrimination; discrimination in sentencing.

Discrimination is a blight on our criminal justice system and our society, and I would argue that this discrimination undermines support for anyone who feels strongly about law and order.

The Racial Justice Act would respond to the Supreme Court's ruling and allow the use of valid statistics in death penalty cases. All the Racial Justice Act says is that when a defendant is facing the death penalty, he or she should have the opportunity to use valid statistics to show that this sentence was based upon race. In each case, the prosecution will have a full opportunity to dispute the evidence and the validity of the statistical data. The only thing this act does is make our judicial process fair by allowing the introduction of valid statistical evidence in capital cases.

This act does not endorse a particular statistical study. It does not create a presumption of racial bias. This act does not overturn the death penalty, although I would like to see that happen.

This act merely and simply says that a defendant should have the opportunity to introduce valid and relevant evidence of discrimination. That is why this is a basic civil rights vote. I do not see how anybody can be opposed to it.

Since there is no denying that the problem exists, I think there is a real, not so obvious, but important reason why there are those who oppose this Racial Justice Act. And that is because all too many people do not want to confront what is a political bombshell which is, there is a clear pattern of racial discrimination when it comes to sentencing, when it comes to capital punishment.

What I am trying to say today, Mr. President, to the very best of my ability, the time for playing politics on a basic human rights, civil rights question, is over and the time to pass this legislation, even if it is a difficult vote has come. This Racial Justice Act is about a commitment to justice that says that justice does not end at the courtroom door and it is a commitment that says that we, as the U.S. Senate, that we, as the U.S. Congress, are prepared to cast courageous votes to support the civil rights of people of

color in the United States of America. That is the very best of our tradition, and that is what I hope we will do. Thank you, Mr. President.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the time for debate only be extended until 4:45 p.m., with the majority leader being recognized at the end of that time.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MURKOWSKI. Mr. President, 106 days ago the President challenged the Congress to pass transportation and crime legislation within 100 days. Yesterday, the Senate passed the highway bill and today the Senate takes up S. 1241, the crime bill. While I am pleased that the Senate is considering this important legislation, I would have preferred consideration of S. 635, the President's sweeping antiviolent crime bill. While we all agree in purpose that Congress must respond to our Nation's violent crime problem, we do not agree on the method for addressing this problem.

BIDEN BILL IS FLAWED

The bill on the floor today is well-intentioned, but flawed. It would unnecessarily restrict the rights of law-abiding gun owners, but does not strengthen the penalties against those who would use firearms in the commission of a violent crime. The revisions to habeas corpus procedure in S. 1241 would have the effect of allowing convicted murderers on death row to draw out what is an already protracted appeal process. Changes in the exclusionary rule included in the bill are more narrow than existing case law exceptions and would require that evidence vital to felony prosecutions be excluded because of legal technicalities. I do not believe that this bill is in the best interests of the American people who are besieged by an epidemic of crimes of violence.

PRESIDENT'S BILL IS BETTER APPROACH

A more effective approach to halting the incidence of violent crime in America is outlined in the President's bill, S. 635, the Comprehensive Violent Crime Control Act of 1991. This bill is the product of an unprecedented national summit on law enforcement responses to violent crime conducted by the Attorney General. The legislation represents the steps Congress must take in order to address violent crime.

DEATH PENALTY

The President's bill provides for an enforceable Federal death penalty, by establishing constitutional procedures for the implementation of a Federal death sentence. The bill authorizes the death penalty for the most heinous of Federal crimes including murder of law enforcement officers, murder for hire, fatal kidnapping, terrorist murders, and murders in violation of civil rights statutes. The President's bill also would provide the death penalty for drug kingpins, and for any murder in the course of a felony violation of Federal drug laws. S. 1241 does not adequately address the problem of drug-related violence, providing for the death penalty for murders committed in the course of only certain violations of Federal drug laws.

HABEAS CORPUS—LIMIT NEEDLESS APPEALS

Reform to habeas corpus procedures is included in the President's bill to curb abuses of this process. The provisions include time limits for filing, limitations on second and successive habeas petitions, and time limits for disposition of habeas petitions by Federal district and appellate courts in capital cases. These provisions reflect the view that to strengthen the criminal justice system's credibility, we must put an end to the never-ending succession of appeals.

EXCLUSIONARY RULE—GOOD FAITH

The President's bill also codifies the good faith exception to the exclusionary rule which has been recognized by the Supreme Court. This provision would provide for the admittance of evidence in warrant and nonwarrant cases where the conduct of the officers carrying out the search and seizure was reasonable. This provision also includes an exception to the exclusionary rule for firearms seized by Federal law enforcement officers in prosecutions of dangerous offenders where alternative safeguards against search and seizure violations are established. The bill introduced by the chairman of the Judiciary Committee takes a more narrow view than the existing caselaw exception, providing only that evidence will not be excluded if a police officer reasonably believed in good faith that the warrant he obtained complied with the law.

GUN CONTROL PROVISION UNACCEPTABLE

The gun control provisions for S. 1241 are most objectionable. The 7-day waiting period contained in the bill will not stop criminals from obtaining weapons. However, it would unnecessarily restrict law-abiding gun owners. The only way to stem the tide of higher crime is through stiffer penalties on criminals. This fact is recognized in the provisions of the President's bill, which proposes increased penalties for serious gun offenses and strengthened penalties for firearms possession by offenders with prior convictions for violent felony or serious drug offenses. It also imposes a 10-year mandatory prison term for use of semiautomatic weapons in a crime of violence. The President's bill makes substantial prison time a certainty for drug traffickers and other criminals who use firearms to commit their crimes.

While S. 1241 does contain provisions requiring a background check of potential gun purchasers, which I support, the 7-day waiting period is superfluous and will not have a significant impact on our efforts to keep guns out of the hands of violent criminals and eradicate violent crime.

CONCLUSION

Mr. President, the American people rightly demand from Congress a crime bill which will protect their right to be free from the fear of violent crime. The President's bill represents real reform toward reaching that goal. While the bill before us may have superficial appeal, by expanding the rights of criminals at the expense of law-abiding citizens, it does not move us closer toward our goal. I urge my colleagues to reject the Biden bill and support the substitute amendment containing the President's crime bill.

Mr. COCHRAN. Mr. President, let me first compliment the distinguished Senator from South Carolina [Mr. THURMOND] for the courageous and valiant effort he has made on the Judiciary Committee to convince that committee that the President's bill ought to be reported with favor to the Senate and recommended for passage.

I am concerned that we are continuing to see this agreement within the committee and a failure to reach a consensus on legislation that would really be effective in dealing with the serious problems we face today because of the scourge of crime on the streets and in our communities and in States throughout our great country.

The crime bill that was passed by the Senate must address the problems that we face in society and in the criminal justice system itself. I worry that the Biden bill that is being put before the body does not meet that challenge.

This crime bill ought to respond to the shocking facts that we see in our country today. For example, a murder is committed in the United States every 25 minutes, a rape every 6 minutes, and a burglary every 10 seconds. These are minutes and seconds that continue to go by.

The President challenged the Congress to react promptly to pass a bill that meets some of the needs that we

have for criminal justice reform. He asked for a 100-day reaction by the Congress. It has been 100 days since the distinguished chairman and the former chairman of the Judiciary Committee, Mr. THURMOND, introduced the President's bill.

I think the time for action is now. I am glad the Senate has turned to the consideration of the crime bill. I congratulate the leader for scheduling it as he has now for the Senate's consideration.

But we must not lose sight of the fact that what is required by the Senate is not just taking up a bill but it is taking action, strong and decisive action, to ensure that criminals will be arrested, that criminals will be prosecuted, and that criminals will be punished for the commission of violent crime in the United States today.

Americans in every State, in every city, in every community, worry that they may be the next victim of a violent crime. Just 2 weeks ago, for example, in Arlington, TX, a man who had served only 7 years out of a 20-year sentence for murder was out of jail on bond on drug charges. He had not yet been arrested on some new charges that had been brought because police had a heavy caseload. He killed a 10-year-old girl and two of her relatives because the family had refused to drop criminal charges against him.

Mr. METZENBAUM. Mr. President, will my colleague yield for a moment so we may get an extension of time?

Mr. COCHRAN. I am delighted to yield to my friend.

Mr. METZENBAUM. I ask unanimous consent that the time for debate only on the bill be extended until 5 p.m., and that the majority leader be recognized at the end of that time.

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

Mr. COCHRAN. Mr. President, I thank my distinguished colleague from Ohio.

Mr. President, there is a disturbing story, but it also carries a message that I hope is not lost in the Senate. It highlights a serious problem in the criminal justice system that needs to be reformed. Our system has had opportunities to prevent the kind of crime that I just described, opportunities to keep that person in jail, to make sure that he served his sentence, opportunities to support the local police in their efforts to deal with the heavy caseload that they face. The system broke down in this instance, Mr. President.

There is one proposal in the President's bill that I think would help address one of these problems that we continue to have brought to our attention. It stresses the swiftness and certainty of punishment for violent criminals, those who continue to commit violent crimes. We need to protect, in a more effective way, the innocent members of our society who have to continue to deal with the criminals who commit crimes over and over again.

The crime bill the President has recommended will authorize the death penalty for an additional 38 Federal felonies. It would include drug kingpins and persons who commit murders in the course of drug-related felonies. It would also include retaliatory murders of witnesses and jurors, fatal uses of weapons of mass destruction against American nationals anywhere in the world, and murders that occur during hostage taking.

The crime bill recommended by the President also contains effective procedures for restoring an enforceable Federal death penalty. In some States those who have been convicted of murder have been avoiding punishment for as much as 15 years. The Texas attorney general, Daniel Morales, recently said that the next execution in his State would probably be of an inmate who had been imprisoned awaiting execution since 1976. The President's bill will prevent criminals from making a mockery of our judicial process after they are convicted.

Mr. President, I believe the bill submitted by the distinguished Senator from South Carolina is much more convincing in its commitment to action than the bill being called up now by the Democratic leadership.

I urge the Senate to approve a substitute that will be offered by Senator Thurmond. It is the bill suggested by President Bush and it deserves to be enacted.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I want to commend the able Senator from Mississippi for his remarks. There is no question about it—the public is demanding a strong crime bill. The President has recommended a strong crime bill. We intend to offer that bill.

There was objection on the part of some of the Democrats that the President's bill did not have any funds in there to do certain things. So we have added the funds that Senator BIDEN had in his bill so you set the strong crime bill with the Biden funds.

What more do you want? That would give us the type of legislation we need here in order to combat crime. We ought not to delay this thing. We ought to go on and agree—to offer some amendments and then start voting. Let us get going. We have been on this bill all day. We have not voted a single time yet. All we want is just get a vote.

I think when you get a vote, the people will realize that we favor this bill, the law enforcement people favor it, the national law enforcement people in this country favor this bill. The national sheriffs favor it. The national police favor it. There is just no use in delaying the vote any further.

There is no use to pass a watered downed, weak crime bill. That is deceptive to the public. We do not want to pass a bill that enhances the opportunities of the criminals. We want to pass a bill that protects the victims. We ought to go ahead and vote as soon as we can.

I think the able chairman of the committee is about ready to vote. I hope he is. We can go ahead and save time.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I am a little confused. The Senator from South Carolina is suggesting the President's crime bill is watered down because I am ready to vote on the President's crime bill right now. If the Senator from South Carolina does not want a vote on the President's crime bill, if he wants to vote on the President's crime bill with the Biden crime package attached to it, we can probably vote on that, too. That is a separate issue. But I am a little confused.

Is the Republican leadership saying they do not want a vote on the President's bill? If they want a vote on the President's bill, we can do that, bam. We can vote on the President's bill with the Biden bill attached to it if you want to do that, too. But I am just wondering what bill.

Is it the President's bill that is watered down.

Mr. THURMOND. The Biden bill is watered down on crime. We are willing to vote on the President's bill and the main objection as I understood Senator BIDEN, had he talked about it so much, that there is no money in there to do these things, that he put a lot of money in this bill.

Here is a list of funding provisions we have added: State local law enforcement, $1 billion; Federal counterterrorism, $65 million; law enforcement scholarships, $30 million; Federal law enforcement, $45½ million; antigang, $100 million; police corps, $400 million; rural crime initiative, $76 million; drug emergency areas, $300 million; regional prisons, $700 million; boot camps, $150 million, organized crime division, $45 million, and it makes a total of $3,221,000,000.

You have advocated this, and the main difference has been we did not have any money then. Now we will take your money.

In addition, we will add $550 million that was cut in the House from the President's 1992 budget for Federal law enforcement. The House cut that out. We will add that to it. Since you are intent on having these money provisions, we are going to give it to you; $100 million for instant gun checks, we are going to give you that. That makes a total of $3.83 billion. So you are getting mainly what you want, except we are getting the President's crime bill that we want. Working together, we

can accomplish it all. So let us go ahead.

Mr. BIDEN. Mr. President, I understand it now. So that means that the President's crime bill, absent helping local police officers and the like, is obviously not going to do much about crime.

I want to know, has anybody called the President to tell him he is not going to get a vote on his crime bill? Because that is not the President's crime bill. I am delighted to vote on that as well, and we are going to vote on that.

I want to make it clear that, as I understand the substitute, the ranking member of the committee has dropped provisions that the President told us were critical. He said we need this antiterrorism provision, alien antiterrorism. Apparently, they went ahead and dropped that. Then the President said, by the way, we need an exclusionary rule that allows police to go in under any circumstances, as long as they get a gun. I understand now they have dropped that out of the President's bill.

Mr. THURMOND. Will the Senator yield.

Mr. BIDEN. Sure.

Mr. THURMOND. Mr. President, we took them out, because it was objected to, so we can get the rest of the crime bill through.

Mr. BIDEN. Mr. President, if I have been that successful in getting that many onerous provisions out of the crime bill and getting so many more enlightened provisions into the crime bill, if we work a little harder, we may have a really good crime bill.

As I understand it, once again, the Senator from South Carolina always does do this—he seeks to get a solid piece of legislation.

I do not want anybody confused here. What we are about to vote on, when we vote on it, bears no resemblance, no resemblance to the President's so-called crime bill. So I want the RECORD to show when we vote on that, it was not the Senator from Delaware who denied the President his vote on a crime bill; it was the Republican leadership that denied the President.

I am delighted by what they are doing. It makes me happy. We are moving in the right direction. I just want the President and the press to understand that the Democrats did not deny the President his vote. The Republicans obviously concluded that it was not good enough, and they are adding these other things, which is good. I am all for it. We will be able to work something out and vote on it. We are working in the right direction.

I yield the floor.

Mr. THURMOND. Well, Mr. President, the President has offered a wonderful crime bill. He did not put in a lot of this money because he did not feel it was wise at that time. But we are putting it in our bill in order to get this crime bill passed. These other items he says are being taken out, my good friend objects to them, so we took them out. We still think we will have a good cime bill. So this is really the President's bill with a Biden attachment, so let us go ahead and pass it right away.

Mr. BAUCUS. Mr. President, Tuesday I joined with Senators BIDEN, PRYOR, CONRAD, BUMPERS, and HARKIN in introducing a bill which will help rural areas address important components in the war on drugs: Interdiction, treatment, and prevention.

Just recently, two men were arrested for making methamphetamine or crank in a lab hidden in a camper trailer parked outside of Worden, MT, some 20 miles outside of Montana's largest city, Billings. Agents with the U.S. Drug Enforcement Administration, the Montana Criminal Investigation Bureau, and the Yellowstone County Sheriff's Office seized a lab and enough chemicals to make 3 to 4 kilograms of methamphetamine.

Only yesterday, the Southwest Montana Drug Task Force arested 40 suspects involved in illegal drug trafficking, including cocaine, marijuana, and LSD. This sting operation might be the drug task force's last, however, for county authorities have denied Sheriff Bob Butorovich's request for further funding.

As I have said repeatedly, rural areas are not immune to the drug problems of this country. In fact, the latest crime figures show that violent crimes linked to drugs have increased faster in Montana than anywhere else in the country.

For instance, Montana experienced a 23-percent increase in violent crime totals in 1989—much more than in either Los Angeles or New York.

DEA cocaine arrests in Montana have increased 100 percent in the last 5 years. My colleague from Arkansas, Senator PRYOR, tells me his State has experienced a similar increase.

Rural areas are especially conducive to methamphetamine production since crank labs are less easily detected in the vast and heavily wooded areas of my State.

And drug dealers do not have to import crank—they can make it anywhere here at home, even in a camper trailer. And unfortunately, they are making it in Montana, Arkansas, and other rural States.

I am encouraged that the legislation this body passed last year that increased funding for drug-related crime and provided an additional 7 DEA agents for Montana had helped bring drug traffickers like the ones I mentioned to justice. However, there are many more throughout the State who don't get caught.

The Rural Crime and Drug Control Act of 1991 is a solid step toward controlling drugs in rural areas. The bill authorizes $45 million to hire 350 DEA agents and support personnel to target rural drug trafficking, $50 million in aid to State and local law enforcement officials in rural areas, and $1 million for a specialized course for law enforcement personnel from rural agencies.

Reducing the amount of illegal drugs found in rural America is an integral part of the national drug strategy, but it is incomplete without a solid plan for treatment and prevention. Substance abuse, including alcoholism, has taken its toll in Montana, as it has in Arkansas, California, Washington, DC, and other places across the country. But resources for interdiction, treatment, and prevention are not readily available in many rural areas.

The Rural Crime and Drug Control Act of 1991 addresses these needs. This bill provides $25 million to the Office for Treatment Improvement to establish drug treatment programs and $25 million to the Office of Substance Abuse Prevention to foster drug prevention efforts in rural areas. In addition, the bill directs the Alcohol, Drug Abuse, and Mental Health Administration to use its clearinghouse to collect and disseminate information about rural drug treatment and prevention.

I would like to thank Senator BIDEN for bringing this legislation to the Senate floor. I commend him for including rural States in his important efforts to control crime in America.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT REQUEST

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator GRAHAM of Florida be recognized to offer an amendment to strike section 207 of S. 1241; that there be 90 minutes for debate on the amendment, equally divided and controlled between Senators GRAHAM and KENNEDY; that no amendment to the amendment be in order, nor the language proposed to be stricken; that when all time is used or yielded back, the Senate, without intervening action or debate, proceed to vote on or in relation to the Graham amendment.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, I object.

Mr. MITCHELL. Mr. President, I regret the necessity for the distinguished Republican leader to object to this request, although I understand the circumstances which lead to it.

For the information of Senators, we have now been on the crime bill all

day. There has been a good bit of debate and discussion on the bill, so I do not view that time as having not been effectively utilized.

This is a very important bill. The President, as we all know, has repeatedly stated his interest in having this bill considered and action completed upon it, and I have been trying very hard to do that, but without success and without being able to get an agreement on how best to proceed.

It had been my feeling that if we could reach an agreement on how to proceed, we could have completed action on the bill much earlier than will otherwise be the case. That is not now possible.

AMENDMENT NO. 365

Mr. MITCHELL. Mr. President, under the circumstances, I now, in behalf of Senator GRAHAM of Florida, send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. GRAHAM, proposes an amendment numbered 365.

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

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

The amendment is as follows:

On page 35, strike from line 12 through line 18 on page 44.

AMENDMENT NO. 366

Mr. MITCHELL. Mr. President, in behalf of Senator GRAHAM of Florida, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. GRAHAM, proposes an amendment numbered 366.

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

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

The amendment is as follows:

On page 35, strike from line 12 through line 17 on page 44.

Mr. MITCHELL. Mr. President, we will now commence debate on these amendments, and I renew my hope that we can proceed to get a vote on these amendments within a reasonable time and proceed to consider further amendments to the bill, and also that we can continue our efforts to reach an agreement for further handling of the bill.

As I said, I know that all concerned are anxious to complete action on this bill at the earliest possible time.

Mr. DOLE. If the majority leader will yield, I just say I think this will much stimulate discussion about reaching some accord on how we can figure out some rotation plan, or whatever, on amendments, or maybe some agreement on the number of amendments.

But we will continue to pursue that with the majority leader and with the manager of the bill, along with the distinguished Senator from South Carolina, Senator THURMOND.

Mr. MITCHELL. Mr. President, I thank my colleague for his cooperation.

Mr. GRAHAM. Thank you, Mr. President.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. THURMOND. May I make a brief statement, just about a minute?

Mr. MITCHELL. Mr. President, I yield to the distinguished Senator.

Mr. THURMOND. Mr. President, I want my colleagues to be clear on what is happening here. I have an amendment which embodies the major provisions of the President's crime bill and which leaves the Biden funding levels in his bill. It contains the tough reforms called for by the President and leaves intact Senator BIDEN's $3 billion-plus for law enforcement.

Now, if this tree is filled up here, I am being blocked from offering my amendment. The majority will permit a vote on the President's bill only, as I understand, if it is offered on their terms, with the racial justice amendment. The majority is trying to clean up their bill. That is fine. The racial justice should not have been put in there to start with. Now they want to take it out. They know it cannot be passed, and they hurt their own bill.

I will be here, I tell you, with my amendment, as long as it takes to get a vote on this bill, my amendment, which is the President's crime bill, with the funds offered by the distinguished Senator from Delaware, the chairman of the committee.

Mr. MITCHELL. Mr. President, I momentarily yield to the chairman of the committee, but I would just like to say in response to my colleague, for months the President has said he wants a vote on his crime bill. For months the distinguished Senator from South Carolina has said he wants to vote on the President's crime bill.

We have said here today over and over again we are prepared to vote on the President's crime bill this evening, but the distinguished Senator from South Carolina now says no; he does not want to vote on the President's crime bill. He wants a vote on the President's crime bill with some changes, changes taken from the bill of the Senator from Delaware [Mr. BIDEN].

So it reminds me of the old tale, you ought not to ask for something that you do not really want because you might get it. We had the President's bill and we are prepared to vote on that this evening, but all day we have been prevented from proceeding.

So I simply say to the Senator—and I am going to yield here momentarily to the Senator from Delaware, who is the chairman of the committee—I have the greatest respect and affection for the Senator from South Carolina. If he wants what he has been saying he wants, and what the President has been saying he wants is a vote on the President's crime bill—not the President's crime bill and the crime bill of the Senator from Delaware melded together—then we are prepared to do that. We have been prepared to do that all day, and we are prepared to do that right now. But that is not what has been asked.

At the last minute, at the last minute, now we are told: We do not really want what we asked for. Now we want something else.

So my response is—let everybody be clear about this, so there is no misunderstanding; the Senator from Delaware has been most involved—at this moment, we are prepared to agree to vote on the President's crime bill, which is what the President and the distinguished Senator from South Carolina have been saying all along they want.

So with that explanation, Mr. President, I yield to the distinguished Senator from Delaware.

Mr. BIDEN. Mr. President, we are making some progress; we are making some progress here. My Republican friends have jettisoned about 20 percent of the President's crime bill, I guess assuming it made no sense.

The provisions on exclusionary rule that the President testified before my committee in the person of the Attorney General were critical. The leadership, the Republicans, have said no, it is not a good idea. We should not have those searches for guns in there, and we are going to eliminate that. I think that is progress.

Now, they have also said the imposition of what are essentially the diplock courts, the provision that says you should be able to go in and try someone in absentia and in secret, and throw them out of the country, which the President said was important and he wanted. They have now said: That is a bad idea; let us throw that out of the President's bill. Progress.

They have also then said, of 200 of the 233 pages of the bill of the Senator from Delaware, this bill right here, they have essentially gone like this: They have taken this portion of it, taken off the front, and taken the rest and stapled it to the back of the President's bill, and I am happy with that. Progress.

The President, though, unfortunately, in the person of the Attorney General, before our committee came and testified. And he said he was against all of this stuff the Senator from Delaware wants, but that is progress.

Now, what I want to know, has anybody told the President? Because what

I do not want to have happen is what my friend from Texas made reference to before. A lot of sleight of hand works around this place. The House of Representatives voted for the death penalty; we voted for the death penalty. We got into a conference. The House would not even support their own House's position.

We could not get support for a death penalty without the racial justice provision. I moved to eliminate the racial justice provision. We could not even get a vote.

What I am a little worried about is that, we go ahead and pass this—and I know the Senator from South Carolina is not being cynical at all about this—we go ahead and pass this, and all the things the Senator from Delaware and the police of America say are critically important in stopping crime. Is there going to be support? Does this mean the President supports this; is he for these things? If he is for these things, we really have a deal. We are really getting there.

But what I do not want to have happen is just a cynical effort to be able to vote on a bad habeas corpus bill and a bad—the only two things left are the President's version of habeas corpus and the provision relative to good-faith exception and exclusionary for a warrantless search, because we are going to strike racial justice. There is not the votes in here for that.

The only thing is the death penalty. There is no death penalty provision in the Biden bill and the President's bill. That is the only difference. They accepted those as well. There may be some other minor difference.

So I guess what I am trying to say here is, is this an effort just to get rid of guns; is that what this is all about? Is that what we are doing?

Is that what we are doing? Because if that is the case, then we are really not, because they did not accept the provision that deals with guns that the Senate once voted for in the DeConcini bill or the Brady bill.

Does this mean we are going to get up-or-down votes on those if we accept this bill? Then it is OK by me if we can work this out. I just hope we understand what we are doing here. This bears no relationship to what the President said he wanted. The President's Attorney General had explicitly testified against the Biden bill and all the provisions that are being accepted by the Republicans. So I guess I end by saying, does the President know about this? Does the President know that this is his bill?

With that I yield the floor.

Mr. GRAMM. Mr. President, I ask unanimous consent that the distinguished Senator yield so we might discuss this a moment.

The PRESIDING OFFICER. The Senator from Florida has the floor.

AMENDMENT NOS. 365 AND 366

Mr. GRAHAM. Mr. President, on my behalf the majority leader has offered two amendments which would have the effect of removing from this bill the provision known as the Racial Justice Act.

Mr. President, it is difficult to speak in opposition to a provision that is self-described as a Racial Justice Act, and I do so with great admiration for those who, including myself, are committed to the cause of nondiscrimination and the equal application of justice in our American judicial system.

But, Mr. President, I must submit that the Racial Justice Act provision of this bill serves another purpose. The reality is that by enacting the Racial Justice Act, this Congress, in a bill designed to enhance Federal criminal justice standards, procedures and laws, will destroy the right of the States to impose the death penalty in a constitutional manner.

The Racial Justice Act of 1991 might more appropriately be called the Death Penalty Abolition Act of 1991.

Seldom has a proposed Federal law gone so far at one time as to unravel: First, the interest of the States in protecting citizens from murderers; second, to unravel the prosecutorial discretion recognized in every State; and, third, to unravel the jury system.

For the past 2 years, I have studied this act in great detail. I have asked for assistance from people on both sides of this issue. I am more convinced than ever that the Racial Justice Act in its current form is unacceptable. This proposal, as part of legislation establishing a Federal death penalty, prohibits States from imposing the death penalty in a "racially discriminatory pattern."

What is that pattern, Mr. President? An inmate must only show that death sentences are being imposed disproportionately on members of one race or on persons who commit crimes against members of another race by using "ordinary methods of statistical proof." Once that simple evidentiary standard is met, then the burden of proof shifts to the State to "establish, by clear and convincing evidence that identifiable and pertinent nonracial factors persuasively explain the observable racial disparities comprising the pattern."

In other words, simply by showing statistical evidence of disproportion application of the death penalty, the proponent is able to shift to the State the impossible burden of showing, by clear and convincing evidence, reasons for the statistical disparity.

Mr. President, this is not a new issue. As part of the Anti-Drug Abuse Act of 1988, Congress asked the General Accounting Office to determine if the race of either the victim or the defendant influences the likelihood that defendants will be sentenced to death.

What the General Accounting Office did—and their work has been previously referred to—was not an independent analysis of that question. Rather, they reviewed and critiqued existing research, compiled the analysis of that existing research, and issued a report in February of 1990.

A review of this limited analysis shows the problem of using statistical evidence in the criminal justice system. GAO found that 82 percent of the 28 reports which they found to be legitimate showed some race-of-victim trends. Another 18 percent of reports, meeting similar standards of academic acceptability, found no such patterns.

The evidence relating to race of a defendant was very unclear. One study, in fact, found that in rural areas black defendants were more likely to receive death sentences than white defendants. In urban areas, white defendants were more likely to receive death penalty than black defendants. Other studies have shown equally confusing results.

As the Georgia deputy attorney general Bill Hill said in testimony before the Judiciary Committee, the Racial Justice Act requires a criminal justice system not susceptible to mathematical predictability to produce mathematically predictable results.

The very nature of the criminal justice process does not lend itself to statistical precision. Each death-eligible decision is inherently individualized and not necessarily subject to being categorized.

Proponents of this legislation point to the use of statistical evidence in the area of employment discrimination as the basis of this legislation. However, the criminal justice system is inherently different from the employment process. As the Supreme Court has said, the very nature of the capital sentencing decision, and the relationship of statistics to that decision, are fundamentally different from the corresponding elements of a title VII employment discrimination case.

Mr. President, I also feel that public policy considerations strongly call for the removal of the Racial Justice Act from this bill.

Historically, prosecutors have been entrusted with wide discretionary powers. These powers include the decision to seek the death penalty where the law permits. Prosecutors are also possessed with the power to grant leniency. This power is inherent in our criminal justice system. To adopt this bill would call for a complete overhaul of the criminal justice system, an overhaul which I do not believe this Congress should be prepared to make, to make every State criminal justice system, as part of legislation, add a Federal death penalty.

If the Racial Justice Act is a proper response, we should be prepared and, in fact, I think we should insist that the methodology formulated by the Racial Justice Act be used not just in the relatively few capital cases, but in all aspects of our criminal justice system.

Think for a moment about the mass confusion our States would face as they attempted to deal with the ever-increasing problem of crime if the Racial Justice Act applied to all crimes.

The same confusion will result in the death penalty area if this legislation becomes law.

I am convinced that this bill would make the system much more arbitrary and capricious than even the proponents of this bill would argue that it is today.

Currently, the decision to execute is an individualized decisionmaking process.

The courts have repeatedly stressed that the Constitution requires an individualized determination as to the appropriateness of the death penalty, taking into account the character and record of the murderer and the circumstances of the offense.

This bill would substitute a different mode of analysis: No State may execute a murderer who deserves execution if other murderers who are equally deserving of execution have somehow managed to obtain undeserved mercy.

This is absurd; it is akin to prohibiting prison sentences for burglars because some burglars never got caught, Mr. President, that would be an arbitrary and capricious system of justice.

In summary, the proposed Racial Justice Act seeks three goals.

First, the act is designed to shift the focus of judicial inquiry from the defendant on a case-by-case basis to the Government on a systemwide basis.

Second, because of the inadaptability of statistical evidence to the criminal justice system, the act guarantees almost all criminal defendants a prima facie case.

Finally, by requiring that a criminal justice system not susceptible to mathematical predictability produce mathematically predictable results, this act would effectively end the ability of the States to constitutionally apply the death penalty.

Mr. President, I encourage my colleagues to oppose this act.

However, I want to take this opportunity to thank the distinguished Senator from Massachusetts for his efforts to abolish discrimination in all aspects of our society—a goal I endorse and a goal that I encourage all Members of the Senate to endorse.

With our common goal in mind, I will be offering an amendment which offers a proper response to the issue of potential discrimination in our entire justice system.

In analyzing this issue, I had three goals in mind.

First, Congress should do nothing to disrupt the discretionary nature of our criminal justice system.

Second, our States not be prohibited from applying their laws in a constitutional manner.

Third, we should attempt to analyze the issue of not only potential discrimination in the capital sentencing process, but also potential bias in the entire judicial system—from our law schools to our courtrooms.

I am convinced that an analysis of these three issues can best be conducted in the individual States.

In fact, the Florida Supreme Court established a statewide commission to study the issue of racial and ethnic bias in the State court system.

I am pleased to report that the recommendations made as a result of the first stages of that study were adopted in whole by the Florida Legislature this past spring.

I understand that several other States have established similar commissions and other States are studying the advisability of such studies.

The proper role of Congress is to encourage our States to look at their entire justice systems and for the States to formulate their own responses to any racial or ethnic bias.

My amendment calls for the authorization of $10 million over the next 5 years to make grants to States for such studies.

The grants would be administered by the Attorney General, through the Bureau of Justice Assistance.

Any such plans would have to be established by either the highest court of the State, the State legislature, or the chief executive officer of the State.

In awarding grants, the Attorney General would give priority to those States that impose the sentence of death for certain crimes.

In establishing criteria for awarding the grants, the Attorney General would take into consideration the population of the respective States, the racial and ethnic composition of the population of the States, and the crime rates of the States.

It is my hope that States will use these funds to look at their entire court system and develop innovative methods of not only dealing with discrimination—but also of encouraging participation in our court system by all members of our society.

The amendment which I will be offering later in this debate is virtually the same as an amendment which I offered on our most recent crime bill and which was adopted by a majority vote of the members of the U.S. Senate.

I am encouraged, therefore, that the Senate will respond again by recognizing that this approach, looking comprehensively at the total justice system of a State through a procedure which grows from either the highest judicial, legislative or executive office within that State, is the more appropriate manner to meet our very appropriate concern that justice in America be administered in a nondiscriminatory manner.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in strong support of the motion to strike the Racial Justice Act from this bill. I oppose the racial quota provisions and urge my colleagues to vote to strike them. The so-called Racial Justice Act was defeated last year by a vote of 58 to 38. A similar amendment was soundly defeated by the full Senate when it was offered as an amendment to the 1988 drug bill by a vote of 52 to 35. This version of the Racial Justice Act is vastly different and much more onerous than the 1988 amendment because it not ony applies to the Federal Government, but to the States as well.

The Federal death penalty in the President's bill clearly comports with the constitutional requirements outlined by the Supreme Court and establishes the procedures for the imposition of the death penalty for the numerous Federal crimes that currently authorize a sentence of death and other vicious crimes. Clearly, there is no constitutional requirement that the Racial Justice Act amendment be a part of any death penalty legislation.

Let me make one point crystal clear from the start: A vote to keep this racial quota provision in this bill is a vote against the death penalty. Just so no one is confused, the Racial Justice Act is a killer amendment. It must be removed from the bill.

Mr. President, the Racial Justice Act would amend Federal law to invalidate the death penalty, both in the Federal Government and in every State, whenever statistics show a racially disproportionate pattern without regard to the brutality of the crime committed. Supporters of the racial quota death penalty provisions would have statistics used to determine the sentence of a capital defendant as opposed to the rational judgment of honest judges and juries after a full examination of the heinous facts in a particular case. It is important to note that the Supreme Court examined the issue of using past statistical data to invalidate the death penalty in the case of McCleskey versus Kemp. The Supreme Court rejected this proposal and noted that to take this proposal "to its logical conclusion, throws into serious question the principles that underlie our entire criminal justice system * * *". The unconstitutionality of such a quota system under the equal protection clause is clear. The Supreme Court's death penalty decisions seek to minimize the role of race in capital sentencing. But the racial quota provisions would make racial considerations paramount and conclusive with no emphasis on the nature of the heinous crime committed.

Aside from questions of the RJA's constitutionality, the death penalty would be rendered ineffective, and impossible to impose. It would impose statistical quotas for both victims and killers, thereby dispensing justice by mathematical computation based upon statistics from other cases, rather than

by a jury in each particular case. Computers doing computations should not determine the punishment of an individual who has committed a ruthless offense. Judges and juries who are sworn to uphold the law and be impartial should be the final arbitrators of appropriate punishment.

Mr. President, I think supporters of the racial quota provisions would agree with the following statement: "Race should play no role whatsoever insofar as far as the death penalty is concerned." Yet the Racial Justice Act would do just that. It would permit vicious murderers to avoid a death sentence by invoking the race of their victims as a shield and it would put prosecutors in the position of seeking the death penalty based upon a racial quota system. In fact, death row inmates will use statistics to overturn all death sentences without having to show any racism in their own cases. For example, a Federal court would be required to overturn every death sentence in a particular State if a study is presented to the court which shows the death penalty is applied in a disproportionate manner. Every death sentence—including the death sentence of a white defendant, who murdered a white victim, found guilty by an all white jury, and sentenced by a white judge—would be overturned. The same would hold true if every person involved in the case was black. This makes no sense whatsoever.

Mr. President, I believe the President will veto this legislation if the Kennedy racial quota language is included. The Department of Justice is strongly opposed to this provision. Because the Racial Justice Act is itself constitutionally problematic, and threatens both to lessen the effectiveness of capital punishment and reinject racial considerations into its imposition, the administration is strongly opposed to any legislation which contains it. In addition, a majority of our Nation's State attorneys general oppose the Racial Justice Act as well as our Nation's prosecutors.

Mr. President, the Senate should give the President a crime package he can sign into law. When Congress chooses to act upon comprehensive death penalty legislation, it should take steps to ensure that the legislation can be effectively implemented. For Congress to pass a death penalty which includes such a provision which, in effect, would eliminate the death penalty would be a disservice to the American people.

In summary, let me make one thing clear. The Federal Death Penalty Act included in the President's bill applies to those who commit heinous, depraved offenses. The legislation applies equally, across the board, to anyone who commits such a crime.

Finally, I want to restate my position so that there can be no doubt in anyone's mind. A vote today in favor of the motion to strike the racial quota provisions is a vote for the Federal death penalty. A vote against the motion to strike is a vote to kill, not only this bill, but every State death penalty as well. A vote against this motion to strike is a vote to kill the death penalty in the 36 States which now have it.

For these reasons, I strongly urge my colleagues to vote for the motion to strike.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I want to be sure since our colleagues keep using the phrase "racial justice" that everybody understands exactly what we are talking about. The bill before us contains a provision with similarities to a bill recently adopted basically on a partisan vote in the House of Representatives, that has the effect of setting up racial quotas in the application of the death penalty. That is what is being called racial justice.

Mr. President, there is one thing about those who are in favor of racial quotas. They are absolutely consistent. We saw adopted in both Houses of Congress last year a provision that, in effect, imposed racial quotas in hiring. The President vetoed that bill and his veto was sustained by one vote.

Today we have before us a provision in the crime bill that imposes racial quotas on capital punishment. I ask my colleagues, do we want to sentence people to death or not sentence them to death based on race? I submit, Mr. President, that we do not. Such decisions should be based on their crimes, based on what they do, based on the offenses that they commit against society no matter who their daddy is, no matter how society may have done them wrong, whether they are a rich person or a poor person, no matter what color they are.

Mr. President, I think it is clear this amendment is going to be adopted. We are going to strike the racial quota provision. I think it is good that we are going to do it. I hope the House has that much judgment.

I want to turn my comments now to the comments of our distinguished chairman. A minute ago, we had a little discussion as we engaged in moving toward the real debate on the bill and we saw some gamesmanship and posturing on both sides of the aisle. Basically, let me try to explain the issue and what we on our side of the aisle are trying to do, so that everybody understands exactly what the issue is.

There are really three issues that we are going to deal with. One issue is money. Our dear colleague from Delaware has sweetened his bill by putting about $3 billion of authorization in it. It does not appropriate any money. It simply authorizes that money be spent.

The President's crime bill is a true anticrime bill. It is not an authorization bill for funding. So what our distinguished leader from South Carolina decided to do is, rather than debate money, is debate the substance of the crime bill. So our distinguished leader from South Carolina decided that we will simply accept the $3 billion of authorization knowing that it may never be appropriated, but on the other hand, from our point of view, it is not a big issue in dispute.

What we are proposing to do, and at some point we are going to have a vote on it, and I want people to understand it, is authorizing more money. If our distinguished colleagues on the other side of the aisle want to fund the war on drugs, we are going to give them an opportunity to do it by doing two things. We want to provide $100 million to set up a nationwide instant criminal check verification program, whereas they provide $50 million for a similar purpose. And we want to go ahead and authorize the money that the House has already cut from the President's war on drugs.

But our objective was to separate out the money issue so we could vote on the substance of the crime bill. Do we want a death penalty that is a real death penalty? Do we want to make it possible to admit evidence that is obtained in good faith? Do we want strict minimum mandatory sentencing? Do we want to reform habeas corpus to assure that people get a day in court, but that they do not get 20 years in court and thereby circumvent the whole criminal justice process? That is what we want to vote on.

A final issue that our dear colleague from Delaware referred to are the provisions in the President's bill that we have dropped from the substitute. I think everybody here knows that we are engaged in negotiations around the clock on the gun issue. I think there is some possibility we might reach a compromise. Many of the colleagues on my side and many on the other side are not equally optimistic, but I think it is possible.

So our objective was not to vote on guns. We are negotiating to go see if there can be a compromise. Our objective is not to vote on money. This is not a money bill. It was never meant to be a money bill. Our objective is to vote on the key issues.

If you want an effective death penalty, you want the bill that will be offered and that contains the President's proposal by the distinguished Senator from South Carolina. If you want a sham death penalty, then you want the bill that is pending before us. If you want habeas corpus reform so people get an opportunity to appeal but they do not make a lifetime profession of thumbing their nose at the criminal justice system while their victims suffer and mourn, then you want to vote for the President's bill that will be of-

fered by the distinguished Senator from South Carolina.

If you want stiff, minimum, mandatory sentencing to grab drug thugs and criminals by the throat, then you want to vote for the President's bill that is going to be offered by the Senator from South Carolina.

So that is what the issue is here. The issue that we really focus on is the crime bill, not guns. We are going to debate that. We are going to vote on it probably many times here. But the decisions to be made about the death penalty, about habeas corpus, about the exclusionary rule are converted into English as a good, tough, no-nonsense crime bill. That decision ought to be made on that issue.

That is what the distinguished Senator from South Carolina sought to do; take money off the table by agreeing to an authorization bill that funds everything the distinguished Senator from Delaware proposed, and what the President proposed that the House cut, and at the same time leave the gun issue to be decided later. We are going to get plenty of opportunities on that. Lest there be confusion, there is no trickery involved here. We want to vote on a crime bill and we want an up-or-down vote on it.

Finally, to be sure that it is absolutely clear, one of the reasons we decided to go ahead and deal with the money issue here is that we had people on the other side of the aisle say they would like to vote with us but they wanted to authorize $1 billion for State and local law enforcement.

Mr. President, what we have done is we have taken the money issue off the table. Now we can vote on the substance, we are going to vote on the substance finally so that everybody understands.

I want to repeat what the distinguished Senator from South Carolina said but in a little bit stronger form. We are going to have a vote on the amendment of the distinguished Senator from South Carolina. If we are here till Christmas, we are going to get an up-or-down vote on that.

And once it is voted on, once this crime bill is adopted, if the House does not move on the crime bill, we are for the next 4 weeks going to vote on this crime bill in the Senate, and after that, we are going to vote on it every single day until we finally do something about the No. 1 problem in the country. That is basically our plan.

I do not want anybody to say that we had not let them know what the ball game is. The ball game is we are not going to allow Congress to deny the President a chance to have his bill voted on, and we are not going to allow this game to occur where the American people are for the death penalty, the House votes for it, the Senate votes for it, and then it never becomes law; the American people want to allow the use of evidence gained in good faith, the Senate votes for it, the House votes for it, and it never becomes law.

That process has to stop. That is what this whole debate is about.

I yield the floor.

Mr. AKAKA addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I rise today to urge my colleagues to support the Racial Justice Act.

Mr. President, regardless of whether one supports the death penalty or not, we should all work to assure that it is prescribed in a nondiscriminatory fashion. We must ensure that criminal penalties are commensurate with the crime committed—not based on the skin color of the criminal or victim.

But, this is not happening. There is ample evidence of racial bias in the sentencing of convicted felons to death. A growing body of research conducted by social scientists since the reinstatement of capital punishment in 1976, confirms the existence of racial bias in determining who dies on America's death rows. In a recent report synthesizing 28 different studies, the General Accounting Office found "a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the Furman decision."

On sentencing, a study in Illinois showed that those who murder whites are four times more likely to be sentenced to death than the murders of blacks. An Oklahoma study found similar results. And in Colorado, the murder of a white person is 20 times more likely to receive the dealth penalty than someone who has killed a black person according to another study.

We should be embarrassed by these findings. In a country founded on the premise of an individual's right to equal treatment under the law, we should be ashamed of how the death penalty is now being imposed on our citizens, and we should do something about it.

The Racial Justice Act has one singular purpose: to allow the use of valid statistics as evidence of racial bias in the imposition of the death sentence in a particular case. It would allow a defendant to challenge a death sentence by offering valid statistical evidence of a substantial disparity in capital sentencing according to the race of either the victim or defendants. Once evidence has been presented that a death sentence furthers a racially discriminatory pattern, a State can rebut the presumption of discrimination by offering evidence that some additional, nonracial factor explains either the pattern or the sentence.

This legislation is necessary because in 1987, the Supreme Court held that, absent a statutory requirement, the Federal courts could not accept evidence of discriminatory death sentencing patterns as proof of discrimination in death cases. This decision ran counter to established evidentiary principles, under which statistics have long been accepted as proof of discrimination. In fact, the Supreme Court has repeatedly upheld the use of statistical evidence in other criminal justice contexts, such as jury selection. Nonetheless, the Supreme Court held that in the death penalty context the courts would need statutory authority to accept statistical evidence as proof of race bias. This legislation would provide that authority.

The Racial Justice Act will not abolish the death penalty as some have argued. It prohibits only the execution of those death sentences that are the product of racial bias.

Mr. President, I urge my colleagues to support the Racial Justice Act.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HEFLIN. Mr. President, I feel that we need a strong crime bill, because I want to remind my colleagues here in the Senate that, last year, over 6 million Americans fell victim to violent crime. By merely glancing at the latest statistics, one can see that crime continues to increase at an alarming rate. It is time we tried to slow down the spread of this horrible disease that is occurring in the United States.

We have before us two crime packages which, potentially, make significant strides toward combating violent crime. Both bills have provisions that will aid law enforcement officals in their work. There are aspects of each bill that I strongly support, and there are others that I oppose.

I support a strong Federal death penalty law, as well as curtailing frivolous appeal by death row inmates. I oppose the Racial Justice Act provisions that are in some of these bills, but favor instead the Equal Justice Act provision which requires evenhanded administration of the Federal death penalty and other penalties without regard for race.

But I must stress, Mr. President, that our debate must not be limited strictly to these high profile issues. There are other issues that are very important, and I think that we should not lose sight of them. They may not have all the charisma and the high profile appearance that some of the major provisions have.

In S. 1241, title 1 would amend the Omnibus Crime Control and Safe Street Act of 1968 by authorizing $1 billion for grants to assist State and local

law enforcement agencies, which would help strengthen their fight to provide safer streets and neighborhoods to each and every American. We must make a better effort to equip all law enforcement officials who are on the front lines of fighting crime.

The statistics continue to show that crime is growing. In 1990 alone, over 23,000 murders and more rapes and robberies and assaults than every before occurred. At the same time, however, the number of police officers in the Nation's 10 largest cities today is only about 1 percent higher than when the first drug strategy was released several years ago.

Title I is and a attempt to address this reality by providing to local law enforcement agencies the needed resources to combat crime.

I understand that in both packages this provision is included, which I think is a movement toward much progress. And I am delighted to see that it is there, and that the grants that will be made are not on a block grant basis, by which they go to the Governor. But they would allow for the local units of law enforcement to request grants to meet their particular needs.

There is another feature that I think merits our support in the Senate, and this is the provision dealing with the Drive-by Shooting Act, which would provide a fine and also provide maximum prision sentences of up to 25 years for firing a weapons into a group of two or more persons and injuring them. It would also provide for life imprisonment or the death penalty in drive-by shooting where death occurs.

These provisions apply to acts performed specifically in furtherance of a criminal drug enterprise, carrying with them a stronger sentence than the one presently applicable. Look at the simple fact that so much violent crime today is drug related. Intelligence reports from the U.S. Drug Enforcement Administration reveal that cocaine is becoming more scarce. As the drug supply decreases, the demand will necessarily increase. Such action foreshadows an even greater increase in violence, as criminals attack innocent Americans and fight amongst themselves over the distribution of dwindling supplies and control of territory.

This effort involves attempts to put a loophole in Federal law by providing stronger penalties for such drive-by operations, which are now commonplace in the drug community.

Then there is title VIII which is another provision that I think is very important. It is popularly known as the police corps. This proposal passed the Senate last year by a wide majority. It was, however, subsequently dropped in the conference between the House and the Senate.

Quite simply, the police corps would provide for the establishment of an organization similar to the Reserve Officers Training Corps, the ROTC. This provision would allow State and local law enforcement agencies to recruit people who would agree to serve a term as a police officer in a local law enforcement agency. In return, these young people would receive financial assistance for their college educational costs.

Essentially, the police corps concept is a competitive Federal scholarship. A college student selected by a local law enforcement agency could receive up to $10,000 per year over a 4-year period. But if the student fails to complete his or her course of study, the student must then repay the money earned toward the scholarship.

This program is flexible, allowing students to pursue their core curriculum. And, like ROTC, there would be two summers of specialty training. This program is broadly supported throughout the law enforcement community, and hopefully will attract bright, disciplined, and dedicated young men and women to assist in our Nation's war on drugs and violent crime.

There is another provision, title XIV, that is very important, and that is the provision dealing with Federal funding for State boot camp programs. Boot camps operate on the principle of shorter sentences coupled with a rigid program of both physical and mental activity. Boot camps serve as a viable alternative to adding inmates to our already crowded Federal prisons.

This program is unique in that it targets first-time offenders in an attempt to keep them away from career criminals, who often lead young people into becoming repeat offenders.

Provisions also are made in title XIV to combat this country's rapidly growing street gang violence. As everyone knows, street gangs have long been a problem for law enforcement officials in major metropolitan areas. What many do not realize, however, is that these violent organizations have begun to invade the smaller cities.

In fact, news reports from my own State reveal recruiting trips between Mobile and Montgomery by both the Bloods and the Crips, which are two of the most notoriously dangerous street gangs in recent history. These gangs have become so sophisticated, the weaponry they employ to commit crimes is often more technologically advanced than that used by law enforcement officers to oppose them.

Mr. President, we must level this uneven playing field. With a dramatic strengthening of the penalties for violent youths and a commitment of funds for programs that target juvenile gangs, law enforcement officials will have a far better chance of winning this battle.

One of the most important titles in the bill, tittle XVI, relates to rural crime, specifically violent crime that has moved with the drug epidemic from the metropolitan areas to middle America. This often-overlooked aspect of crime control does not garner the media's attention like our urban counterpart, but yet trying to combat illegal drugs in a rural setting is one of the greatest challenges facing law enforcement officials today.

The vastness of the area geographically coupled with limited resources combine to make the struggle against rural crime a major and a difficult task. No longer does living outside of an urban area automatically immunize an individual from violent crime.

This provision addresses the need for targeted resources in this regard, resources which will prove beneficial not only to my home State of Alabama but to the Nation as a whole.

Mr. President, still another provision, title XVIII which I think is worthy of the Senate's consideration, deals with increasing the penalty for drunk driving when a child is in a vehicle. Unfortunately, this irresponsible behavior occurs all too often. Hopefully, by strengthening the law in this area, adults will think twice before endangering not only their own life but the life of a young child.

I feel that the public expects and the Congress has the duty to enact a strong and responsible crime bill during this session. Legislation when enacted is rarely perfect and is usually the product of compromise. The vehicle upon which we embark on our journey as the first step is not perfect, but it is a good first step. I think it recognizes the importance of local law enforcement as the first line of defense in the war on drugs and violence and attempts to provide these local agencies the needed assets and resources to carry on their efforts to make America a safer place to live.

I look forward to working with my colleagues on this important legislative initiative. I hope that we can reach an agreement on many, many aspects of this proposed bill. There are controversial areas. There are certain things that I cannot support in the various crime packages, but I think we can move through them and strike those from the bill. I believe the majority of the Senate will agree that they should be stricken and that we can come up with an excellent crime bill.

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

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

The bill clerk proceeded to call the roll.

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

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

Mr. SIMON. Mr. President, I just want to address this amendment very

briefly. We all know that violence breeds violence. We look at a situation overseas, and we say, well, do they not realize that one thing just results in a reaction, a response?

It is also true that racial violence breeds more racial violence. Now, what does that have to do with this amendment? As you know, Mr. President, I am opposed to the death penalty, but that is not the issue immediately. The issue is whether the death penalty can be permitted to be applied in a discriminatory fashion.

Anyone who has any kind of sensitivity to the minority communities—and I am talking particularly about African-Americans and Hispanic Americans—knows that someone who is African-American or Hispanic-American, particularly in some settings, is much more likely to be found guilty of a crime of burglary or whatever the charge is than someone who is Caucasian. That is a fact of life, and it is a fact of life that is well recognized in the minority communities if not always in the white communities.

But when we come to the penalty of capital punishment, that clearly should not be applied in a discriminatory fashion. And that is all this bill does when it says capital punishment cannot be applied in a discriminatory way. We should not back off on that. Frankly, we do not reduce crime if we back off on it, we increase crime because people know that it is applied too often in a discriminatory fashion. That is the simple reality. Senator KENNEDY, in his remarks, pointed out earlier the GAO study as well as the Stanford University study about discrimination and the discriminatory means of application of this.

I hope that this body will do the humanitarian thing and will respond in a way that does not encourage more crime. Pulling this amendment out, candidly, Mr. President, is not going to discourage crime; it will result in more crime. Racial violence breeds more racial violence. And an indiscriminate application of capital punishment by any measure is racial violence. That is the reality, and I hope we recognize that reality.

Mr. President, if no one else seeks the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, I support the motion to strike this provision of the crime bill because I do not believe that there can be a statistical analysis which provides justice, because the essence of our American system of justice is individualized treatment for the defendant based upon the nature of the act and the background of the defendant. When this provision has been denominated as the Racial Justice Act, it is an effort to characterize the provision in an extraordinarily favorable light, which is not an uncommon occurrence when Senators propose legislation and put a label on it. But I suggest that this provision does not deal at all with racial justice but realistically viewed, deals with the defense of statistics on some effort to analyze the race of the defendant or the race of the victim and, when it is concluded, it does not bear any reasonable relationship to what is just and proper in an individual case which ought to turn on individualized justice, on the nature of the act, and on the background of the defendant.

I agree with the last speaker, the Senator from Illinois, who said that the death penalty should not be applied in a discriminatory manner. I believe all 100 U.S. Senators would agree with that proposition, totally, unequivocally, and forcefully. But, this provision realistically viewed does not have anything to do with the discriminatory application of the death penalty.

I believe the death penalty is a deterrent, although I know there are many who disagree with that proposition on grounds of conscientious scruples. I have come to my own conclusion based upon extensive experience as a district attorney, and before that an assistant district attorney. My experience has demonstrated to me that the death penalty is a deterrent.

But I believe today and have always believed that the death penalty has to be applied sparingly, with extreme care, and with extreme societal restraint—both as a matter of fairness to the individual defendant and also if society is to retain the death penalty as an appropriate remedy for the most heinous of criminal acts resulting in murder, where the defendants are depraved and the nature of the act and the background of the defendant warrants the imposition of the death penalty.

During the 8 years I was district attorney in Philadelphia, from 1966 until 1974, I maintained the practice of personally reviewing each case where the death penalty was requested. In Philadelphia we had some 500 homicides a year and the death penalty was requested in a very, very small number of cases—only when the act was horrendous and the background of the defendant was incorrigible and the facts of the specific case warranted the death penalty.

I have voted, as the record will show, not to impose the death penalty on 17-year-olds or 16-year-olds, where that controversy has been brought forward on the Judiciary Committee and on the floor of the Senate. I have voted to maintain the age 18 or above as opposed to lowering the age for the death penalty, even though it is true that there are many horrendous acts, and it is a tempting matter to seek in some cases to impose the death penalty below the age of 18. But I have resisted that because of the proposition I have already described, of a restrained application of the death penalty.

Similarly, I have voted against any application of the death penalty to those who are mentally retarded. So that the context must be one of very, very careful application.

One case which I cite as illustrative of the deterrent effect of the death penalty arose in the late 1950's, in Philapelphia, when I was assistant district attorney and handled the case in the Supreme Court of Pennsylvania. It involved three young men named Williams, Kader, and Rivers, ages 19, 18, and 17, respectively.

Williams had a gun and urged Kader and Rivers to join him in the robbery of a north Philadelphia store. Kader and Rivers, 18 and 17, with marginal IQ's, in the 85 to 90 range, said they would not go on the robbery if Williams carried his gun. We know that from the statements which the three defendants made after the fact—all entirely consistent on that point.

When confronted with the refusal of Kader and Rivers to go along if he, Williams, carried a gun, Williams put the gun in a drawer and slammed it shut. And then unbeknownst to Kader or Rivers, Williams put his hand in the drawer, pulled out the gun, put it in his pocket, and off the three went to rob the store owner. During the course of the robbery there was resistance, a scuffle ensued. Williams pulled the gun and shot and killed the store owner and all three were charged with murder in the first degree.

The death penalty was imposed on all three and Williams was, in fact, executed in the early 1960's. The death sentences for Kader and Rivers ultimately were commuted because the evidence was undisputed that neither intended a murder to result and both resisted going along when they saw that a gun was to be carried.

The death penalty could have been imposed notwithstanding that set of facts. But it was a matter of discretion that the death penalty was ultimately commuted as to the two younger men.

That case is only illustrative of many, many cases which are on the books, many of which I have seen personally, where someone like Kader or Rivers—18, 17, marginal IQ's—are unwilling to go on a robbery if a gun is present because of their fear that a victim may be killed and that they may be charged with murder in the first degree and may sustain the death penalty.

There are numerous similar illustrations which lead me to the conclusion,

based on my experience and what I have read and what I have learned from others, that the death penalty is an effective deterrent and ought to be maintained in an arsenal of weapons against violent crime, which is an enormous problem in our society today. I would support any reasonable restraint which went to the individualization of justice. The fact is, today's standards for the imposition of the death penalty are careful standards. The Sureme Court of the United States, in Furman versus Georgia in 1972 upset death penalty standards because of the failure to consider aggravating and mitigating circumstances.

So that today before the death penalty may be imposed, as a matter of constitutional law of the United States, there has to be a very careful analysis of the aggravating and mitigating circumstances to be taken into account by a jury before the death penalty is imposed.

We have, Mr. President, at the present time 36 of our 50 States which have retained the death penalty. Regrettably, it does not work well because of the long range of appeals which are taken. Some cases have lasted for as long as 17 years, and the average case with 2,500 men and women on death row at the present time is 8½ years.

These crime bills, both the one proposed by Senator BIDEN and the corollary proposal proposed by Senator THURMOND, contain provisions on the habeas corpus line to try to bring some sense into the appellate practice. Habeas corpus is the Latin expression meaning to produce the body, and that is the procedure by which Federal courts review State court convictions where the death penalty has been imposed.

The death penalty cannot be a deterrent, Mr. President, if these long exist. Regrettably, in our current system of justice, there is a failure to provide adequate counsel in many cases. The pending legislation would seek to cure that by a requirement that competent counsel be provided.

The pending legislation seeks to speed up the process so that there is fairness in the judicial determination, but that the process should not last so long, years and years, so that other decisions come down by the Supreme Court of the United States which then require another hearing in the lower court and then go back up on appeals in what has been a virtually endless process.

Last year, Senator THURMOND and I offered an amendment which was passed by this body which would substantially speed up the application of the death penalty. I intend to offer a series of amendments—hopefully they will be accepted—to restore what Senator THURMOND and I proposed last year and this body adopted.

One of those amendments would go to Federal jurisdiction attaching to review a State death penalty conclusion after the case has finally been reviewed by the State supreme court on the first occasion. At the present time, after a State court affirms the penalty of death in many jurisdictions there can be what is called collateral attack; that is, an attack on the conviction with State habeas corpus proceedings or proceedings dominated in some States, like my State of Pennsylvania, with postconviction hearing cases.

California has a model where after conviction, after imposition of the death penalty, there is a review of the issue of competency of counsel prior to the time the case goes to the State supreme court on the first occasion. Then when the State supreme court makes its decision affirming the imposition of the death penalty, it is my view that at that point the case is ripe for consideration in Federal courts.

At that juncture, there ought to be a tight time limit in terms of the appeal to the State courts, and then a tight time limit on how long the Federal courts will have to consider the case. In following this line, these matters could be adjudicated in the course of 2 years or perhaps slightly longer, within a period of time so that the law does not change so often that the case has to be remanded for further proceedings at the trial court level, and then more appeals are taken on what today is an endless process.

Mr. President, we have a situation as to Federal law where there is no death penalty on the books except for the so-called kingpin drug sellers who murder which was legislated in 1988 and certain application of the death penalty under the Uniform Code of Military Justice.

The Congress of the United States has not reinstated the death penalty since the case of Furman versus Georgia in 1972 imposed the new constitutional standards to undertake the complex variety of aggravating and mitigating circumstances. That has happened because, as I have personally witnessed in the 10½ years that I have been in the Senate, there are long speeches and filibusters, there is a failure of this body to agree, or when the Senate does enact legislation for the death penalty and the House enacts legislation for the death penalty, it goes to conference, as it did last year, very late in the session, and none of it comes to fruition.

I have offered, as the record shows, the death penalty on quite a number of extraordinarily heinous offenses, and one which I have pursued involves murder in the course of a terrorist act, a hijacking of a plane, or taking hostages, or the murder of U.S. citizens anywhere in the world, particularly egregious forms of murder where I believe the death penalty ought to be applied.

There are provisions of the pending legislation which would reinstate the death penalty for those categories of outrageous criminal conduct which result in murder where the defendant is depraved and upon consideration of the facts of the case and the background of the defendant, the death penalty is appropriate.

Again, Mr. President, I emphasize that the death penalty must be used sparingly. It must be used sparingly in the interest of justice both as to the individual and also if society is to retain the death penalty, because if society overuses the death penalty on people under 18, for example, or if society overuses the death penalty, abuses it on the mentally retarded, the public sentiment which favors the death penalty I think is susceptible for a decisive shift.

Public opinion supports the death penalty, Mr. President, by and large because of the commonsense conclusion based on extensive experience that the death penalty is a deterrent.

When you come to the issue of the resolution currently on the floor on the statistical computation, it is my firm conclusion that justice would not be done, but that justice will be done if the facts of the case are analyzed carefully by a jury which is charged meticulously to consider the facts in the case, the aggravating circumstances, the mitgating circumstances, the nature of the individual defendant, and the individual's record.

That is why, Mr. President, I think the provision which has been designated as the Racial Justice Act—and again I think it is a misnomer, it is not that at all. What it is is a complex statistical defense which is not practicable, not workable and would not bring justice to the criminal courts of the United States.

I thank the Chair and yield the floor.

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

The PRESIDING OFFICER. The clerk will call the role.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. METZENBAUM. Mr. President, I rise to oppose any effort to remove the Racial Justice Act amendments from the death penalty provisions of the crime bill. If a crime bill with numerous death penalty provisions is to pass this body, it is critical that we deal with the obvious discriminatory nature of death penalty sentences.

The Racial Justice Act has nothing to do with whether you are for or against the death penalty. It is about racial discrimination.

We, as a society, have determined correctly that racial bias should not

influence such questions as who should get a job, who should vote, who should buy a house, or who should get a fair trial. It is time for Congress to make it clear that racial bias should not affect the question of who gets executed in this country. That is exactly what the Racial Justice Act does.

It creates a Federal right to a capital sentencing process that is unsullied by race discrimination. It is premised on the simple idea that it should be no more difficult to prove discrimination when a person's life is at stake than it is to prove bias when a person's job or right to vote is at stake.

If we are going to have a death penalty, it is absolutely critical that we do everything possible to ensure that criminal defendants are not wrongly or unjustly executed. We cannot attain that level of certainty unless we are sure that capital sentencing procedures are free from racial bias. That is what the Racial Justice Act is designed to do.

Our criminal justice system is far from infallible. Since the turn of the century, there have been over 350 instances in which defendants in this country were wrongly convicted of homicide and rape, and sentenced to death. At least 23 of these innocent people were actually sent to their death by our Government—23 men sent to their death. They were not guilty. It was a mistake. These mistakes were made for a number of reasons. Adding racial discrimination to the equation only increases the likelihood that juries will mistakenly or unjustly send people to their death.

Any discussion of this issue cannot ignore the shameful history of this country's treatment of Afro-Americans. In particular, there is a long history of discriminatory treatment in the enforcement and prosecution of criminal laws and the application of the death penalty. Beginning with the slave codes of colonial days, blacks faced criminal penalties for conduct which was legal for whites and they faced more severe punishment than whites when both committed the same offense. Some offenses constituted capital crimes only when committed by Afro-Americans or blacks.

With the passage of the 13th amendment, the slave codes were replaced by black codes which contained these racially discriminatory practices.

The 14th amendment abolished the black codes and supposedly guaranteed equal treatment under the law for blacks. But as we all know, that goal has not been fulfilled.

Mr. President, we need to confront the fact that in many parts of the country our criminal justice system operates primarily against racial minorities and the poor in our society. The Los Angeles Times reported that although—

> * * * it is clear that whites sell most of the nation's cocaine and account for 80 percent of its consumers, it is blacks and other minorities who continue to fill up America's courtrooms and jails.

One out of four black males in their twenties is either in jail or on probation or parole. A black male in his twenties is more likely to be caught up in the criminal justice system than to be in college. A Florida study found that black women are 10 times more likely to be turned over to child abuse authorities for substance abuse during pregnancy than are white women.

The police chief in Atlanta has wondered aloud whether our approach to crime would be different "if we started to put white America in jail at the same rate that we're putting black America in jail."

Mr. President, the New York police commissioner has suggested that we need to conduct a thorough study regarding race in the criminal justice system. I think that is appropriate. But I also think that at the very least the U.S. Senate must today make it clear that we want a capital sentencing process that is free of any hint of racial bias.

We in Congress have repeatedly sought to remedy racially discriminatory behavior when it occurs, whether it be in hiring, housing, or in education. For too long, however, we have ignored bias where it is a matter of life or death. When blacks are being sent to their death by our criminal justice system for conduct which would not result in capital punishment for a similarly situated white, when killing a white is four times more likely to result in a death sentence than killing a black, then it is time we act. The Racial Justice Act amendments of the crime bill are an important step toward remedying these injustices.

A study of this problem is not the answer. That will not resolve the issue. All it will do is postpone the deliberation and the determination as to what is the proper action for the Congress to take.

There can be little doubt that the death penalty is applied in a racially discriminatory manner. A General Accounting Office study found that since 1972 there has been a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty. That, from the General Accounting Office, is certainly an objective source.

This discrimination takes two forms: One kind is race of victim discrimination; and the other is race of defendant discrimination.

As to the first, the unfortunate fact of life is that juries in this country do not value the life of a black as highly as they value that of a white. Since 1976, when the death penalty was reinstituted 85.3 percent of the time that a person was executed, it was for killing a white person. Only 11 percent of the executions were for killing a black, and then only where the defendant was also black.

Mr. President, may we have order in the Senate?

Mr. President, I sought order because the next sentence I am about to make is an astounding one. Incredibly, there is not a single instance of a white being executed for killing a black. Never has a white been executed for killing a black.

Even more stark are some of the individual State statistics. A study of the Georgia system showed that white victim cases were over four times more likely to produce a death sentence than black victim cases. OK to kill a black, not OK to kill a white.

The other type of discrimination in capital sentencing involves discriminating against black defendants. Let me give some examples from the States. In a judicial district in central Georgia, the district attorney has sought the death penalty in 28 cases since taking office in 1974. In 22 of 28 cases, the defendant was black.

In Philadelphia, a single judge is responsible for sentencing 26 people to death. Of the 26, only 2 were white. Clearly, something is wrong with the system. Do not give me the argument that blacks commit more crime. The fact is blacks commit crime, and the whites commit crime. But the fact is we handle the matter differently when it comes to trying blacks and whites, and we make a big distinction when the victim is black instead of the victim being white.

Let me give you one example of the kind of racial bias that taints the justice system. Last December, Clarence Brandley was released from a Texas prison where he been on death row for the last 9 years, been on death row for 9 years. By all accounts he was innocent of the murder of which he was accused. But he had been convicted because of blatant racial bias. In fact, the court of appeals was so concerned about allegations of bias in his case that they appointed a special judge to review the case. That judge had the following to say after reviewing Brandley's case.

> In the over 30 years this court has presided over matters in the judicial system, no case has presented a more shocking scenario of the effects of racial prejudice. * * *

This is from the judge who was reviewing the earlier case.

Brandley was convicted of raping and murdering a white high school girl. An all white jury convicted him based on the testimony of three white fellow employees. The chief investigator allowed these three white employees to get together, to get their stories straight, before being interrogated.

There were no eyewitnesses, and the prosecution offered no forensic evidence or motive. In fact, evidence that the perpetrator was white was found on the victim, but was lost before trial.

Evidence that the perpetrator of the crime was white was found on the victim but was lost before the trial. A court reporter for the judge presiding said the judge and the prosecutor met secretly to decide how to testify about the missing evidence. The court reporter was told to keep her mouth shut and was later fired.

I could go on and on about how this case was mishandled and how Brandley was victimized because he had done something wrong when he was born—he was born black. But let it suffice that his is not a unique case. If anything, the fact that he is still alive and out of jail is what makes him different.

I could cite other specific examples where racial bias has clearly tainted a particular death sentence. For example, Roosevelt Wilson, a black man, was sentenced to death for rape in Alabama in 1937. Despite claims that the victim consented and despite the fact that the jurors later said they believed the act was consensual, the jury still found that Wilson deserved to die simply for messing around with a white woman. Think of that. The jury felt that Wilson deserved to die because he had an affair with a white woman, messing around with her.

Another example comes from Louisiana. In 1953, Edgar Labat and Clinton Poret, two black men, were sentenced to death for raping a white woman and robbing her male friend. After a dozen of stays of execution and 16 years on death row, they were released because witness' testimony unraveled, alibi witnesses came forward, and evidence showed that one of the defendants had been beaten into confessing.

What we are going to be doing here on this crime bill, Mr. President, is we are going to refuse to take into account the racial justice aspects; but we are going to do something more, because that particular defendant probably would have been dead and gone a long time before, had there been in the law at that time the denial of the right of habeas corpus that is about to become the law, if so many in this Senate move in that direction today, or the first of next week.

Two black men, Robert Shuler and Jerry Chatman, were sentenced to death in Florida in 1960 for raping a white woman. They were freed in 1972, 12 years later, after it was proved that police had suppressed evidence and that plaster foot casts introduced at the trial had been made in the deputy sheriff's backyard.

Mr. President, I could stand here for another 2 hours citing other such miscarriages of justice. But the fact is that racial bias is often not as blatant as it was in the case of Brandley, of these others that I mentioned. That is why we need the Racial Justice Act. Even this Supreme Court, which has weakened antidiscrimination laws, acknowledges that in the voting rights and employment contexts, a prima facie case of racial bias can be established based upon a showing that a pattern of discrmination results from the application of particular practices.

But the Supreme Court's 5 to 4 decision in McCleskey versus Kemp means that, in the context of the death penalty, a prima facie case of racial bias can never be established by evidence which shows that there is a pattern of discrimination in the application of the death penalty.

In other words, the Supreme Court is willing to overlook evidence of racial bias in the capital sentencing context that has determined should not be overlooked in the employment or voting rights context. The Senate should not make that same mistake.

The Racial Justice Act prevents the use of the death penalty where it can be shown that the penalty has been applied in a racially disproportionate way and there are no pertinent nonracial explanations for this disproportionate application.

In so doing, it addresses the results of discrimination, rather than trying to pinpoint the causes which, as we know, are sometimes too subtle to identify.

The Racial Justice Act only requires what is fair and just, but that seems to be too much for some people. I would be remiss if I did not take note of the rhetoric of those who oppose the Racial Justice Act. Attorney General Thornburgh opposes this amendment and has said, "The Racial Justice Act cannot fairly be characterized as in any sense a civil rights measure."

Frankly, Mr. President, I have to wonder whether the Attorney General knows anything about civil rights. There is not a single scintilla of evidence that he has any sensitivity at all to the issue of civil rights, as evidenced by his opposition to the civil rights bill here in the U.S. Senate, and as evidenced by his comments concerning the Racial Justice Act.

Does the Attorney General really believe that there are no civil rights concerns raised by the evidence and studies which show that racial considerations influence whomever receives the death penalty? Is the Attorney General blind? Is he deaf? Can he not read the evidence that has been proven time and time again by independent sources?

Does the Attorney General Thornburg believe that it is acceptable for black people to be executed more frequently than whites, or that killers of whites should be executed more readily than killers of blacks?

Furthermore, if this is not a civil rights bill, why do I hear it attached by the administration, absurdly, as a quota bill? How absurd can the White House be getting? The administration's automatic response to any civil rights bill proposed by the Congress is to label it a quota bill.

Obviously, this measure will work to reduce discrimination. Otherwise, the administration would not feel compelled to trot out its favorite attack line.

Mr. President, it is tempting to toss aside constitutional safeguards in order to punish individuals accused of heinous crimes. Sometimes we are inclined to do that. Emotionally, sometimes we feel that way. But that is not how constitutional democracies operate.

The process by which we decide who shall suffer the death penalty tells us much about the character of this body and the character of this Nation. Surely, we have enough character to ensure that this process is free of racial bias.

I urge my colleagues to support the Racial Justice Act. I hope that my colleagues will not see fit to delete that portion of the bill, and I hope my colleagues will recognize that a study of the issue is not the answer; it is time to enact the Racial Justice Act.

I yield the floor.

Mr. ADAMS. Mr. President, a national consensus has developed regarding the imposition of the death penalty under certain circumstances. Both the committee bill, S. 1241, and the administration's bill, sponsored by Senator THURMOND, broaden the use of the death penalty for 30 Federal offenses for which the current maximum penalty is life imprisonment. This is the most significant expansion of capital punishment since its reinstatement by the Supreme Court in 1976.

There is, however, one extremely significant difference between the two positions: the Biden bill contains the provisions of the Racial Justice Act. This fundamentally important safeguard would prohibit a State or the Federal Government from imposing the death penalty in a "racially discriminatory pattern."

Those of us who have the responsibility to vote in this Chamber should hold ourselves to the highest standard when we pass laws that might ultimately determine who will live and who will die. Where is justice if we permit the color of a person's skin, a person's ethnicity or any other such characteristic to determine or influence whether the death penalty may be imposed?

I am not aware how many of my colleagues have stood before a jury and asked that the death penalty be imposed upon a defendant, but I have. As U.S. attorney for the Western District of Washington, I asked for the death penalty in a case involving the cold-blooded murder of police officers that occurred during a bank robbery. Asking a jury to impose the death penalty is a responsibility that is not taken lightly by a fair-minded prosecutor. Voting to impose the death penalty is a legislative responsibility of similar gravity and importance.

As one who supports the imposition of the death penalty under certain cir-

cumstances, I am in strong support of including the Racial Justice Act. On February 26, of last year, the General Accounting Office released its landmark report on death penalty sentences issued since the U.S. Supreme Court's 1972 decision in Furman versus Georgia. The GAO found there has been "a pattern of evidence indicating racial disparities in the charging, sentencing and imposition of the death penalty." GAO concluded that "in 82 percent of the studies, race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty; that is, those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks. This finding was remarkably consistent across data sets, States, data collection methods, and analytical techniques."

As the Seattle Times commented last year, the entry of race into capital sentencing decisions is "an American disgrace."

Mr. President, the Racial Justice Act is designed to assure that justice is truly blind when this ultimate punishment is weighed. As I have already indicated, I support the death penalty under certain circumstances. The American Bar Association and nearly 100 other groups support the Racial Justice Act, not because they want to end the death penalty, but because they believe, as I do, that equal justice under law demands that we end this pattern of discrimination.

It is my eternal hope that we would not even have to incorporate the provisions of the Racial Justice Act into our criminal justice laws. But the evidence is overwhelming that we must act to eliminate race as a factor in death penalty cases. I urge my colleagues to keep the Racial Justice Act provisions in S. 1241.

Mr. CRANSTON. Mr. President, I rise today to express my support for the Racial Justice Act which is included in Senator BIDEN's crime bill. No one would dispute that racial considerations have no place in our capital sentencing process. Yet, there is strong evidence that racial considerations are all too often a critical factor in deciding whether a particular defendant is executed.

In Furman versus Georgia, a 1972 Supreme Court case, the Court held that the death penalty as then applied in the United States was unconstitutional. The procedures used to impose the death penalty were found to be arbitrary and capricious. Several Justices specifically noted the racial bias apparent in death sentencing at the time. In response to Furman, many States devised statutes that they hoped would result in a more fair capital sentencing system. When these new statutes were reviewed by the Supreme Court in the Gregg versus Georgia decision, it was held that they offered the possibility of removing the bias and whim from capital sentencing.

Despite the Court's optimistic assessment, recent statistical evidence poignantly shows that the race of the victim strongly influences the decision to impose the death sentence. In February 1990, the General Accounting Office [GAO] confirmed the validity of the findings in 28 studies that race plays a significant role in capital sentencing. The GAO found "a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the Furman decision." Some of the studies have indicated that, in one particular State, a person accused of murdering a white was 4.3 times more likely to be sentenced to death than a person accused of murdering a black; a study involving a different State showed that the killers of whites were 8 times more likely to receive the death penalty than those convicted of murdering blacks. A nationwide study by the Dallas Times Herald showed that the killer of a white is nearly three times more likely to be sentenced to death than the killer of a black.

Mr. President, the GAO and the other independent studies are compelling evidence of the need for the Racial Justice Act. The Racial Justice Act would not create a presumption of racial bias. The act merely says that a defendant facing the death penalty should have an opportunity to use valid statistics, along with other evidence, to show that his sentence was based on race. In each case, the prosecution will have a full opportunity to dispute the validity of the defendant's evidence and show that there is no racial pattern or, even if there is, that the particular case does not fall within it.

The Racial Justice Act could be a critical tool in ensuring that justice is based on the facts of the case and not the race of the victim or the defendant. I urge my colleagues to join me in supporting the Racial Justice Act.

Mr. BRADLEY. Mr. President, I differ from some of my colleagues in that I believe that there is a place in our system of justice for capital punishment. At the one extreme of the scales of justice, there are crimes that so brutally deny the humanity of the victim and the criminal that they merit only the most absolute punishment. But I know that none of my colleagues would disagree with my belief that there is no place in our system of justice for racial prejudice.

Mr. President, I do not know whether people are put to death in parts of this country because of their race or the race of the victim, when a person of another race who committed the same crime against a victim of another race would live. But I know that I would want to know. If I were a judge evaluating an appeal from a death row inmate, I would want to know.

I would want to know about what's going on in Bay County in Florida. In that county, there were at least 119 homicides in 12 years. Forty percent of the victims were black. But the death penalty was imposed only in cases where the victim was white. If I were an appeals judge I would want to know this and I would want an explanation.

Those who contend that collecting and making available to courts such statistics would effectively stop executions make some assumptions that I'm not willing to make. That assume that most jurisdictions generate statistics like those small counties I've mentioned. They won't. As Prof. David Baldus of the University of Iowa points out, statistical disparities alone will not constitute prima facie evidence that the death penalty is being imposed in a discriminatory manner. Courts are capable of recognizing the genuinely significant discrepancy, and if they do, the State has the opportunity to demonstrate that race did not determine who lived, and who died.

Further, even after a significant racial discrepancy has been demonstrated, the jurisdiction would have the opportunity and the means to rebut that allegation with their own statistics. If they could show that there were some factors that would even partially explain the discrepancy, executions would continue as before. If only those who committed crimes against whites were executed, for example, the State could show that the crimes against whites were more brutal or aggravated, and thus the severity of the crimes explained the statistical disparities.

I want to know, Mr. President, that there is justice in this country, not racial justice. I want to know that if a white man brutally murders a black man, his crime will be judged just as dispassionately as that of a black man who murders a white man.

Mr. President, knowledge cannot obstruct justice. Knowing whether or not the death penalty is imposed in a flagrantly discriminatory manner, and stopping it only in the specific cases where it is, will not abolish the death penalty as an instrument of justice. This amendment asks for facts that no one should fear. It offers the kind of information and knowledge we need to ensure that justice is truly blind.

Mr. HARKIN. Mr. President, I wish to express my support for S. 1249, the Racial Justice Act, which is incorporated in the crime bill. The Racial Justice Act would ensure that racism plays no role in capital sentencing. I am an original cosponsor of S. 1249.

I am not in favor of the death penalty in any case. It does not deter crime and is a waste of resources. However, this act does not raise the question of whether the death penalty

should be imposed; it raises the question of whether the death penalty should be imposed because of race.

Much of the underlying rationale of the Racial Justice Act is the work of Prof. David Baldus, a professor at the University of Iowa Law School. Professor Baldus conducted a comprehensive study of over 2,500 homicide cases in Georgia, which controlled for 230 nonracial factors. The results are astonishing.

According to the Baldus study, a person accused of murdering a white person was 4.3 times more likely to be sentenced to death than a person accused of murdering a black person. This effect was most pronounced in close cases, where the sentencer could legitimately return a sentence of life in prison or a death sentence. Highly aggravated murders showed little racial bias. The sentences for the most vicious murderers were not the result of racial bias; nor were the sentences in cases with the least aggravating circumstances. But where the question of life in prison or death in the electric chair was close, those who murdered whites were far more likely to be sentenced to death than those who murdered blacks.

Although fewer than 2 out of 5 Georgia homicide cases had white victims, nearly 9 in 10 death sentences were imposed on those who killed white persons. One Georgia district attorney sought the death penalty nearly six times as often for killers of white victims than killers of blacks.

Racial bias should not play any part in our justice system.

Some seem to think that this act would promote a quota system of death. This is absolutely not true, and is a gross simplification of the statistical analysis Professor Baldus undertook in his study, and which would be required under this law.

First, the appellant would have to prove a prima facie case through statistical methods. This means that the disparity must be highly likely to have resulted from racism. This test is more than a simple comparison of the number of death-eligible cases and the number of cases in which death was imposed. Instead, it is a sophisticated analysis of the statistical pattern of sentences to show that in the particular case at hand, the death penalty is being imposed because of race.

Even if the appellant demonstrates a prima facie case, the State has the opportunity to show that nonracial factors were clearly and convincingly responsible for the disparity. Some suggest that the clear and convincing standard is excessive. I do not believe it is unreasonable to require the Government to prove that race played no role in a sentence of death.

I have a copy of a letter from Professor Baldus analyzing the Racial Justice Act. I believe his careful analysis clearly shows that this legislation is necessary to overcome a travesty of justice in imposing racially discriminatory sentences. Considering the paramount importance of eliminating racial factors in the imposition of the death penalty, I strongly support the Racial Justice Act. I ask unanimous consent that a copy of this letter be printed in the RECORD.

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

THE UNIVERSITY OF IOWA,
Iowa City, IA, June 17, 1991.

Re S. 1249, Racial Justice Act of 1991.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: We have been asked to comment upon whether S. 1249, the Racial Justice Act of 1991, would have the practical effect of either abolishing the death penalty in the United States or resulting in the use of racial quotas to avoid the application of the Act. We believe that neither of these outcomes would follow from the enactment of the Racial Justice Act.

The de facto abolition argument appears to rest upon the assumption that it will be very easy for capital defendants to establish a prima facie showing of a "discriminatory pattern" under the Act and very difficult for the States to rebut that showing. The argument also appears to assume that successful prosecution of a claim under the Racial Justice Act by one death-sentenced offender would entitle all death-row inmates in the State to relief from their death sentence. We believe that both of these propositions are false.

The establishment of a prima facie case under the Racial Justice Act requires racial disparities of a magnitude which strongly suggest that capital punishment is being used in a racially discriminatory fashion. Small statistical disparities are not enough to support such an inference. It is said nevertheless that minor numerical differences in the numbers or percentages of death sentences which a State has imposed will require the State to shoulder a troublesome burden of disproving discrimination. More specifically, it is argued that such evidence would be sufficient to demonstrate that the death penalty is being imposed "more frequently" in cases of one race than another under section 2921(1) of the Act and/or to show a racially "disproportionate" frequency which constitutes a prima facie case of discrimination under sections 2922(c)(1)(A) and (B).

This argument is simply wrong. When an observed racial disparity in death-sentencing rates in a State is small or is based on small numbers of cases, it is not sufficient to put any burden of disproving discrimination on the State. Consider, for example, a State with a death-row population of 6 inmates, 4 of whose cases involved a white victim, while only 40% of these and all other death-eligible cases in the State involved a white victim. Or consider a State with a death row of 100 prisoners, 43 of whose cases involve a white victim while 40% of the death eligible cases from which they were selected have a white victim.

Common sense suggests that neither of these patterns represents a situation in which the death penalty is being imposed "more frequently" upon killers of white victims within section 2921(1) or in which there is a "disproportionate" racial frequency within section 2922(c)(1). And we can assure you that any sort of responsible statistical analysis will produce exactly the same result: numerical differences as small as the ones described above would not lead any scientific researcher to conclude that racial discrimination is at work.

The reason is that small numerical differences like these could readily occur by chance in a criminal justice system that was not discriminating on the grounds of race. Ordinary statistical procedures do not allow conclusions of discrimination to be drawn from racial disparities based on small sample sizes (like 4 out of 6 cases) or from small differences in death-sentencing rates between racial groups even when the sample size is not small (like 43 instead of 40 out of 100 cases). To the contrary, a major function of statistics in research is precisely to ferret out disproportions that are real and to distinguish them from disparities that may be simply happenstance numerical differences that are attributable to chance.

All this leads one to ask—what type of disparities are we likely to observe in the various States? On the basis of the studies done to date, we are unlikely to see strong statewide racial disparities in many States, especially disparities concerning the defendant's race. We are much more likely to see the disparities concentrated in specific localities. For example, our research from Georgia showed no significant statewide evidence of race-of-defendant discrimination. Those overall results masked, however, data from one judicial district that showed a strong race-of-defendant effect. The data also showed evidence of race-of-defendant discrimination among a number of rural prosecutors. It is in areas like these that we will be likely to see a prima facie case established.

The de facto abolition argument further assumes incorrectly that States will be unable to rebut any inferences of discrimination by showing with "clear and convincing evidence that identifiable and pertinent nonracial factors persuasively explain" the racial disparities. Section 2922(c)(2) In fact, a variety of accepted statistical techniques are available for use by the State in making its rebuttal case whenever it appears that an observed racial disparity in a state's death-sentencing rates is more likely the product of differences in the distribution of pertinent nonracial characteristics than the product of racial discrimination. For example, in considering data simply showing that killers of white victims are more often sentenced to death than killers of black victims, one might legitimately wonder whether this observed disparity reflects the fact that the white-victim cases were more aggravated than the black-victim cases. But here also, there are available generally accepted statistical procedures designed to avoid this inferential pitfall. Specifically, they estimate racial disparities in death-sentencing rates and executions after taking into account or controlling for such nonracial factors. These procedures provide a solid basis for estimating the likelihood that the racial disparities that finally emerge from analysis are in fact the product of racial discrimination and are not explained by the fact that one racially defined subgroup of cases is more aggravated than another with which it is compared. And it is just such procedures that have been used in the more thorough empirical studies that show significant evidence of race-of-victim discrimination in this country, i.e., the race-of-victim effects persist after adjust-

ment has been made for racially neutral factors such as the presence of torture or contemporaneous offenses like robbery or sexual assault.

Generally accepted statistical procedures of the type that will be used to evaluate racial disparities under the Racial Justice Act are used in a wide variety of other legal and nonlegal contexts in which it is important to distinguish between what is apparent and what is real. For example, such procedures provide the principal proof of a causal connection between cigarette smoking and cancer and between cholesterol and heart attacks. These procedures are also routinely used by pharmaceutical firms to establish the safety of new drugs.

Moreover, similar procedures are widely used in lawsuits, particularly in employment-discrimination cases involving claims of purposeful and intentional discrimination in employee hiring, promotion, and discharge. In those settings, the use of generally accepted statistical methods of proof has been explicitly and unanimously endorsed by the United States Supreme Court. These procedures have routinely provided an indispensable basis for the valid and just assessment of claims of race and gender discrimination. Moreover, defendants in discrimination cases are often successful in rebutting the plaintiff's prima facie case with objective and relevant nonracial factors. We fully expect such defenses will be similarly used in the context of the Racial Justice Act, often with considerable success.

In comparing the Racial Justice Act with comparable Title VII cases, i.e., those involving special qualifications for hiring or promotion, it is worth noting that the plaintiff carries the burden of accounting for the most important nonracial factors on which data are available as part of her prima facie case. So long as the relevant data are available to the parties, this requirement is appropriate and imposes no undue hardship on the plaintiff. Accordingly, under the Racial Justice Act the imposition of a similar burden on offenders presenting claims under the Racial Justice Act would be appropriate as long as data were available on the relevant aggravation and mitigating factors. This appears to have been the thinking behind the House version of the Racial Justice Act, which provides for an equivalent of a prima facie case on the basis of disparities that "take into account, to the extent it is compiled and publicly available, evidence of the statutory aggravating factors of the crimes involved." HR —— section 2921(d).

The argument that claimants will always prevail in claims brought under the Racial Justice Act overlooks a simple fact. It is that after taking into account pertinent nonracial factors, it will be extremely unlikely to ever see any evidence of racial discrimination unless racial factors are in fact exerting a significant influence on capital sentencing in the jurisdiction under evaluation. As a result, it is by no means the case that states will usually lose these cases. For example, the existing literature suggests it is quite unlikely that claims of race-of-defendant discrimination will be successful at the statewide level, although the picture may be quite different in particular subdivisions of the states. Moreover, we expect that over time fewer and fewer claims of any type will be successful as prosecutors become more aware of their obligation to treat capital cases in an evenhanded fashion. On this point, we note that our evidence from Georgia showed quite strong evidence of statewide discrimination against black offenders before *Furman v. Georgia* (1972). In the period from 1973 to 1980, however, we observed no significant statewide evidence of race-of-defendant discrimination. The most plausible explanation for this change is that prosecutors and juries have become more sensitive to the problem of racial discrimination and most have generally sought to treat all offenders in a more evenhanded fashion. If the Racial Justice Act becomes law, we expect a similar development would occur over time with respect to the race of the victim.

It is also important to note that the statistical analyses required to refute claims of discrimination involve information on relatively few pertinent nonracial circumstances of the cases beyond the statutory aggravating and mitigating circumstances (and those would usually constitute a total of 10 to 20 variables). This fact belies any claim that the Racial Justice Act would require the states to collect and maintain massive statistical data files. Another relevant point is that once the required data base for evaluating the system is in place, it will be available for use with no further expense beyond routine updating. The suggestion that each claim brought under the Racial Justice Act will require the development of a new data base for analysis from scratch ignores this fact.

The de facto abolition argument also appears to assume that a single successful claim under the Racial Justice Act will block execution in all other death-sentenced cases in the state involved. This assumption completely overlooks the language of 2922 of the Act, which bars executions only if that person's death sentence and execution would "further a racially discriminatory pattern." As a result, only defendants whose cases fall within categories of death-eligible cases where racial effects are observed would be entitled to relief. For example, in Georgia, our research indicated that in cases highly aggravated with factors such as torture or multiple victims, there were no race effects related to either the race of the defendant or the victim. Those death sentences clearly do not further a racially discriminatory pattern and therefore would be unaffected by the law. And as noted earlier, our research from Georgia also indicates that the levels of racial disparities in capital sentencing vary significantly from one judicial district or county to the next. Thus, a finding of discrimination in district A would provide no basis for relief in other jurisdictions where there is no evidence that race is influencing the system.

The argument that the Racial Justice Act would lead to racially discriminatory charging and sentencing practices and quotas is misleading in the extreme. The decline in racial discrimination that we have generally observed in this nation's criminal justice system is most plausibly explained by expanded protection of federal and constitutional law and a growing perception of the importance of nondiscriminatory and evenhanded treatment of criminal defendants. Any suggestion that this development has somehow produced quotas is completely implausible. Similarly, in the employment discrimination context, the United States Supreme Court has for years authorized methods of proof for proving classwide purposeful discrimination that are comparable to those contemplated by the Racial Justice Act. Plaintiffs in those cases have both won and lost such cases, but there has never been any serious contention that either the right to challenge classwide purposeful discrimination in an employment context or the methods of proof employed for the task have led to racial or gender quotas in employment. The dispute over quotas recently raised by the 1991 Civil Rights Act relates strictly to disparate impact claims (which require no proof of purposeful discrimination) and not to claims of classwide purposeful discrimination.

Finally, an observation about the provision in the administration's Equal Justice Act that prohibits the use of "statistical tests" as a means "to achieve a specified racial proportion" of offenders, etc. S. 635 section 1002(b)(3)(A & B). The provision completely misconceives the function of statistical tests. They are used to compare differences in the rates at which characteristics of all types occur in different populations (e.g., the rates at which cancer develops in people who smoke versus those who do not), and to provide a basis for making causal inferences (e.g., that smoking causes cancer.) In the context of death-sentencing research, statistical tests are merely an aid to determine whether different racial groups are being treated differently and whether those differences are a product of chance, different distributions of nonracial factors among different racial groups, or racial discrimination. Those tests have nothing whatever to do with achieving "a specified racial proportion relating to offenders" or anyone else. While Congress may want to outlaw quotas in death sentencing, to equate quotas with statistical tests is absurd. Moreover, the enactment of such a provision could unintentionally limit the capacity of state courts to monitor their own capital-sentencing systems to ensure that they are subject to no racial discrimination.

Sincerely,

DAVID C. BALDUS,
Joseph B. Tye Professor of Law.
GEORGE WOODWORTH,
Associate Professor, Department of Statistics and Actuarial Science.
CHARLES A. PULASKI, JR.,
Partner,
Snell & Wilmer, Phoenix, AZ.

Mr. GRASSLEY. Mr. President, I rise to oppose the Racial Justice Act, included in this crime bill.

The death penalty is the gravest and most serious of punishments, and it is not something I take lightly.

But I believe that justice requires criminals receive an appropriate punishment and for the most heinous and abominable acts, justice requires the imposition of the death penalty.

The inclusion of the Racial Justice Act as part of a Federal death penalty will not only undermine our system of justice, it will result in the abdication of the Government's duty to protect the people.

You cannot support the availability of capital punishment, while supporting the Racial Justice Act.

This legislation will make it impossible for not only the Federal Government—but also those States that presently have the death penalty option—to impose the death penalty.

In McCleskey versus Kemp—the case that the Racial Justice Act attempts to overturn—the Supreme Court said:

A defendant who alleges an equal protection violation has the burden of proving "the existence of purposeful discrimination."

A corollary to this is that a criminal defendant must prove that the decisionmakers in this case acted with discriminatory purpose.

As even the proponents of the Racial Justice Act know—or should know—the Supreme Court concluded that McCleskey did not prove he was the victim of discrimination.

Yet, the proposed Racial Justice Act—in total disregard for accepted principles of equal protection jurisprudence—impose no burden on a criminal defendant in a capital case "to show discriminatory motive, intent, or purpose on the part of any individual or institution."

Under the death penalty provision in this bill, all that a convicted capital defendant need show is a statistical disparity, based on race, among defendants sentenced to death or among the victims of capital defendants.

All that the act's required statistics need show is a racially discriminatory pattern.

There is no requirement that a capital defendant prove prosecutors and juries acted with racially discriminatory intent.

This pattern could be established simply by showing a disproportion between the number of persons in a racial group who are sentenced to death or executed, in comparison with the representation of persons from that group in the pool of individuals who are arrested for, charged with, or convicted of crimes that are punishable by death.

A pattern may also be established on the basis of a disproportion between the racial composition of the class of victims of crimes for which the death penalty is actually imposed or carried out, and the racial composition of the class of persons against whom crimes are committed that may be punished by death.

Perhaps even worse, by its own terms, the act is retroactive.

Consequently, if the act becomes law, it would apply to every State capital defendant on death row, whether or not these defendants raised any claim of racial discrimination in the past.

Among its many provisions, the act requires every jurisdiction that allows for the capital punishment option to maintain racial data through elaborate records and reports.

However, since no jurisdiction currently maintains records on the race of victims and defendants and the reasons for various prosecutorial and jury decisions, this title may likely result in the invalidation of every capital sentence now in effect.

Consequently, every prosecutor would be required to relitigate every previous capital case in the jurisdiction—justifying decisions made by long ago prosecutors, judges, and juries.

Unless the act's required statistical equality can be maintained as a kind of death by racial quota, the death penalty will no longer be a criminal law sentencing option.

It is naive to believe that violent antisocial behavior takes place with a neat and clean statistical precision.

The act's abolition of the death penalty would gravely threaten the security of the American people—including members of minority communities who know firsthand the most devastating effects of violent crime—by inhibiting the ability of the criminal justice system to protect the people and insure domestic tranquility.

Make no mistake: The exact aim of this act is to eliminate the death penalty as a possible sanction against criminals convicted of the most heinous and abominable acts.

Worst yet, this act cynically ignores the present safeguards in our criminal law against discriminatory practices.

I defy anyone to dispute the fact that an individual defendant charged in our present criminal justice system and who can demonstrate that race motivated either the prosecutor's decision to charge him with a capital crime or the jury's decision to impose the penalty, has a constitutional claim for relief.

Current Supreme Court constitutional decisions safeguard capital defendants from all actual racial discrimination during any stage of the criminal justice process. The Supreme Court's decisions also ensure that convictions and sentences will not stand if any discrimination has occurred at any stage of the process.

Mr. President, in our system of justice, computers do not hand down sentences. There is no role for statisticians or social scientists in the courtroom. Rather, for more than 200 years, our system has dispensed justice through the efforts of prosecutors, judges, and juries. They take an oath to serve the ends of justice.

The Congress cannot exercise discretion for prosecutors, judges, and juries based on some arbitrary racial quota, who is to receive the death penalty and who is not.

If true justice can only be achieved through the use of a quota, then why base this quota simply on race, why not include religion, gender, and national origin as well.

The answer, the Racial Justice Act is not concerned with justice but rather the elimination of the death penalty.

More importantly, elimination of the death penalty as a means to fulfill the Government's role of protecting the people from violence is no solution to any concerns about possible race disparities.

Again, all that is required to establish discriminatory impact, is proof of nothing more than the acknowledged fact that as a result of unique human judgments that defy codification, a jury's collective sentencing judgment lacks mathematical predictability.

Under such a minimal burden, a defendant is guaranteed a ready-made prima facie case. However, the presentation of a successful rebuttal case by the Government would be virtually impossible. Prosecutors would be required to reproduce and present evidence sufficient to explain the race-neutral factors that motivated jurors to return race-neutral sentences of death.

Even if these factors could be produced in rebuttal, only by examination of individual jurors regarding their mental processes and emotional reactions could it ever be known that race-neutral factors were actually relied upon by the jurors.

Only then could proof of these race-neutral factors serve to persuasively explain any observable racial disparity.

The Government would also have to present proof of lack of discriminatory intent and purpose on the part of every decisionmaker involved in the capital sentencing process: prosecutors, grand jurors, trial and appellate court judges, and legislators.

All this is calculated to shift the judicial focus away from the guilt or innocence of individual criminal defendants and to focus on the collective guilt of society's criminal justice system.

Instead of determining whether the defendant received due process safeguards, the proposed act engages in diversionary tactics:

First, it shifts the focus to the Government on a systemwide basis;

Second, it guarantees a prima facie case against execution for any capital defendant; and

Third, it requires the criminal justice system to produce mathematical predictable results.

The result of enacting the Racial Justice Act is not justice, but rather the prohibition of the death penalty.

But we should not and we cannot insure a statistically exact proportion of African-American, Latino, and white defendants receiving the death penalty.

Such a statutory compelled course of conduct is contrary to the very belief that race has no part in the determination of guilt or the punishment to be imposed.

The Racial Justice Act commits the very evil it purports to cure. Race will determine one's sentence. This is not justice.

As I have said before, the use of society's ultimate criminal sanction is not something I take lightly.

It is for these reasons that I support this amendment and not S. 1241.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I ask that my remarks appear as in morning business.

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

POLLUTION PREVENTION AND INDUSTRY

Mr. BAUCUS. Mr. President, several years ago the famous Grace Commission published a report entitled "War On Waste." That report focused on waste in Government. It is now time, however, that we look at waste in America.

We are now a very wasteful society. We throw out more than 11 billion tons of waste every year. We cannot hide it; we cannot just push it off into a corner or pile it up somewhere and just forget about it; though some have tried.

For too long, we have viewed waste in our country as a necessary evil. We have buried it until our purple mountains turned brown. We have burned it until our spacious skies rain toxins. And we have dumped it until infectious waste can be found from sea to shining sea.

We must change our attitudes about waste. It is not a necessary evil. We must create a new ethic in America to save what can be saved, conserve what can be conserved, recycle what can be recycled, and then and only then, under the most stringent standards, dispose of it.

The time has come to look at waste as a measure of our efficiency. The less we throw out, the more efficient we will be. The more efficient we are the more competitive we will be.

In outer space, for example, we use nonpolluting fuel cells for power and water. And since we cannot take unlimited fuel out in spaceships we must burn only what we need. We must operate at peak efficiency to survive in space. We do. And because we do we are world leaders in space travel.

So how do we get this mentality into the board room, into the production line, and into balance sheets?

How do we get chemical plants or steel mills to see efficiency as a necessity and not as a cost, even better, as an opportunity for profits, not as a cost?

Some companies are beginning to realize these opportunities. Why is that? What do they see that others to not see?

The Wall Street Journal on June 11, 1991, ran an article that provides some of the answers. It illustrates how industry is learning that less waste means more efficiency and more profit.

Let me share with you a few examples from the article.

DuPont's Beaumont, TX, plant cut its waste by two-thirds and will save $1 million a year.

Dow Chemical spent $15 million last year on waste reduction at its facility near Baton Rouge, LA. It has already saved $18 million in disposal and raw material costs.

And Monsanto believes there is $125 million worth of material in waste that can be recovered, but is now disposed.

Mr. President, there are other examples not mentioned in the article.

Merck & Co. cut air and water emissions and saved $280,000 with no capital expenditures.

Spic & Span replaced some old equipment and cut its landfill costs by 80 percent a year.

General Dynamics in 4 years cut its hazardous waste generation by 75 percent.

These companies and others have discovered that they too can save money by reducing their wastes. They can avoid costly landfill and incinerator costs and potential liabilities.

These examples illustrate what we can do if we put our minds to it.

The Resource, Conservation, and Recovery Act bill—S. 976—that I recently introduced will encourage more companies to put their minds and garbage to good use.

It will challenge industry, to use less toxic materials—to minimize the generation of waste—to recycle, reclaim and reuse as much as they can—and then to safely dispose of waste.

This combination of responsibility and regulation is intended to make the production of waste less desirable. It is intended to make recycling and reuse more desirable. And it is intended to make the disposal of waste more costly.

If we are to have a growing economy, a competitive society, and a healthy, safe environment—goals that we all want—what better way to get there than to reduce our waste.

Mr. President, I ask unanimous consent that the article appearing in the Wall Street Journal be printed in the RECORD.

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

[From the Wall Street Journal, June 11, 1991]

CLEANING UP: CHEMICAL FIRMS FIND THAT IT PAYS TO REDUCE POLLUTION AT SOURCE

(By Scott McMurray)

The chemical industry's record on the environment has been a sorry one. Despite toughter regulation and pressure from public interest groups, it still accounts for nearly half of all the toxic pollution produced in the U.S.

Yet lately, a new force has been driving the industry to clean up its act: economics.

In a major shift, chemical companies are viewing waste not as an unavoidable result of the manufacturing process, but as a measure of its efficiency. The more unusable byproducts a process creates, the less efficient it is—and the more economic incentive there is for making it better.

That's what Du Point Co. discovered at it's Beaumont, Texas, plant, which makes products for plastics and paint. For years, the facility had been spewing out a staggering 110 million pounds of waste annually. Du Pont engineers argued that reducing the pollution would be too expensive.

NOT WASTE AFTER ALL

But when they took a second look last year, they found just the opposite was true. By adjusting the production process to use less of one raw material, they were able to slash the plant's waste by two-thirds. Yields went up and costs went down. The savings: $1 million a year.

"When I heard about it, I just said: 'That's amazing,'" says Edgar Woolard, Du Pont's chairman and chief executive officer. He says the company now even sees waste reduction as a way to achieve a competitive advantage.

Environmentalists heartily support this view. Slashing toxic waste production "is very similar to energy conservation in the 1970s: There is a potential for massive savings," says David Roe, a lawyer with the Environmental Defense Fund.

The entire chemical industry, says Environmental Protection Agency administrator William Reilly, is "getting religion" about the benefits of cutting wastes.

Other industries, from semiconductor makers in Silicon Valley to metal processing companies across the Rust Belt, are also beginning to focus on toxic waste reduction as a way to cut costs, curb pollution and make operations more efficient. But it's the chemical industry that has the most to gain from waste reduction savings simply because it churns out so much.

According to the EPA, in 1989, the last year for which figures are available, the industry produced nearly half of the 5.7 billion pounds of toxins generated nationwide and tracked by the EPA. Chemical company officials say that, since then, the proportion has stayed roughly the same, though the total amount of toxins released in the country is believed to have declined. Some environmentalists have argued, however, that the EPA significantly understates the total amount of toxins discharged into the environment.

A BIGGER PICTURE

Richard Mahoney, Monsanto Co.'s chairman and chief executive officer, estimates that there is $125 million worth of material that currently isn't recovered from the waste that leaves the company's plants. What's more, other costs associated with waste are rising. They include processing, disposal and cleanup, not to mention lawsuits and government fines when those jobs don't get done right.

Dow Chemical Co., for instance, recently spent $30 million building a waste incinerator and dump to handle toxic materials at its plant site in Midland, Mich. And, earlier this year, Monsanto paid the state of Massachusetts $1 million to settle claims that its Everett, Mass., plant didn't report certain waste-water discharges. It paid another $192,000 to a trust fund that supports the cleanup of Boston harbor. Last year, it forked over $27 million to clean other sites. At year end, it had an accrued liability of $120 million on its balance sheet to cover certain future cleanup costs.

Chemical companies, however, might have made substantial cuts in toxic emissions sooner had they recognized some of the potential economic advantages, such as lower materials costs. "One of the differences is that we're now putting some of our best people into this area," says Robert Luft, Du Pont's senior vice president, chemicals. "When you do that, you can start making some fast progress."

THE LEGACY OF BHOPAL

In the past, chemical companies used to focus merely on complying with federal and state pollution laws for specific chemicals or plants. They didn't pay much attention to the aggregate amount of waste they produced each year, or the future liability it represented. Waste disposal costs were low, and the typical approach to pollution often

was the dilution solution: Dilute wastes in massive amounts of air up a smokestack or water out the end of a sewer pipe. More-permanent solutions were unattractive. They almost always involved adding equipment, which meant higher costs, and, thus, intense corporate resistance.

That began to change after the deaths of more than 3,800 people in Bhopal, India, following the release of a cloud of toxic gas at a Union Carbide Corp. subsidiary in 1984. The disaster led to U.S. legislation in 1986 directing the EPA to compile and publicize a survey of toxic emissions, which put pressure on big polluters to do more than just meet minimum government standards.

In the process, companies began to discover economic advantages, as well. Some came from increasing production efficiency, while others came from finding other uses for some of the byproducts. Along the way, companies began to conclude that pollution was a sign of a bad manufacturing system. "When you make a lot of waste you know you don't have control of your operation," says Mr. Woolard, Du Pont's chairman.

Dow Chemical has been applying the same philosophy to its operations. For example, it estimates that, by recycling a toxic solvent used to make its Verdict herbicide, it is now saving about $3 million a year, and halving the amount of solvent going out the door as waste.

At its Plaquemine facility near Baton Rouge, La., Dow spent $15 million on waste reduction projects last year that it says have already saved $18 million in toxic waste disposal and raw material costs. The company promotes these projects internally with the acronym WRAP: Waste Reduction Always Pays.

Monsanto says that its nylon fibers plant in Pensacola, Fla., has cut its toxic air emissions by about 90% since 1987, and saved a few million dollars a year in raw materials expense. The plant is capturing a toxic solvent in a mineral-oil bath before it escapes up a smokestack. It then recycles the solvent back into the production process. The mineral oil isn't wasted either: It is returned to the plant, where it captures more solvent.

CAPTURING A CARCINOGEN

Monsanto says its Sauget, Ill., plant, across the Mississippi River from company headquarters outside St. Louis, cut its air and water emissions of PDCB, a carcinogenic chemical used in making mothballs, by 90%, or one million pounds. The company cooled the plant's waste vapor and captured the crystallized chemical for resuse before it was emitted. Loading the product directly into tank cars under sealed conditions cut vapor emissions even further.

In some cases, the industry is constructing new plants that incorporate the latest waste reduction technology. A new Du Pont herbicide plant, near Dunkirk, France, is expected to produce 90% less pollution than an existing facility. Among other things, it will distill and recycle solvents.

In other cases, chemical companies are tying together production processes at different plant sites to cut waste and save on raw material costs. Last fall, a Du Pont plant in Mobile, Ala., that makes herbicides and insecticides began tapping into the waste stream leaving the plant, pulling out solvents and titanium byproduct that it used to incinerate. The solvents get recycled into the plant's own operations, while the titanium is treated and shipped to a Du Pont plant in DeLisle, Miss., where it is used to make paint pigments. By integrating production this way, the Mobile plant cut its annual toxic emissions by about 25 million pounds, nearly 20%.

GETTING ALONG

Besides cutting costs, these waste reduction programs help companies earn public good will, as well as meet demands from regulators and environmentalists. Arco Chemical Co. is using several waste reduction processes to meet the stiff environmental standards that apply to the expansion of its Channelview, Texas, propylene oxide plant just east of Houston. The Arco Chemical plant, where 17 workers died in an explosion last July, is in an area of back-to-back oil and chemical plants that parallels the ship channel leading to the Gulf of Mexico.

"Roll down your car window and the aroma will knock you over." is how George Smith, of the Sierra Club's Houston chapter, describes the area.

The environmental group feared Arco Chemical's plant expansion would fill the air with an excessive amount of benzene, so it threatened to put the plan through a lengthy public hearing process. In response, Arco Chemical agreed to install a distillation process to recover benzene from liquid waste at the plant. The process keeps much of the benzene from reaching the plant's water treatment unit, where it could partially evaporate into the air before decomposing.

As it turns out, the added cost of the distillation process is largely offset by savings from the benzene that's recycled, says John Evans, environmental superintendent for the plant. And when all waste processes are in place, including catalytic converters that break down hydrocarbons before they go up the smokestack, the expanded facility will emit substantially fewer toxic chemicals than the original plant, even though production will have increased 200%, Mr. Evans says.

Environmentalists say the chemical industry still has a long way to go before it gets unqualified praise. But chemical companies contend that both regulators and the public will continue to see a substantial reduction in their output of toxic wastes. Monsanto, Dow and Du Pont all say their emissions have declined by between 30% and 50% in the past four years. They add that the numbers will continue to drop in the years ahead. The EPA is providing additional incentive: Last month, the agency proposed extending the deadline for required pollution controls at plant sites if companies speed up voluntarily cuts in their emissions.

Even though some of the short-term costs for the new waste reduction programs have been high—more than $200 million a year at the largest chemical companies—Monsanto's Mr. Mahoney says it is money well spent. "Our initiative and commitments to environmental protection will, over the long term, make us more, efficient, more cost effective and more competitive," he predicts.

THE TOXIC TOP TEN

U.S. companies ranked by the amount of toxic waste produced by their various facilities: *

Company	Facilities	Toxic waste (In millions of pounds)
Du Pont	85	348.40
Monsanto	33	293.83
American Cyanamid	29	202.09
BP America	18	123.66
Renco Group	2	119.08
3M	51	106.04
Vulcan Materials	2	93.15
General Motors	133	87.87
Eastman Kodak	23	79.48
Phelps Dodge	19	77.42

* 1989 figures (latest available).
Source: Environmental Protection Agency.

Mr. BAUCUS. I yield the floor.

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

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

The legislative clerk proceeded to call the roll.

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

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

VIOLENT CRIME CONTROL ACT

The Senate continued with the consideration of the bill.

Mr. SPECTER. Mr. President, I believe that later this evening there will be a vote on an amendment to be offered by the distinguished Senator from South Carolina, which is really in the nature of a substitute to the pending bill which has been proposed by the distinguished Senator from Delaware [Mr. BIDEN].

While there is a moment to make a statement on the floor, because I think there will be time limitations later, I wish to express my views in support of the Thurmond bill because I believe that the critical aspect in the pending legislation relates to habeas corpus, as to how we treat death penalties which come out of the State courts and in the Federal courts.

Earlier this evening, on the subject related to the so-called Racial Justice Act, I discussed at some length my views on the habeas corpus provisions. But I do want to state there are a number of provisions in Senator THURMOND's bill that I disagree with.

I believe the death penalty ought to be limited to those 18 years of age and older, and again, I had outlined my reasons in an earlier presentation. I do not believe the death penalty should be imposed on those who are mentally retarded; that it is insufficient simply to consider that a mitigating circumstance.

I am not yet certain as to the provisions with respect to abridgement of hearings on foreigners in the United States, although I am told that those provisions are now out of the bill proposed by the distinguished Senator from South Carolina.

But in making this statement, I wish to explain that in endorsing the Thurmond bill over the Biden bill, I do not agree with all the provisions of the Thurmond bill. But it will be subject to amendment, and I will have an opportunity at a later moment to amplify these views.

I thank the Chair, and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MITCHELL. Mr. President, I ask unanimous consent that the pending amendment No. 366 be withdrawn; that the Senate vote on amendment No. 365 at 7:15 p.m., with no intervening amendments or motions in order; that upon disposition of amendment No. 365, Senator THURMOND be recognized to offer his version of the President's crime bill; that there be 40 minutes of debate on that Thurmond amendment equally divided in the usual form; that no second-degree amendments be in order nor motions to recommit prior to the disposition of the Thurmond amendment; that at the conclusion or yielding back of that time the Senate vote on the Thurmond amendment; and that if the amendment is agreed to, it be considered original text for the purpose of further amendment.

Mr. DOLE. Mr. President, I have no objection. I wonder if we might start the vote in about 5 minutes to give some people who are already downtown a little time to get back.

Mr. MITCHELL. Mr. President, to accommodate that concern, an appropriate one, I ask unanimous consent that my request be modified to have the vote begin at 7:20 p.m.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Reserving the right to object; and the time to be equally divided between now and 7:20.

Mr. MITCHELL. I further modify my request that during the time between now and 7:20 p.m. there be debate on amendment No. 365, to be equally divided between Senators GRAHAM and KENNEDY.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the majority leader, as modified? The Chair hears none. The request is agreed to.

Amendment No. 366 is withdrawn.

The amendment (No. 366) was withdrawn.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. Three and one-half minutes.

Mr. KENNEDY. Mr. President, I yield myself such time as I might use.

Mr. President, I welcome the opportunity to have a disposition of this issue that is before us now and will be voted on at 7:20.

Just in a very summary way, Mr. President, the Senate of the United States, the Congress of the United States, the American people have tried to root out discrimination in whatever form or shape it has taken over the period of the last 30 years. We have made attempts at other times in our history, and there has been a very important continuing, ongoing effort to do so.

In the early 1960's, we eliminated discrimination on the basis of voting. In the mid 1960's, we eliminated discrimination on public accommodations. We attempted to eliminate discrimination in housing in 1968 and in 1988. Then during the period of the seventies, we made important progress in eliminating discrimination against those with disabilities and on the basis of gender.

All we are saying with the Racial Justice Act is if we are going to apply the death penalty, make sure we do not apply it in a discriminatory fashion and discriminatory way. We do believe that, on the basis of the GAO studies, a prima facie case has been made that in a variety of different jurisdictions the death penalty has been applied in a discriminatory way. That case has been made earlier during the course of the debate.

A point that has been made by those who are opposed to this amendment is that we should not use statistics in the criminal justice system. Mr. President, is it appropriate to use statistics in proving discrimination in criminal law in general and under the Racial Justice Act in particular?

Mr. President, statistics are generally accepted as one reliable indicator of racial discrimination. Few people admit their intention to discriminate. Therefore, the Supreme Court has usually recognized that the existence of discrimination can be proved by showing that the results of a decision-making process are discriminatory.

The Racial Justice Act will not, as some of its opponents have suggested, necessitate an overhaul of the criminal justice system. To the contrary, the statistical analysis that would be mandated pursuant to the act is consistent with Supreme Court pronouncements in criminal law decisions such as *Batson* v. *Kentucky*, 476 U.S. 79 (1986).

The Court determined in Batson that, in jury selection, a black criminal defendant can establish a prima facie case of discrimination by showing a substantial disparity between the percentage of blacks in the population and the percentage of blacks in the pool from which his grand jury or trial jury was selected. That is what the Batson case involved. It was a criminal case and the Court recognized the important and persuasive role that statistics can play.

A defendant may also use statistical evidence to show discrimination in a prosecutor's use of peremptory challenges against black trial jurors.

Congress has in the past exercised its enforcement authority by statutorily mandating use of evidence of unexplained and unjustified racial disparities. For example, after the Supreme Court ruled in 1980 that the Voting Rights Act and the 15th amendment required a showing of discriminatory intent, *Mobile* v. *Bolden*, 446 U.S. 55, Congress amended that act to allow plaintiffs to base a showing of discrimination on statistical evidence.

The statistical analysis required by the Racial Justice Act is clearly consistent with those boundaries that have been laid down by both the Supreme Court and the Congress. In addition, the heavy burden that faces a defendant seeking to mount a claim under the Racial Justice Act and the various opportunities that a State has to rebut those claims will ensure that courts and the criminal justice system will not be manipulated through misrepresentation.

A second point that is made, Mr. President, is that this is really an attempt to abolish the dealth penalty. I remind many of our colleagues that many of those who are cosponsors of our amendment are strong supporters of the death penalty.

Mr. President, the Racial Justice Act will not bring an end to capital punishment. Just to make absolutely clear, a number of those Members of this body who are strong supporters of the death penalty are cosponsors of S. 1249, the Racial Justice Act, and a number of others who support the death penalty have voted for the act.

They include: the Senator from Washington [Mr. ADAMS], the Senator for Delaware [Mr. BIDEN], the Senator from New Jersey [Mr. BRADLEY], the Senator from New York [Mr. MOYNIHAN], and the Senator from Oregon [Mr. PACKWOOD].

The idea that there are Members who are strongly committed to the death penalty and who somehow feel that this will undermine it just does not hold up as an argument. It just does not hold up. I have indicated my own opposition to the death penalty. But what this debate is all about is racism in the application of the death penalty.

Even those who support the death penalty, support the Racial Justice Act. Others, who have no position on the death penalty, such as the American Bar Association, have indicated strong support for the Racial Justice Act.

In addition, Mr. President, I would refer again to the letter on this subject from University of Iowa Profs. David C. Baldus and George Woodworth and Arizona attorney Charles A. Pulaski, Jr. These widely recognized experts in the field of statistics and their application in the capital punishment context conclude as follows:

> The argument that claimants will always prevail in claims brought under the Racial Justice Act overlooks a simple fact. It is that after taking into account pertinent nonracial factors, it will be extremely unlikely to ever see any evidence of racial discrimination unless racial factors are in fact exerting a significant influence on capital sentencing in the jurisdiction under evalua-

tion. As a result, it is by no means the case that states will usually lose these cases.

Mr. President, a copy of this letter, dated June 17, 1991, has been included in the RECORD.

This letter illustrates in some detail how a seeming statistical disparity suggesting race as a factor may be easily explained. Does the disparity take into account the brutality of the various offenses, for example, or the prior records of the offenders, or other nonracial characteristics?

So it is clear, Mr. President, that the Racial Justice Act will not abolish the death penalty. Its effect is limited precisely to situations where racial bias plays a role in the application of the death penalty.

There may well be jurisdictions which already display no racial pattern in capital sentencing. And even if a defendant can meet the substantial burden imposed by the Racial Justice Act, the State can challenge the quality of that presentation or show how nonracial factors explain the alleged pattern of discrimination. But that is not all.

The State can proceed with an execution if it shows that the defendant's particular case was not part of the pattern of discrimination. In the McCleskey case, for example, it was clear from the defendant's statistical analysis that there was no pattern of discrimination in highly aggravated homicide cases.

Even if a defendant overcomes all of those hurdles and the death sentence is vacated, Mr. President, the State can retry that defendant once it remedies its practices to eliminate race as a consideration. Indeed, a State that has not already done so could go ahead and provide its district attorneys clear guidelines on when to charge capital offenses and when to seek the death penalty as a precaution to eliminate racial bias now.

Finally, Mr. President, the spurious argument made by some is that we will, if we accept the Racial Justice Act, then be applying a death penalty by quotas. Nothing could be further from the truth.

Contrary to arguments made by opponents of the Racial Justice Act, the measure will not result in quotas in death sentencing. Members of the Senate on both sides of the death penalty issue should be offended by the possibility of racial bias in capital sentencing in any form. That is the issue to which the act addresses itself.

Under the act, the mere fact that blacks may receive the death penalty more frequently than whites would not even create a prima facie case of discrimination.

To establish a prima facie case, a defendant must show that blacks, or killers of whites, for example, receive the death penalty with a frequency that is disproportionate to their representation among those arrested, or charged with, or convicted of capital crimes under the bill. Even if a prima facie case is established, the Government can rebut such a claim by showing by clear and convincing evidence that any disparity is the result of nonracial factors.

Nothing in the act requires any kind of quota in capital cases. All it does is guarantee that racial discrimination does not unfairly influence these life or death decisions.

Any attempt to use quotas in the process would violate the Racial Justice Act, precisely because the decisions would be so clearly founded upon race and not upon legitimate factors.

The Racial Justice Act is intended to eliminate racism in capital sentencing. It would not create quotas of any kind. We have included in the RECORD a letter, dated June 17, 1991, from University of Iowa Profs. David Baldus and George Woodworth and Arizona attorney Charles Pulaski, all of whom are widely recognized experts on this issue. They conclude, and I quote:

> The argument that the Racial Justice Act would lead to racially discriminatory charging and sentencing practices and quotas is misleading in the extreme. The decline in racial discrimination that we have generally observed in this nation's criminal justice system is most plausibly explained by expanded protection of federal and constitutional law and a growing perception of the importance of nondiscriminatory and even-handed treatment of criminal defendants. Any suggestion that this development has somehow produced quotas is completely implausible.

They go on to note:

> While Congress may want to outlaw quotas in death sentencing, to equate quotas with statistical tests is absurd.

Mr. President, if there is one area of public policy that we should free this country from, that is the application of the death penalty used in a discriminatory form. This is the last chance that an individual has. He may be discriminated against in terms of voting, but, hopefully, at some time in the future we might remedy that. He may be discriminated in housing and discriminated in employment as a matter of gender or disability, but we can still come back and try to have the opportunity to redress that particular grievance.

But when we have discrimination in the form of the death penalty, there is no second chance. And we believe that the Racial Justice Act offers the best opportunity to root out what has been demonstrated and documented and submitted in evidence during the course of this debate, the serious evidence that the application of the death penalty has been used in a discriminatory way in too many jurisdictions of this country. And with this particular amendment we say no to that.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Florida controls 3½ minutes.

Mr. HATCH. Mr. President, I have listened to the distinguished Senator from Massachusetts.

The PRESIDING OFFICER. If the Senator will suspend, under the unanimous-consent agreement, the 3 minutes allotted to the opposing point of view are under the control of Senator GRAHAM. Is there objection to Senator HATCH speaking on Senator GRAHAM's time?

Without objection, it is so ordered.

The Senator from Utah [Mr. HATCH] is recognized.

Mr. HATCH. Mr. President, enactment of section 207 of title II of S. 1241 would mean the end to the death penalty—both Federal and State. That is a sweeping claim, and I do not make it lightly. But this is the only conclusion that is possible for one who has studied the provisions of this legislation.

This is also the view of the attorneys general of the various States. On June 14, a letter signed by over 25 State attorneys general was sent to the chairman of the Judiciary Committee. Here is what the attorneys general stated:

> We have concluded that the practical effect of enactment of the Racial Justice Act would be to abolish the death penalty while doing nothing to promote racial justice.

The State attorneys general make an important point, Mr. President. They do not say simply that the Racial Justice Act will abolish the death penalty and therefore should be abolished despite some good that it might otherwise accomplish. No, they conclude that the act will do "nothing to promote racial justice," plus it will abolish the death penalty. That is a double criticism of the bill that I think should decide the vote of any Senator who may have been deceived by the title of this bill into thinking that it warranted his or her vote.

I have not heard of any State attorney general who denies that this bill will end the death penalty in his or her State, or anyone who claims that it will advance justice in any sense. Maybe there is one, but I doubt it.

The so-called Racial Justice Act is objectionable on innumerable grounds: it is illogical, some of its provisions are nonsensical, and, the entire bill is, I believe, plainly unconstitutional.

A prima facie case of discrimination is established under this bill by showing that death sentences are being imposed on persons of one race, black or white, with a frequency that is disproportionate to that race's representation among: First, the numbers of persons arrested for, charged with, or convicted of, death-eligible crimes; or second, the numbers of persons "against whom death-eligible crimes have been committed."

In addition, the bill requires State and Federal agencies to maintain per-

tinent data on the charging, disposition, and sentencing by race for all defendants in and victims of cases of death-eligible crimes. Proposed section 2923.

It is a significant failing of this bill that it does not indicate how this calculation is to be done: Who, for instance, are the victims of treason? Aren't we all? Who are the victims of airline hijacking or of drug kingpin activity? Does it make any difference whatsoever what the racial composition of the passengers is on a hijacked airplane? It is nonsensical to think that such crimes are motivated by the race of the plane's passengers, yet the Racial Justice Act would require prosecutors to find out the racial composition of the airplane's passengers and base their prosecutorial decisions on what that racial composition is.

This bill, if enacted, would force the criminal justice system to consider things never previously thought appropriate for prosecutors to consider. Indeed, it requires them to consider things that I believe they are positively prohibited, under the 14th amendment from considering. The bill would inject the factor of race into the operation of the criminal justice system in cases, such as prosecutions for treason, where no one has ever even alleged that race is a problem.

Is that racial justice? Is that progress in our Nation's longstanding effort to remove racial consideration from public policy? Of course not.

I submit that this provision promises one of the most significant steps backward in race relations that this Congress has ever considered. It would not only impede our progress toward a color-blind society; it would guarantee that we never get there. That it would accomplish all of this under the guise of the fine-sounding phrase "racial justice" is nothing more than a cynical hoax on those who have fought so long for genuine racial justice in this country.

Consider what the Justice Department has said about this bill:

> The Racial Justice Act cannot fairly be characterized as in any sense a civil rights measure. The practical abolition of capital punishment that would flow from the act would gravely harm the security of the American people, including minority groups who often experience at first hand the most devastating effects of violent crime. (DOJ Talking Points on the Racial Justice Act, May 16, 1990).

Earlier, Senator KENNEDY placed in the record the famous Baldus study that purports to establish racial disparities in capital sentencing. But section 207 goes far beyond the Baldus study. The study only condemned the situation in which more death sentences are allegedly being imposed where the victims are white than where the victims are black. But the so-called Racial Justice Act also prohibits the death penalty if fewer death sentences are being imposed in white-victim crimes than in black-victim crimes. The States cannot win: whether the statistics favor blacks or favor whites, this bill says there shall be no death penalty.

By making it equally bad whether the disproportion favors—or disfavors—blacks or whites, section 207 guarantees that its prohibition can never be satisfied. It never happens, in any jurisdiction, that everyone arrested for a crime is later charged with the offense, nor is everyone tried for a crime ultimately convicted, nor those convicted sentenced to death. A statistician could tell you the exact odds against all four of these numbers turning out to be identical, but any of us can see that the odds must be less than the chance of a coin toss landing on its edge. This is Alice in Wonderland stuff—it does not reflect a true concern for adopting a legislative solution to a perceived problem, even if we were convinced that the problem did exist.

Section 207 abolishes the death penalty by defining racial discrimination in such a way that it will be found in every case. When we decree that it is equally bad for either race to receive more or fewer death sentences, as the Racial Justice Act does, then we guarantee that discrimination, so defined, will exist in the future, even if it doesn't exist now. Since only two variables are to be measured in determining racial proportionality, it is clear that there will always be a disproportion.

We do not advance racial justice by pitting one race against another in meaningless statistical head counts. All that this bill guarantees is the abolition of the death penalty.

Capital sentencing, in the wake of Furman versus Georgia, is a very demanding process. Extensive procedural requirements not found in other criminal trials ensure that the death penalty will not be imposed arbitrarily, that racial bias will not enter into the process, and that any suspected discriminatory influence will be quickly detected and remedied.

Mr. President, there are simply no other questions is our public life about which we demand that the answers be so definitely and absolutely certain as the three questions necessary to the carrying out of a death sentence:

First, was the defendant guilty of the crime?

Second, was the sentence of death appropriate? and

Third, was the trial and sentencing free from prejudice and discrimination?

In addition, if the special precaution to assure against discrimination is enacted—section 102 of S. 1241, which is also contained in the Thurmond bill—then every juror in a capitol case will be required to ask a fourth question: has racial bias entered into my decision in the case before me? Only when every juror answers that additional question in the negative will the sentence be permitted to stand.

In sum, there are so many layers of protection against racial bias affecting capital sentencing that any statistical tinkering with the process, particularly tinkering as wrong-headed and unreliable as that proposed by section 207, is wholly unjustified.

CONSTITUTIONAL OBJECTIONS

Mr. President, section 207 also raises constitutional questions that I would urge my colleagues to consider. Prof. Richard Lempert of the University of Michigan—who is, coincidentally, a leading opponent of the death penalty—has studied the effect which the adoption of a statistics-based sentencing scheme would have. He said:

> In such a system people will be killed not because those who hear their case think they deserve to die but because the sentencers think that others do.

To me, that is the very definition of an unconstitutional application of the death penalty as laid down by the Supreme Court 19 years ago in Furman versus Georgia. But such a blatantly unconstitutional result is—tragically, I believe—what the supporters of the so-called Racial Justice Act are calling for.

The preamable to section 207 correctly notes that "section 5 of the 14th amendment of the U.S. Constitution calls upon Congress to enforce the Constitution's promise of equality under law." Section 207(b)(1). But this bill is not concerned with equality: it mandates proportionality, not equality. It not only fails to fulfill the 14th amendment's mandate, it would operate in direct opposition to that landmark provision of our law.

The 14th amendment prohibits any State from denying "to any person within its jurisdiction the equal protection of the laws." Section 207, by contrast, mandates the proportional treatment of the races, even if the races are thereby treated unequally. It bases justice not on equal treatment, but on a proportional ratio derived from arrest and conviction statistics. It is not concerned with equality: it seeks out and promotes proportionality which is, by logic and dictionary definition, inequality.

So let us be clear about what this bill is. It should be called the Racial Proportionality or Racial Inequality Act of 1991, for that is the clear aim of all of its provisions. But everything in the 14th amendment speaks to individual equality—you will not find anything in the 14th amendment about proportional justice.

CONCLUSION

In conclusion, Mr. President, let me simply say what must be obvious to all: Statistics are not justice. Our justice system provides layer after layer of protections against all forms of racial bias in jurors, judges, and prosecu-

tors. Section 207 can have no result except the total elimination of the death penalty as an acceptable penalty for the most heinous crimes known to man. I realize that this result—the abolition of the death penalty—is pleasing to some, but I am equally aware that it is not desired by the great majority of Americans. Abolition of the death penalty is clearly not desired by the State legislators who, in 39 different States, have adopted death penalty statutes since 1976. Abolition of the death penalty is clearly not desired by the voters in States such as Illinois and California who in popular referenda have voted overwhelmingly to adopt or retain capital punishment. Nor is abolition of capital punishment desired by the typical 80 percent or more of the respondents whom pollsters regularly report favor the penalty.

Mr. President, I urge my colleagues to support this amendment and to reject—emphatically—section 207 of S. 1241.

The PRESIDING OFFICER. The Senator from Delaware.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Florida, amendment No. 365. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arizona [Mr. DECONCINI] and the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

I further announce that, if present and voting, the Senator from Arizona [Mr. DECONCINI] would vote "aye."

Mr. DOLE. I announce that the Senator from Wyoming [Mr. SIMPSON] is necessarily absent.

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

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

The result was announced, yeas 55, nays 41, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—55

Baucus	Cochran	Graham
Bentsen	Craig	Gramm
Bingaman	D'Amato	Grassley
Bond	Dixon	Hatch
Breaux	Dole	Heflin
Brown	Domenici	Helms
Bryan	Exon	Hollings
Bumpers	Ford	Johnston
Burns	Fowler	Kassebaum
Byrd	Garn	Kasten
Coats	Gorton	Lieberman
Lott	Pressler	Stevens
Lugar	Robb	Symms
Mack	Roth	Thurmond
McCain	Rudman	Wallop
McConnell	Seymour	Warner
Murkowski	Shelby	Wofford
Nickles	Smith	
Nunn	Specter	

NAYS—41

Adams	Glenn	Mikulski
Akaka	Gore	Mitchell
Biden	Harkin	Moynihan
Boren	Hatfield	Packwood
Bradley	Inouye	Pell
Burdick	Jeffords	Reid
Chafee	Kennedy	Riegle
Cohen	Kerrey	Rockefeller
Conrad	Kerry	Sanford
Cranston	Kohl	Sarbanes
Danforth	Lautenberg	Sasser
Daschle	Leahy	Simon
Dodd	Levin	Wirth
Durenberger	Metzenbaum	

NOT VOTING—4

DeConcini	Simpson
Pryor	Wellstone

So the amendment (No. 365) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order the Senator from South Carolina [Mr. THURMOND], is to be recognized for the purpose of offering an amendment. Debate on that amendment is limited to 40 minutes divided equally according to the usual form. Pursuant to that agreement, the Chair recognizes the Senator from South Carolina [Mr. THURMOND], for the purpose of offering an amendment.

AMENDMENT NO. 367

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

The legislative clerk read as follows:

The Senator from South Carolina, [Mr. THURMOND], proposes an amendment numbered 367.

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

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

(The text of the amendment (No. 367) is printed in today's RECORD under "Amendments Submitted.")

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I am happy to stand in support of the President's anticirime package. Frankly, I believe the Thurmond amendment is not only tougher on crime than the Biden bill, but it is an anticrime measure. The Bush bill on habeas corpus will limit the number of appeals through these petitions. The Biden bill will increase the already repetitious appeals of death row inmates rather than limiting them. And part of the problem is the retroactivity in the Biden proposal.

In Utah, death row inmate William Anderson convicted of murdering 5 people has been appealing his conviction since 1974; that is 17 years. He has received over 25 separate judicial reviews of the sentence, and the end is still not in sight. His current appeal before the Tenth Circuit Court of Appeals was argued in January 1991.

As I described earlier today, the Biden bill will allow even more repetitious appeals than what we have now.

Mr. President, the Supreme Court has established that evidence illegally obtained by the police is admissible in court if the police made a good faith reliance on a search warrant. President Bush's bill takes the commonsense approach of extending this good faith exception to evidence illegally obtained in a good faith warrantless search. The Biden bill does not. Indeed, I believe the Biden bill even cuts back the Supreme Court's good faith exception for searches based on a warrant.

Frankly, Mr. President, the President's bill really does reform habeas corpus. It really does stop the endless petitioning, the fruitless appeals made through habeas corpus petitions by convicted murderers all over this country at a cost of billions of dollars annually to the taxpayers of this country in cases where the most heinous crimes have been committed. The exclusionary rule reform will end this ridiculous ability of criminals to get off on technicalities. It will make a tremendous inroad into that, and it will extend the good faith rule under the Leon case in such a way as to protect the citizens of this country.

With regard to capital punishment, Mr. President, the President's death penalty bill is considerably better than the Biden provisions.

It applies to the murder of witnesses in criminal trials. It protects Americans abroad who were murdered, in certain instances. It has additional categories. It has a good procedural approach to capital punishment. It would solve the problems that currently plague the capital punishment area and have contributed to the endless appeals that we have been going through.

Mr. President, this is a chance for all of us to do something about stiffening the Criminal Code of this country in a way that will make dents in criminal activity like never before. I think almost everybody understands that we need to make these reforms and these changes.

I think almost everybody understands that we have people getting off on technicalities today and being put right back on the streets.

I think everybody understands the unlimited cost to the taxpayers, unlimited clogging of our courts that the

repetitious habeas corpus appeals and petitions are making in our society today.

I think everybody understands that unless we have a death penalty as a deterrent factor, we are never going to stop some of the violent crimes going on in America today.

All three of these would be resolved by the President's bill. None of them would be resolved satisfactorily by the Biden bill that we have on the floor today. So I commend the distinguished Senator from South Carolina for being willing to sponsor the President's bill.

I hope we can put aside partisanship and can, in a bipartisan way, support the stronger bill, the bill that would help to resolve these three critical areas in criminal law, along with other areas, and the bill that I think would have the full faith and support of the President of the United States, that I think has an opportunity of being enacted into law, so we can make inroads into the criminal problems in this country like never before.

I yield the remainder of my time back to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield 3 minutes to the distinguished Senator from Texas.

Mr. GRAMM. Mr. President, I thank our distinguished leader from South Carolina for yielding.

Mr. President, since the 1960's, the dominant thought in the American criminal justice system has been that it is society's fault that people engage in criminal behavior. That thought process and the leniency it has produced has resulted in crime in our streets, and our bleeding Nation demands that we act and that we do something about this problem.

We have two basic approaches before us: The underlying bill, the majority bill, is basically a continuation of the policy of the 1960's. It goes backward on the exclusionary rule. It goes backward by allowing evidence gathered in good faith to be disallowed in the courts.

Mr. President, the American people think we have gone too far in the direction of protecting the rights of the criminals, while millions of our people are victimized by crime every year.

We have a choice between the death penalty that has questionable enforcement and a death penalty that puts into place what the American people support; that is, the death penalty for those who, through their actions, have taken the lives of other people under extreme circumstances of cruelty and disregard for human life and society.

We have a choice in terms of our ability to make a decision and to enforce the law, in terms of reforming endless appeals procedures whereby criminals who have been convicted and sentenced to death circumvent the law and thumb their nose at society for decades through endless appeals. The amendment offered by the Senator from South Carolina gives them their day in court, gives them an appropriate appeal; if their case is found to have merit, then they can escape the sentence. If not, the sentence is carried out.

Mr. President, if you are for getting tough on crime, if you are for grabbing criminals by the throat and not letting them go, to get a better grip, then you should vote for the President's crime bill, which has been offered by the distinguished Senator from South Carolina.

Money is not an issue. Basically, funding in both bills is the same. The gun issue has been delayed, as we negotiate on that tough and contentious issue. The only thing that is at issue is: Are we going to have a crime bill that is worthy of the name; are we going to respond to a national crisis? If you vote yes, we respond.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield 7 minutes to my distinguished colleague from Wisconsin.

Mr. KOHL. Mr. President, I rise to speak in support of S. 1241 and in opposition to the President's crime bill which will be offered later as a substitute for the Biden bill.

It is important to put this legislation in context: it is clear that violent crime continues to escalate. Murder, rape, assault—these and other violent crimes occur more and more frequently. No State is free from the violence. In 1989 one violent crime was committed every 49 minutes in Wisconsin—one rape every 8 hours, 51 minutes; one robbery every 2 hours, 24 minutes, one aggravated assault every 1 hour, 28 minutes. In 1990 there were 223 murders in my State—the largest number by far since Uniform Crime Reporting figures have been compiled. And recently a Newsweek article listed Milwaukee as the top city for increased homicides for cities under 1 million in population.

This huge increase exemplified by my State is not an exception. It is the rule. Nationally, in 1989, there was a violent crime committed every 19 seconds—19 seconds. During my statement there will be 1 murder, 3 rapes, 15 robberies, and 30 aggravated assaults. These crimes strike at the core of our society; people live in fear and distrust; afraid to use the street of our cities, the parks in our towns. Crime threatens us as individuals and it threatens the social compact which binds us together.

The Senate is now considering the Violent Crime Act of 1991. Chairman BIDEN has devoted many hours to this legislation. He has conducted numerous hearings, coordinated with every law enforcement organization in the country, and worked with his colleagues on the Judiciary Committee and in the Senate to craft this proposal to reduce violent crime. I commend the chairman for his fine effort.

S. 1241 is not a singular approach to the violent crime epidemic. Here the problem is attacked on many fronts. First, the legislation provides funding for additional law enforcement personnel. Title I authorizes $1 billion to aid State and local law enforcement agencies for fiscal year 1992. Title V provides $75 million to the FBI and other Federal agencies for agents devoted to counterterrorism efforts. Title X authorizes $345 million to increase the number of Federal agents focusing on violent and drug-related crimes—1,000 FBI agents; 400 DEA agents; 500 border patrol agents; 400 INS agents; and 350 Federal prosecutors; in addition to increasing funds for public defenders, U.S. Marshals, and the courts. And title XVII provides $300 million for emergency assistance to State and local areas besieged by drug and crime problems.

Second, the violent crime package addresses specific drug-related activity. Titles VI, VII, and XIII deal with drive-by shootings, assault weapons, and prison for violent drug offenders, respectively. Furthermore, title XII increases penalties for use of a firearm during a violent crime, title XXI authorizes a new civil remedy to evict drug dealers from crack houses, and titles XIV and XV address special problems associated with youthful drug offenders.

Mr. President, as you know, I am chairman of the Juvenile Justice Subcommittee of the Judiciary Committee. Since reestablishing the subcommittee in January, I have been working with many experts in the field, conducting hearings, gathering information, and evaluating the current system. Chairman BIDEN and I have agreed that, although title XIV and XV of S. 1241 would be included in the subcommittee's jurisdiction, they will be incorporated into this crime package without affecting jurisdiction on these or similar issues in the future. Additionally, if the subcommittee develops gang legislation that is different from these titles, it will be substituted for the provisions currently in the bill. I look forward to working with the chairman as we continue our review of the juvenile justice system and develop appropriate legislation.

Third, this legislation includes provisions on the exclusionary rule, habeas corpus reform, and expanding the death penalty. As with most proposals considered by the Senate, I think this bill could be improved. In particular, I would strike the sections covering the Federal death penalty. Wisconsin has not had a death penalty since 1853. And I personally oppose the death penalty. But because I believe this legislation is extremely important to reducing the

incidents of violent crime, I will support the bill.

Finally, Mr. President, title XXVII of the bill incorporates a compromise version of the Brady 7-day wait period. This compromise is the result of the combined efforts of the distinguished majority leader, myself, and Senator GORE, as well as Senator METZENBAUM, who has taken the lead on this issue for many years. In general terms, the compromise combines the waiting period of the Brady bill with the background check of the Staggers proposal offered in the House of Representatives.

Specifically, the Mitchell-Kohl-Gore proposal adds language to Brady which authorizes $40 million for grants to States to be used for either or both of two purposes: First, improving computer criminal records; or second, defraying costs of making a background check. Those grant moneys made available to States are conditioned on three things. First, a background check of handgun purchasers must be conducted during the waiting period. Second, by the end of 1993, States must make their criminal records available to the FBI's Interstate Identification Index System in order to establish a national data base. And third, by the end of 1995, State criminal records must be 80 percent current with case dispositions for the prior five years of criminal activity.

For decades attempts have been made to curb handgun violence. Yet, the proliferation in America continues. From last August to this March, nearly 300 Americans died in the Persian Gulf. But during that same period, more than 1,200 people were murdered in New York, more than a thousand murdered in Los Angeles, and more than 300 murdered right here in the Nation's Capital. And most of these victims were killed with guns. Of course, there is no panacea for this deadly problem. We need to move on many fronts: Ensure more certainty of punishment; provide more resources to State and local law enforcement; and, at times, lock up people and throw away the key. But we also need to do everything we can to keep firearms out of the hands of criminals and drug traffickers. We need to enact a uniform waiting period and a mandatory background check, and provide money to States to improve their criminal records. The Mitchell-Kohl-Gore proposal implements this concept in a simple, effective and straightforward manner, and best of all, it would save lives.

Before I close I would like to make a few comments on the President's crime legislation. The President's bill takes a Madison Avenue approach to legislating. It advertises to excess so-called tough measures—a Federal death penalty, habeas corpus reform, and exclusionary rule expansion; but fails to substantively increase the number of law enforcement personnel, address the problem of firearms proliferation, or develop new programs to deal with violent and drug-related crimes. All the catchy get-tough phrases the administration uses with commercial repetitiveness are, I am afraid, merely empty slogans. I believe that the American public has had enough of telemarketing politics. Crime is a problem not a headache. We cannot just take two aspirin and expect it to go away in the morning. It will take time, It will take money. It will take more cops on the beat, tougher penalties where necessary, and new ideas where old ones have not worked. And that is what is contained in the Biden crime bill, and that is why I will support S. 1241.

Mr. BIDEN. Mr. President, the basic question here, we are about to vote on. That is, are we going to have a Democratic crime bill which is before the Senate with a lot of bipartisan pieces to it, or are we going to have a shell of the President's bill with our bill crammed into it. That is basically what we are about to vote on here.

For a long time, we have been arguing with the administration that local law enforcement needs more money, and that there is a need for help for youth gangs, and so on. And there has been opposition to that.

If you believe in tough penalties, the underlying bill, the Biden bill, which this would essentially wipe out, I would respectfully suggest is much tougher than the President's bill on tough penalties or the substitute or the amendment that is being offered.

For example, we have the death penalty for firearms killing. If there is a use of a firearm and death results, there is a death penalty for that. That is not contained in the bill that is being offered here.

We have the death penalty for drive-by shootings. We read about it every day in the paper, that people who are innocent bystanders standing on the corner are shot down. We provide for the death penalty in the underlying bill which is attempting to be wiped out. The bill that has been offered does not contain that.

I believe in tough penalties, and our bill provides for more penalties for death for more offenses than the bill that is being offered here, and in its place.

With regard to victims' rights, I have been a supporter of—and I believe the Senator from South Carolina is, except his bill does not contain it—I have been a supporter of victims' rights. And our bill, not the President's, removes the cap on the fund so that victims can get the funding they need.

By that, I mean, you know when fines are paid by defendants after being convicted, it goes into a fund, and out of that fund is the place we recompense victims of crime. Right now, there is a cap on that that says only a litte bit of that money can be used.

The Justice Department and the President kind of like it that way, because the rest of the money then goes back into the Treasury. I want to take the cap off those funds and let victims be recompensed. If they need physical therapy, if they need help, let them get help. The underlying bill, the Biden bill does that. The bill that is being offered here does not do that.

Victims get shortchanged, victims of crime get shortchanged by the proposal that has been put forward.

Only our bill has a provision to close down crack houses. Our bill, not theirs. We give the Government authority to close those houses down. There is no such provision to close down crack houses in the alternative that has been put forward.

Only our bill adds a 1-year penalty for drunk driving for an adult who drives drunk with a child in the car. Children are victims. An uncle, an aunt, a next-door neighbor is going to drive your 7- or 8- or 9-year-old daughter somewhere. What does a child do? What does a child say to a drunken father who says, "Get in the car"? They are prisoners.

Our bill says that everyone should know if they are going to drive drunk and a child is in the car, they are going to have a tough penalty. They are going to go to jail for a year beyond what they would already go to jail for.

Above all, I appeal to my colleagues that to suggest that we have put, we Democrats—the Biden bill is a tough, tough, tough bill on crime. Do not abandon it now.

Only our bill has a provision, as I said, to close down those crack houses. There will be amendments, whichever bill wins. If the proposal made by the Senator from South Carolina fails, you will still have an opportunity to vote on habeas corpus.

I know my distinguished and knowledgable friend from Florida, Senator GRAHAM, thinks we should go further than I go on habeas corpus. He will get a chance to introduce that amendment if this provision fails. We will get a chance to vote on the exclusionary rule. We will get a chance to vote on guns, to take them out or put them in, depending on your point of view.

And tonight, we only decide which bill will be the starting point for this debate. I respectfully suggest that the bill that we have introduced, the Biden bill, is a much tougher place from which to start to deal with crime.

Tonight, it seems to me, as I say, we are just deciding what is the starting point: A bill that has just been hatched on the floor by my distinguished friend from South Carolina in what appears to be a mild sense of desperation, or a well-conceived bill. You may not like all the parts of it, but we held hearings after hearings on it. We have worked

on it for, by and large, most provisions in the bill we worked on for over 3 years. That is what is up there.

I do not expect everyone to agree with everything I put in that bill. I expect my colleagues, Democrats and Republicans, will come along and say: Let us change this piece, or that piece. But it is well conceived—able to be improved upon from individual perspectives, but it is well conceived.

And what do we have to put up there? A bill that literally was cobbled together. They were standing here with paper clips and staple guns, putting it together. So, the only question is, Where do we start?

I would respectfully suggest, with all the good intentions on the part of my friend from South Carolina and others, that theirs is obviously not the place. I cannot believe, for example, they would intentionally leave out of their bill the ability to close down crack houses. I cannot believe it.

I know they did not intentionally leave out of the bill the ability to put someone to death for a drive-by shooting. I know they did not intentionally leave out of the bill the ability to put someone to death if they use a firearm in the commission of a crime and someone dies. I know they did not attempt to leave those things out. They did not mean to. But they did; just reinforcing the fact that this is not particularly well thought out.

Let us work from where we are. Let us reject this legislation that is being proposed as an alternative at this moment.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina [Mr. THURMOND].

Mr. THURMOND. Mr. President, I say to the distinguished Senator from Delaware, the chairman of the committee, that our bill does contain the victims' cap he referred to. It does contain the provision on crack houses that he referred to. It does contain a provision for drunk driving. We left in many. They are in. They are in this bill.

Mr. BIDEN. If the Senator will yield just for a second?

Mr. THURMOND. Will the Senator answer on his own time?

Mr. BIDEN. I am sorry.

Mr. THURMOND. Mr. President, there are three big provisions of the President's bill that are very important, and that is what the public is demanding. One is a death penalty provision.

The Biden death penalty makes it extremely difficult to ever have a death penalty imposed. It fails to permit victim impact statement as evidence during the sentencing phase. It tilts the scales of justice in favor of the convicted murderer by requiring the application of Federal rules of evidence to the sentencing phase. This means evidence of a convicted murderer's prior murders may not be admissible when a jury hears evidence on whether to impose the death penalty.

Another provision is the habeas corpus. I will just tell you what the Attorney General of the Nation said, and it is summed up right here.

> Any crime reform effort would be incomplete unless it includes meaningful reform of the Federal habeas corpus process. Of the measures pending in the Senate, we believe that the provisions contained in S. 635—

The President's bill—

> would best accomplish the objectives of attaining finality of State court judgments and reduction of the unnecessary and repetitious litigation in Federal habeas corpus.

Here is the letter signed by the Attorney General. If you want to see what the Attorney General said, come up to see it.

Now, Mr. President, I want to say that so far as the exclusionary rule is concerned:

The Biden bill narrows the good-faith exception recognized by the Supreme Court in the case of United States versus Leon. It creates even more challenges to the admissibility of evidence than what the law currently requires. This is the bill that the people want. This is the bill that the law enforcement people want.

The States attorneys general favor this bill and the district attorneys favor this bill. The National District Attorneys Association endorses this bill, not the Biden bill. A number of States have endorsed the President's bill.

The victims groups have endorsed my bill. The Citizens Against Violent Crime, Memories of Victims Everywhere, the Joey Fournier Anti-Crime Committee, Justice for Murder Victims, North Carolina Victims Assistance Network, Justice for Homicide Victims, Citizens for Law and Order. They have all endorsed the President's bill.

The law enforcement organizations of this country, they have endorsed this bill. The National Law Enforcement Council has endorsed it; Federal Criminal Investigators Association; Federal Investigators Association; Fraternal Order of Police, a national organization. The Society of Former Special Agents of the FBI have endorsed it. The National Troopers Coalition in every State in the Nation have endorsed this bill. The National Sheriffs Association have endorsed this bill. This is the bill the attorneys general want. This is the bill the law enforcement organizations want. This is the bill the district attorneys want. This is the bill the victims groups want. They all have endorsed this bill. They have not endorsed the Biden bill.

This bill is extremely important and ought to pass. If we are going to protect the public, there is no use to pass a weak bill. It would be better to pass nothing. The President's bill contains just what the people want. It contains just what these people I have just told you about want.

I reserve the remainder of my time.

Mr. BIDEN. I yield myself 1 minute. I apologize to the Senator if I misrepresented his bill, but as of the description of what was in the bill 3 hours ago, those things were not in it. I do not know how all these groups—God bless my friend, I know he is reading from letters that are accurate—how could they endorse the bill and dislike the Biden bill when they took the Biden bill and put it in this bill? I am confused here. If all these groups thought the Biden bill was so bad, why did they take the Biden bill and put in the President's bill? And why did they cut out of the President's bill at least a significant piece of it.

The point I am trying to make here is nobody knows what the devil is in this bill. This bears no resemblance to what the President had introduced. This bears no resemblance to what the Senator from Delaware introduced. But it seems to bear a little bit of resemblance to everything anyone has introduced and can mean anything to anybody. I do not know how possibly these groups could have endorsed a bill that has just been sent up since they could not have seen it.

I pride myself in knowing something about this area. I do not know what is in this bill. I mean, how could that be? This is getting kind of silly. But at any rate, I am delighted to hear that all those groups endorse what is essentially now a Biden bill.

I yield the floor.

Mr. THURMOND. I yield 2 minutes to the distinguished Senator from Alaska.

Mr. STEVENS. Mr. President, I thank the Senator from South Carolina. Let me say, this may not be the Biden bill, but I know it is not a gun control bill. If you want to vote on gun control, this is the vote. There are no gun control provisions in this version.

This is a clean bill, an absolutely clean bill, that the record will show who wants to support the legitimate gunowners of the country. And as a clean bill it is a bill I am going to vote for, although I doubt I will have that privilege again on this floor during the debate on the so-called crime bill. This is a clean crime bill consistent with all the groups the Senator from South Carolina has mentioned, and it is the kind of vote I have been seeking, an up or down vote on whether you support the legitimate gunowners of this country. If you do, you will vote with the Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield 3 minutes to the minority leader, the distinguished Senator from Kansas.

The PRESIDING OFFICER (Mr. ROCKEFELLER). The Republican leader is recognized.

Mr. DOLE. Mr. President, over half a century ago, President Franklin Roo-

sevelt declared that America "had nothing to fear but fear itself."

Today, however, that statement is no longer true. For, today, men, women, and children, in urban and rural towns and cities all across America have something to fear—the likelihood that they be a victim of violent crime.

It is a fear that came true last year for 6 million—6 million—Americans—20,000 of whom lost their lives to violent criminals.

Just over a 100 days ago, President Bush challenged us to do something about crime, to act on his anticrime bill. Today, we finally begin to act.

There are those who say the 100-day calendar was only a publicity stunt, that it means nothing.

Well, I say it means something to the estimated 6,500 Americans who have been murdered in the past 100 days.

It means something to the 40,500 women who became the victims of rape in the past 100 days.

It means something to the 332,000 Americans who were robbed in the past 100 days.

And it means something to the 1,400,000 who were the victims of assault in the past 100 days.

For as long as I have been here, it seems we have debated crime every year. And it always seems like opinions could be divided into two camps.

In one camp are those, who, like me, think that individuals are responsible for their own actions, and that if you do the crime, you better be ready to do the time.

In the other camp are those who think that criminals are not to blame for their actions. They always look to blame someone else. They blame society. They blame the criminal's parents. They blame our school system. They blame the National Rifle Association.

Unfortunately, Mr. President, that attitude still prevails over in the House. Time and time again, any attempt to get tough on hardened criminals—to reform court procedures so that the guilty do not go free—are buried by the majority party in the House. And I want to underscore "in the House."

Each of us knows that whatever bill we pass here, has little or no chance of passing the House.

But still, we owe it to America to hope that the House will wake up to the crime epidemic sweeping the country. We owe it to ourselves to pass the best crime legislation we can.

And there is no doubt in my mind, or in the minds of the American people, that the best crime bill is President Bush's crime bill, and that is the bill before us right now.

The American people overwhelmingly believe that capital punishment is justified in the most heinous of crimes.

And the President's bill will provide for a workable, enforceable, Federal death penalty.

The American people overwhelmingly believe that criminals should not be set free to roam the streets because of a legal technicality.

And the President's bill will prevent that by codifying the good faith exception to the exclusionary rule, and by ensuring that any gun seized from a criminal can be introduced as evidence.

The American people overwhelmingly believe that convicted criminals should not be able to tie up our court system through endless appeals, which have no merit.

And the President's bill ensures that convicted felons will no longer evade punishment by drowning our courts in an avalanche of paperwork.

The American people overwhelmingly believe that the best way to deal with those who use guns in the commission of a crime is to lock them up and throw away the key.

And the President's bill will mandate tough no-parole, no-probation sentences for felons who use guns and semiautomatic weapons.

The President's bill is thorough and far reaching. It also includes sections designed to curb terrorism, racial injustice, sexual violence, and juvenile crime. And if we cannot pass it, then we should pass something as close to it as we can.

President Bush challenged Congress to pass tough anticrime legislation within 100 days. We failed that challenge.

More importantly, however, the American people have challenged Congress to let law-abiding citizens reclaim their streets, to remove fear from our neighborhoods.

For the sake of our country, that's one challenge we must meet.

For all the reasons stated by the distinguished Senator from South Carolina—and I have noted the Senator from Delaware said there were some changes. We have already said their bill, the Biden bill, already has been changed. On their own motion, they are changing their bill. So we have a chance to change ours a little bit around the edges, and that is precisely what we have done. But at least we do not have to vote on changing ours. We had to vote on changing theirs. I am glad we were able to accommodate those who no longer wanted the Racial Justice Act as a part of the Biden bill.

The PRESIDING OFFICER. The time of the Republican leader has expired.

Mr. BIDEN. Mr. President, I appreciate the kind comments of my friend from Kansas. Let me just yield myself 3 minutes of the 6 minutes remaining.

He talked about 100 days. Two thousand days ago, Mr. President, Congress enacted life imprisonment for major drug dealers, gave that authority to the President 2,000 days ago. Yet in the past 3 years, the President has obtained the death penalty on average for only four drug dealers in the entire country for the year. Do you hear that? Four. He has had the authority. This administration, this Attorney General. Four times a year. Think about it.

We have about 2 million people who have been using cocaine weekly in this country over the past 3 years and the administration has used its power to send drug dealers to jail for life only once every 3 months.

A thousand days ago, Mr. President, Congress gave the President the power to seek the death penalty against drug kingpins who murder. But in the past 1,000 days, Mr. President, during that period of bloodshed and mayhem everybody talks about, this President, this Attorney General has obtained the death penalty for only one—one. Hear me: one; one time. That is how tough they are. One time. They have had the authority for a thousand days.

Now, Mr. President, 1,000 hours ago the President announced a new national drug strategy. He said, "Here is what I want that Congress to do." And so I sat there as a dutiful Member of Congress, as chairman of the committee, saying, "Mr. President, send us your legislation." One thousand hours ago, Mr. President, he said that. One thousand hours later, the chairman of the Judiciary Committee is waiting for one single suggestion from the President of the United States. One. I do not want them all. Just send me one, Mr. President. Give me one idea what you want done.

One thousand hours ago you came up with a plan. You have sent us nothing. One person getting the death penalty in 3 years. Four times a year life imprisonment out of all those drug killers out there, and you have not even sent us, in 1,000 hours, one idea of what you want.

Now, I am a little bit disturbed, as you can tell, by all this talk about who is tough. Mr. President, we have an outfit downtown that has not used the death penalty and they have it. We have an outfit downtown, where there were 23,500 murders last year, and they sought the death penalty one time. One time for drug kingpins. That is it. They are tough.

Let us vote on this pretty soon. I yield the rest of the time to my colleague from Maine, when the time is appropriate. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Parliamentary inquiry, Mr. President, how much time does the Senator from Delaware have under his control?

The PRESIDING OFFICER. The Senator controls 2 minutes 40 seconds.

Mr. BIDEN. And how much time is under the control of the Senator from South Carolina?

The PRESIDING OFFICER. The Senator from South Carolina controls 3 minutes, 38 seconds.

Mr. BIDEN. I yield to the Senator from Maine, the majority leader.

Mr. MITCHELL. Mr. President, if there is one thing that has become clear today, it is that the bill we are about to vote on has little to do with reducing crime and has everything to do with increasing votes. Votes first in the Senate, votes then among the American people.

It is based on a very simple premise, that if a slogan is repeated often enough and loudly enough, the actions inconsistent with that slogan will be overlooked.

Thus, we have our beloved former chairman of the committee reciting a list of organizations which support the pending bill and oppose the Biden bill, when in fact the pending bill has, just today, incorporated three-fourths of the Biden bill. How is it possible for someone to be for a bill and against another bill when the bill they are allegedly for has incorporated most of what is in the bill that they are allegedly against?

Obviously what has happened is, at the very last minute, after months of clamoring for a vote on the President's bill, when confronted with the reality of a vote on the President's bill, that alternative was rejected.

In the face of the embarrassment, the embarrassment of requiring U.S. Senators to vote on a proposal that would for the first time in American history have authorized secret trials with no notice to the person, the subject of the proceeding, and with no opportunity to defend against the evidence—when faced with that embarrassment, that was withdrawn, at the last minute.

Were all the people who wrote those letters in support of the bill told that the bill was being changed at the last minute to exclude those parts of the President's bill which we have been told for months were essential and which now incorporates provisions from the bill which, we have been told for months, is a bad bill?

That is what is at stake here, it is votes. Votes here in the Senate; votes in the next election.

Mr. President, I will say as someone who has prosecuted many crimes at the State level, prosecuted many crimes at the Federal level, this pending amendment will do little or nothing to reduce crime in our society. The fact of the matter is, if every Member of this——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MITCHELL. Mr. President, I ask unanimous consent to use 30 seconds of my leader time.

The PRESIDING OFFICER. The Senator has that right. He may proceed.

Mr. MITCHELL. The fact of the matter is, as every Member of this Senate knows, violent crime is a subject within State jurisdiction. Changing the Federal law is going to affect a miniscule fraction of violent crimes in our society and those who represent to the American people that changing Federal criminal law is going to in any way significantly reduce the incidence of violent crimes in our society are making a statement that is demonstrably untrue.

I yield the floor.

Mr. THURMOND. Mr. President, I yield 2½ minutes of my time that is left—I still have some—to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas may proceed.

Mr. GRAMM. Mr. President, first of all on habeas, 28 States attorneys general, Democrats and Republicans, who understand this issue, have endorsed the amendments of the distinguished Senator from South Carolina as a stronger provision to help them enforce the law and put violent criminals in jail, as compared to the Biden provision.

Basically what we are seeing here is a debate about items that are not the core of this bill. The distinguished Senator from Delaware put $3 billion of authorization in the bill, with no appropriations. We changed our bill to not only put those in, but to authorize funding the President asked for but was never provided.

There are several little noncontroversial items that nobody disputes: Children victimized in cars driven by drug or alcohol abusers—that we included because it was not controversial. But there are four issues that are very controversial, that are at the heart of this whole debate. And really, there are no other issues.

One, do you want an enforceable death penalty for criminals who have committed terrible crimes and who have been sentenced by the court?

No. 2, do you want a habeas corpus reform that gives murderers their day in court but, when they are found not to have a case, carries out the will of the people?

Do you want an exclusionary rule that makes it possible for us to protect the rights of law-abiding citizens as well as the criminals seem to have theirs protected?

And, finally, one issue that is beyond dispute, is the gun issue. This is the only opportunity that we are going to have in this debate to strike these onerous gun provisions.

So to say that we do not know what is in these bills after we have debated them year after year after year, is basically inaccurate. We are down to these major issues. I do not think anybody disputes the fact that the amendment of the distinguished Senator from South Carolina, the President's bill, is the stronger of the two bills.

If you want a tough, grab-them-by-the-throat bill, this is the opportunity to get it.

UNANIMOUS-CONSENT AGREEMENT

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate resumes debate on this bill at 10 a.m. tomorrow, the next amendment in order be an amendment dealing with the exclusionary rule to be offered by Senator BIDEN, if the pending Thurmond amendment has been adopted, or by Senator THURMOND, if his pending amendment has been defeated; that there be 2 hours for debate on the exclusionary rule amendment with no other amendments or motions to recommit in order prior to the disposition of the exclusionary rule amendment; that the vote on or in relation to the amendment occur at 11:30 a.m., on Tuesday, June 25, with the 60 minutes prior to the vote equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator has a minute. Is there objection?

Mr. THURMOND. I want to say to the Senate, this is the President's bill. This is a crime bill. They yelled about no money in it, we took that money and put it in here. We tried to do everything we could to get a good crime bill, to get it. We put the money in.

The PRESIDING OFFICER. If the Senator will suspend, the Chair asked if there was objection to the majority leader's request. The Senator may use his minute after the question has been responded to.

Mr. THURMOND. No objection.

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

The Senator now may proceed.

Mr. THURMOND. Mr. President, all these Attorneys General, all these law enforcement people, all these prosecuting attorneys, all these victims groups would not be endorsing the President's bill over that bill if they did not think it was the best bill for this country.

We are here to help the people of this country. We need a strong bill. This President's bill is a strong bill. We have the money in our bill to help it pass because it is a strong bill. I hope the Senate will vote in favor of the President's bill. It may be the only chance we have to do it. There are no guns in here, and this is the first chance we have to vote on the bill without any guns.

Mr. President, I hope the Senate will vote in favor of the President's bill and pass it because the people of this country want it and need it.

Mr. GRASSLEY. Mr. President, Senator THURMOND has offered the President's bill, with the money provisions added from Senator BIDEN's bill and a few other amendments. Senator BIDEN says that now there is not much difference between his bill and the President's bill, aside from his gun control titles and the Racial Justice Act. Nothing could be further from the truth.

The President's bill provides an effective death penalty for 42 highly aggra-

vated Federal crimes. The Biden bill also has a death penalty title. But what kind of death penalty?

The Biden bill has no death penalty for drug kingpins. The President's bill does. The President's bill also authorizes the death penalty for any murder in the course of drug trafficking activities. In comparison, the Biden bill arbitrarily limits the death penalty to certain types of murders in violation of particular drug provisions.

The Biden bill would silence the victims of crime in the courtroom. The President's bill, in contrast, espouses the pro-victim philosophy. It would give juries considering the death penalty information about the effect of the crime on the victim's family. It would also give victims of violent crimes the right to address the court concerning the sentence in noncapital cases.

In capital sentencing hearings, the Biden bill would create unprecedented restrictions on the admission of evidence supporting the imposition of the death penalty. Where the President's bill permits consideration of the death penalty based on the defendant's use of a firearm or history of firearms violence, the Biden bill contains no such provision.

Also, enacting Federal death penalty legislation could be an empty gesture if the endless appeals and delay that have thwarted State death penalty laws were allowed to occur in federal cases. The President's bill proposes special death penalty procedures to guard against obstruction of the Federal death penalty through this kind of litigation abuse. The Biden bill does not.

Senator BIDEN concedes that there is some difference between his habeas corpus proposal and the President's. To put it mildly, this is an understatement. It is the difference between night and day. It is the difference between curbing the abuse of habeas corpus, and making it worse.

The President's bill proposes fair but effective measures to curb the general abuse of habeas corpus and deal with the crisis in death penalty litigation. These measures are all taken in substance from bills that have been passed by the Senate or the House of Representatives in earlier Congresses. They include a more deferential standard of review for State court determinations, and reasonable time limits for Federal habeas filing. They also include, in relation to capital cases, broadened appointment of counsel for defendants, limiting second and successive habeas petitions to guilt-or-innocence claims, and time limits for concluding Federal habeas corpus litigation.

In contrast, the Biden bill's habeas corpus provisions systematically overturn existing rules that limit delay and litigation abuse in capital cases, including the decisions of the Supreme Court in McCleskey versus Zant (1991), Teague versus Lane (1989), and Murray versus Carrier (1986). These changes would increase opportunities to engage in repetitive habeas corpus filings, to raise claims that were not presented to the State courts, and to overturn convictions on the basis of later judicial decisions.

Frankly, it is impossible even to talk about title XI of S. 1241 as habeas corpus reform. It is not habeas corpus reform. It is a defendant-petitioner's wish-list of measures to ensure that litigation will go on forever and no death penalty will ever be carried out.

Bad death penalty provisions, and bad habeas corpus provisions, are just the beginning of the problems with S. 1241. In relation to firearms, for example, the Biden bill does not include the President's proposal of a 10-year mandatory prison term for using any semiautomatic firearm in committing a crime of violence or drug trafficking crime.

In relation to juvenile offenders, the President's bill proposes broader availability of the records of serious juvenile offenders for law enforcement and judicial use. It is obscene that a hardened criminal in his twenties, who has been convicted of rapes, armed robberies, or serious drug crimes as a juvenile, should stand in the courtroom as a first-time offender. But S. 1241 has no problem with such travesties, and does not attempt to do anything about them.

The President's bill proposes tough new measures against sexual violence and child abuse. These include, for example, broader use of similar crimes evidence in prosecuting rapists and child molesters, and higher penalties for many serious sex crimes. Also, last year we enacted a funding incentive for States to test sex offenders for the AIDS virus, and required the Federal Government to pay for medical examinations of rape victims in Federal cases. The President's bill extends these provisions by requiring AIDS testing of sex offenders in Federal cases as well, and by requiring Government payment of the cost of AIDS testing for the victim.

In contrast, the Biden bill contains no provisions at all dealing with sexual violence or child abuse. And these provisions from the President's bill are also not in Senator BIDEN's separate violence against women bill.

I could go on, but enough is enough. We have a clear, stark decision. On one side, the President's bill—a bill that vindicates the rights of the crime victim and the law-abiding public. On the other side, a bill that serves—however unintentionally—the interests of the killer, the rapist, and the violent predator. Our solemn obligation to the public permits only one choice: passing President Bush's Comprehensive Violent Crime Control Act of 1991.

Mr. SEYMOUR. Mr. President, I rise today as an original cosponsor of the President's crime proposal—one that will strike a blow against violent crime in America.

I also rise as a concerned American from a State that unfortunately has become all too familiar of the horror, the terror, and the tragedy of the violent crime. I am proud to say that my home State of California is a leader of many things. We are the Nation's economic leader, an engine of entrepreneurial innovation, job growth, and progressive social reform. But we are sadly a leader in other areas—in homicide, rape, and other violent crimes—in drug production, trafficking, and use.

It is true that America is suffering from a 50-State killing spree—but in California, this spree is at a fever pitch. Our great State has faced many challenges. This past year we faced a December freeze, the fifth year of drought, recession, and a staggering budget gap. But in the face of these challenges, Californians still have identified crime as their biggest concern. The latest report from the California Bureau of Criminal Statistics justifies their concern:

The number of willful homicides reported for 1990 increased more than 12 percent compared to 1989.

Aggravated assault rose by more than 6 percent.

Forcible rape rose by more than 5 percent.

Keep in mind, Mr. President, that these are reported crimes. For instance, a rape crisis center in California concluded that 9 out of every 10 rapes are never reported to a crisis center or law enforcement. And that one out of every three Los Angeles women, age 14 and over, will be sexually assaulted at least once in her lifetime.

But enough about statistics. Violent crime is more than just numbers. Violent crime is about people—law-abiding citizens who feel unsafe not because the crime rate is rising, but because they know or have seen a friend, a neighbor, a family member become the next victim of violent crime.

Just last week, a convicted rapist, released after serving only 6 years for raping a 9-year-old girl, was arrested for raping the same girl again.

Now, the President's crime legislation includes provisions that double the penalties for recidivist sex offenders—to keep thugs like that rapist in Oakland behind bars for a long, long time. There are no similar provisions in S. 1241.

Of course, those on the other side of the aisle will say that this is a charade. After all, they'll say, how many people are brought under Federal charges for rape. I agree when they say that most violent crimes are prosecuted in State courts in violation of State laws. But what enacting tough laws such as these do is send a strong signal to the States

that we, as U.S. Congressmen, find the violent sexual assault, for example, is such a heinous crime, such a violation of a woman's peace of mind, that he deserves a long lease, in a small cell. As we have been inspired by the 50 models of democracy that we hail from, the Federal Government can be a model for the States in the area of criminal justice.

But we can pound the podiums on this issue, and label all this tough talk and nothing else, but that's not the case.

Mr. President, the distinguished chairman of the Judiciary Committee is correct when he states that our policies here will do nothing to effectively combat violent crime. He is absolutely right if our policies include a continuation of business as usual on Federal habeas corpus.

Of all the initiatives that are contained in the President's crime bill, habeas corpus reform stands as the heart of his proposal. We can expand the death penalty all we want—to virtually every offense that we find so heinous as to require death—but it will amount to nothing absent effective reform of Federal habeas corpus procedure.

Abraham Lincoln once said: "More rogues than honest men find shelter under habeas corpus." Well, this statement is certainly applicable today, but the rogues involved here are of the worst kind: those on death row.

According to the latest figures from the Department of Justice, the average time between the imposition of the death sentence and execution is 6½ years. Since the constitutionality of the death sentence was restored by the Supreme Court in 1977, just 3 percent of those on death row have received the sentence as prescribed by law.

Three percent, Mr. President.

After more than 12 years of criminal justice, 97 percent of those sentenced to death wait patiently to meet their fate as justice prescribed. But I must also point to an even more glaring statistic—one from California, where more than 250 capital criminals are housed and not one has been executed since 1977. One of them, Robert Alton Harris, should get a Ph.D. for his abuse of the system and his avoidance of the gas chamber.

Now, I am not a lawyer, Mr. President. I do not profess to have the technical legal background exemplified with eloquence and skill by the senior Senator from Pennsylvania or by the distinguished chairman of the Judiciary Committee. But it doesn't take a lawyer to recognize that the reason for the delay in carrying out these sentences is the current Federal habeas system—a system where justice denied means justice delayed. Indeed, after reading several examples of this time-consuming process, I have to believe that habeas corpus is Latin for "excessive delay."

Well, it's time we changed this definition of habeas corpus to mean "effective justice." It's time we restored public faith in a justice system that has been nothing but a never-ending story.

In short, the most common cause of death for a capital offender should not be old age.

Mr. President, the distinguished senior Senator from South Carolina has offered a workable proposal for habeas corpus reform. It will bring an end to needless habeas petitions, and bring much needed relief to our Federal courts.

In brief, this proposal allows death row inmates, with few exceptions, one round of Federal appeals—one trip through the Federal system. This reform was proposed by a committee chaired by the former associate justice of the Supreme Court, William Powell. And, on two occasions, this very body has approved this reform package—in the 98th Congress, and just last year, in the 101st Congress.

Mr. President, I am honored to have had the opportunity, in my first year as a U.S. Senator, to participate in some very historic votes. In my very first vote, I stood by our President in his efforts to restore the sovereignty of a peaceful nation.

And now, I take part in another vote of historic proportions, but it will only truly be historic if we break tradition and send the President's tough crime bill to his desk for his signature. Nothing would make me more proud than to say that in one year, I helped strike a blow against ruthless thugs who have waged violence in neighborhoods from Kuwait City to Kansas City, from Riyadh, Saudi Arabia to Redding, CA.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment No. 367 offered by the Senator from South Carolina [Mr. THURMOND].

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arizona [Mr. DECONCINI] and the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

I further announce that, if present and voting, the Senator from Arizona [Mr. DECONCINI] would vote "no."

Mr. NICKLES. I announce that the Senator from Wyoming [Mr. SIMPSON] is necessarily absent.

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

The result was announced—yeas 40, nays 56, as follows:

[Rollcall Vote No. 103 Leg.]

YEAS—40

Bond	Grassley	Packwood
Brown	Hatch	Pressler
Burns	Hatfield	Roth
Coats	Helms	Seymour
Cochran	Hollings	Shelby
Cohen	Kassebaum	Smith
Craig	Kasten	Specter
D'Amato	Lott	Stevens
Danforth	Lugar	Symms
Dole	Mack	Thurmond
Domenici	McCain	Wallop
Garn	McConnell	Warner
Gorton	Murkowski	
Gramm	Nickles	

NAYS—56

Adams	Durenberger	Lieberman
Akaka	Exon	Metzenbaum
Baucus	Ford	Mikulski
Bentsen	Fowler	Mitchell
Biden	Glenn	Moynihan
Bingaman	Gore	Nunn
Boren	Graham	Pell
Bradley	Harkin	Reid
Breaux	Heflin	Riegle
Bryan	Inouye	Robb
Bumpers	Jeffords	Rockefeller
Burdick	Johnston	Rudman
Byrd	Kennedy	Sanford
Chafee	Kerrey	Sarbanes
Conrad	Kerry	Sasser
Cranston	Kohl	Simon
Daschle	Lautenberg	Wirth
Dixon	Leahy	Wofford
Dodd	Levin	

NOT VOTING—4

DeConcini	Simpson
Pryor	Wellstone

So the amendment (No. 367) was rejected.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. BIDEN. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,287th day that Terry Anderson has been held captive in Lebanon.

STATE LEGALIZATION IMPACT ASSISTANCE GRANT PROGRAM [SLIAG]

Mr. SEYMOUR. Mr. President, I rise today to discuss a matter of great importance to the fiscal integrity, the health and the welfare of the State of California and other States with large populations of individuals who received amnesty under the Immigration Reform and Control Act of 1986.

I am speaking of course about the State Legalization Impact Assistance

Grant Program or SLIAG as it has come to be known.

The purpose behind SLIAG was very simple. Embodied in section 204 of the Immigration Reform and Control Act of 1986, SLIAG provides that States and local governments will be reimbursed for their costs in providing education, public assistance, and public health services to newly legalized aliens.

The law provided that $1 billion would be appropriated for each of fiscal years 1987 through 1991, for a total of $4 billion, and it stated that any unexpended funds would remain available for the States through fiscal year 1994 at which any unexpended funds would be returned to the Treasury.

This second component of the SLIAG agreement, the carryforward authority, expressly acknowledged the fact that as a reimbusement program, not all claims for services provided would be forthcoming in the first few years. That is where California and other similarly situated States find themselves today. We are now in the outyears of the program, but we have not seen claims for bona fide services disappear. In fact, they are increasing just as IRCA's legislative history anticipated.

The demand for SLIAG-related services are there. Under the law, they must be provided, and—also under law—they should be reimbursed through SLIAG. That's what the States and local governments expect, that's the deal they agreed to back in 1985 and 1986 when IRCA was debated and enacted.

Unfortunately, the Federal Government and the Congress see it differently; the Federal Government wants to back out of the deal, clean its hands of the entire matter, and claim the program an absolute success.

Well, let's not be too quick to applaud. Absent Federal support, it will fail.

The States were hesitant to embrace any amnesty program that did not protect them from the spiraling costs associated with this new population. Serving in the California Senate at the time, I recall vividly the internal debate. Home to a growing population of illegal immigrants, we saw the merits of providing amnesty. On the other hand, we feared the fiscal impact of such a policy. There were similar debates in other States.

Those of us who have served in local government can attest to the true impact of a Federal policy that simply shifts the costs of that Federal responsibility onto the shoulders of local communities. Especially in the area of immigration and refugee policy, the Federal Government is backing out of its partnership with the States.

When you sit down and examine the SLIAG debate, one factor becomes crystal clear: States and local governments are powerless to protect themselves from the consequences of Federal immigration policy. A State or county's fiscal well-being in this area is held hostage to the whims of the Federal Government.

Doesn't sound much like a partnership to me. And now, California, Texas, New York, Florida, Colorado, and other States are finding that support for SLIAG has ended. They are fulfilling their end of the bargain; they do so daily in emergency rooms and hospitals, schools, community-based organizations, and in other areas.

All they expect is for the Federal Government to pick up its end of the deal so that these same hospitals and clinics and school districts can assure a full level of service to entire communities.

Well, a brief chronology shows us that the Federal Government has been back peddling since SLIAG's inception. One could argue they never wanted to be in the game.

From the extremely slow promulgation of regulations and congressional feeding frenzies amounting to $1.123 billion, and the administration's budget request that would rescind remaining funds, a few States have been left to fend for themselves.

And I have just been informed that the House Appropriations Committee has zeroed out fiscal year 1992 SLIAG funding. So much for commitment.

SLIAG's biggest enemy has been the Congress' and the administration's unwillingness to understand the very program they joined together to create. Because the program front loads the funds in the first 4 years to reimburse costs incurred during the entire life of the program, through fiscal year 1994, there have been unallocated balances in the fund. The program was designed this way. However, many choose to interpret these unspent balances to mean that the states do not need the funds.

Nothing could be further from the truth. For instance, States did not drawdown a large amount of SLIAG funds in fiscal year 1988 or fiscal year 1989; California drewdown only $221.3 million, or 20 percent of its total allocation. All States drewdown $331 million. Compare this to fiscal year 1990 and fiscal year 1991 when, to date, States have drawndown over $1 billion. As of April, California has drawndown $969.8 million, or 75 percent of the SLIAG funds allocated to date.

Mr. President, California is home to 1.6 million newly legalized aliens. In Los Angeles County alone, more than 1 out of every 10 residents, 850,000 persons, applied for amnesty. This is about one-quarter of the Nation's total amnesty population. Over 20 percent of all hospital admissions in Los Angeles County are legalized aliens. Mr. President, consider the fact that one of every 200 babies born in this country is born to an amnesty applicant in one Los Angeles County hospital.

Let's be clear: cutting SLIAG funds does not cause the demand for services or the related costs to disappear. It merely shifts the burden—unfairly and inappropriately—to a few States and local governments. When hospitals cannot be reimbursed, when people cannot receive the language training they need, when outlays for public assistance programs go unreimbursed, it is not a simple case of a legalized alien not receiving a service. There is a ripple effect. Entire communities are being penalized.

I do not envy Pete Wilson and the California Legislature as they grapple with California's $14 billion deficit. But at least they have control over the very difficult choices they must make. Unfortunately, much of the budget crisis they are embroiled in stems from increased Medi-Cal costs, welfare payments, and school needs directly related to a failed Federal immigrant policy.

Cutting SLIAG will exacebate many times over the California budget crisis, the fiscal health of Los Angeles and other counties, and surely other States with large populations of amnesty recipients.

If we are to cut these funds, then we must be prepared to acknowledge the fact that we are creating an underclass of citizens who will not have the tools to fully participate in and benefit our society. How can you expect someone who is illiterate in their native language to become proficient in English with but 40 hours instruction? How can we expect healthy babies or basic health care when hospitals and clinics, absent reimbursement, will be forced to close down?

While rhetorical, these are very real questions that we must confront and for which we will be accountable should we not fulfill the Federal Government's promise under IRCA. I am not sure, Mr. President, that any Member in this Chamber would like to take credit for that.

Cutting SLIAG gives the Federal Government just one more opportunity to foist yet another fiscal burden onto the shoulders of States and local governments.

That is a bottom line of which no one can be proud.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar 188: Robert M. Guttman, to be an Assistant Secretary of Labor;

Calendar 193: Lt. Gen. Richard G. Graves, to be lieutenant general;

Calendar 195: Lt. Gen. Dennis J. Reimer, to be Vice Chief of Staff;

Calendar 196: Lt. Gen. James E. Thompson, to be lieutenant general;

Calendar 198: Lt. Gen. Thomas N. Griffin, Jr., to be lieutenant general;

Calendar 199: Maj. Gen. Joseph S. Laposata, to be lieutenant general;

Calendar 200: Lt. Gen. Norman H. Smith, to be lieutenant general;

Calendar 201: Vice Adm. Jimmy Pappas, to be vice admiral;

Calendar 202: Vice Adm. Raymond P. Ilg, to be vice admiral; and

Calendar 203: Rear Adm. Kenneth C. Malley, to be vice admiral.

The following nominations reported today by the Committee on Armed Services:

Lt. Gen. Carl E. Mundy, Jr., to be Commandant of the Marine Corps;

Lt. Gen William M. Keys, to be lieutenant general; and

All nominations placed on the Secretary's Desk in the Army and Navy.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF LABOR

Robert Michael Guttman, of the District of Columbia, to be an Assistant Secretary of Labor, vice Mary Sterling.

IN THE ARMY

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Richard G. Graves, 305-36-5367, U.S. Army.

The following-named officer for appointment as Vice Chief of Staff of the Army and appointment to the grade of general while serving in that position under the provisions of title 10, United States Code, sections 601 and 3034:

To be Vice Chief of Staff of the Army

To be general

Lt. Gen. Dennis J. Reimer, 447-36-3390, U.S. Army.

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. James E. Thompson, 252-50-6760, U.S. Army.

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

Lt. Gen. Thomas N. Griffin, Jr., 578-42-8801, U.S. Army.

The following-named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under title 10, United States Code, section 601(a):

To be lieutenant general

Maj. Gen. Joseph S. Laposata, 207-30-0517, U.S. Army.

IN THE MARINE CORPS

The following named officer to be placed on the retired list under the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Norman H. Smith, 287-28-6350, USMC.

IN THE NAVY

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

To be vice admiral

Vice Adm. Jimmy Pappas, U.S. Navy, 452-48-3572.

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

To be vice admiral

Vice Adm. Raymond P. Ilg, U.S. Navy, 097-30-4819.

The following-named officer for appointment to the grade of Vice Admiral while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be vice admiral

Rear Adm. Kenneth C. Malley, U.S. Navy, 134-26-6994.

The following nominations reported today by the Committee on Armed Services:

Lt. Gen. Carl E. Mundy, Jr., to be Commandant of the Marine Corps; and

Lt. Gen. William M. Keys, to be lieutenant general.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE ARMY, NAVY

Army nomination of Charles F. Brower, IV, which was received by the Senate and appeared in the CONGRESSIONAL RECORD of May 6, 1991.

Army nominations beginning Daniel P. Burns, and ending Vicki L. Brosnahan, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of May 15, 1991.

Army nominations beginning Michael H. Chema, and ending James L. Wallingford, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of May 15, 1991.

Army nominations beginning Larry S. Merck, and ending * Michael L. Walters, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 3, 1991.

Army nominations beginning Thomas L. Abbenante, and ending 364x, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 3, 1991.

Army nominations beginning Daniel F. Abahazy, and ending 414a, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 3, 1991.

Army nominations beginning John D. Altenburg, and ending Paul C. Smith, which nominations were received by the Senate on June 10, 1991, and appeared in the CONGRESSIONAL RECORD of June 11, 1991.

Army nominations beginning Ronny Berry, and ending John L. Wydeven, which nominations were received by the Senate on June 10, 1991, and appeared in the CONGRESSIONAL RECORD of June 11, 1991.

Navy nominations beginning Edward L. Abner, and ending Lee Smith, III, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 3, 1991.

Navy nominations beginning Richard John Ackermann, and ending Richard Arnold Nelson, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 3, 1991.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MEASURES REFERRED

The following bill, received from the House of Representatives for concurrence on June 12, 1991, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 2123. An act to amend the District of Columbia Self-Government and Governmental Reorganizational Act to establish a predictable and equitable method for determining the amount of the annual Federal payment to the District of Columbia; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment:

S. 323: A bill to require the Secretary of Health and Human Services to ensure that pregnant women receiving assistance under title X of the Public Health Service Act are provided with information and counseling regarding their pregnancies, and for other purposes (Rept. No. 102-86).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments.

S. 1138: A bill to amend the Nuclear Waste Policy Act of 1982 to direct the Secretary of Energy to carry out site characterization activities at the Yucca Mountain site in Nevada and for other purposes (Rept. No. 102-87).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports were submitted:

By Mr. BURDICK, from the Committee on Environment and Public Works:

Ivan Selin, of the District of Columbia, to be a member of the Nuclear Regulatory Com-

mission for the term of five years expiring June 30, 1996.

(The above information was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. NUNN, from the Committee on Armed Services:

The following-named officer for appointment as Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, and appointment to the grade of general while serving in that position under the provisions of title 10, United States Code, section 5043:

TO BE COMMANDANT OF THE MARINE CORPS

To be general

Lt. Gen. Carl E. Mundy, Jr., 237-58-1423, USMC.

The following-named officer, under the provisions of title 10, United States Code, section 601, for assignment to a position of importance and responsibility as follows:

To be lieutenant general

Maj. Gen. William M. Keys, 179-30-0377, USMC.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HATFIELD:

S. 1336. A bill to amend Title XI of the Higher Education Act of 1965 in order to encourage urban education institutions to form partnerships to use their knowledge and resources for the solution of severe urban problems; to the Committee on Labor and Human Resources.

By Mr. SPECTER (for himself and Mr. SEYMOUR):

S. 1337. A bill to implement a Federal crime control and law enforcement program to stem gang violence, and for other purposes; to the Committee on the Judiciary.

By Mr. SANFORD:

S. 1338. A bill for the relief of Chi Hsii Tsui, Jin Mie Tsui, Yin Whee Tsui, Yin Tao Tsui, and Yin Chao Tsui; to the Committee on the Judiciary.

S. 1339. A bill to settle an agreement dated July 30, 1943, between the Secretary of the Interior of the United States, the State of North Carolina, and the Tennessee Valley Authority, and Swain County, North Carolina; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE:

S. 1340. A bill to amend the Agricultural Adjustment Act to establish a long-term milk supply management system that is controlled by milk producers, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BIDEN:

S. 1341. A bill to provide penalties for additional forms of credit and debit card fraud; to the Committee on the Judiciary.

By Mr. BREAUX:

S. 1342. A bill to amend title II of the Social Security Act to repeal the rule providing for termination of disabled adult child's benefits upon marriage; to the Committee on Finance.

By Mr. MITCHELL (for Mr. DECONCINI (for himself, Mr. KOHL, and Mr. BOREN)):

S. 1343. A bill to encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities; to the Committee on the Judiciary.

By Mr. AKAKA (for himself, Mr. ADAMS, and Mr. CRANSTON):

S. 1344. A bill to require the Secretary of the Interior to conduct a study of nationally significant places in Japanese-American history; to the Committee on Energy and Natural Resources.

By Mr. LEAHY (for himself, Mr. PELL, Mr. STEVENS, and Mr. DECONCINI):

S. 1345. A bill to amend the National Film Preservation Act of 1988 to modify the composition and procedures of the National Film Preservation Board and the Librarian of Congress in preserving national films, and for other purposes; to the Committee on Rules and Administration.

By Mr. SYMMS (for himself, Mr. DOLE, Mr. DASCHLE, Mr. BAUCUS, Mrs. KASSEBAUM, Mr. BURNS, and Mr. SIMPSON):

S. 1346. A bill to amend the Internal Revenue Code of 1986 to provide for a 50 percent-of-occupancy rule with respect to the valuation of seats on corporate aircraft on a legitimate business flight when those seats would have otherwise gone unoccupied; to the Committee on Finance.

By Mr. PELL (for himself and Mr. CHAFEE):

S. 1347. A bill to provide emergency assistance to the State of Rhode Island to stabilize the banking system in the State and provide liquidity for the benefit of depositors at State banks and credit unions in receivership; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MURKOWSKI (for himself, Mr. KERRY, Mr. HATFIELD, Mr. STEVENS, Mr. CRANSTON, Mr. SIMPSON, and Mr. SIMON):

S. 1348. A bill to terminate certain economic sanctions against Vietnam after the Government of Vietnam authorizes access to its territory for the investigation of unresolved POW and MIA cases, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. D'AMATO:

S. 1349. A bill to permit the retroactive medicaid payment of medicare cost-sharing for indigent beneficiaries; to the Committee on Finance.

By Mr. DOLE (for himself and Mrs. KASSEBAUM):

S.J. Res. 166. Joint resolution designating the week of October 6 through 12, 1991, as "National Customer Service Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KASTEN:

S. 1335. A bill to establish a rural crime prevention strategy, to address the problem of crime against the elderly, to combat child abuse, sexual violence, and violence against women, to enhance the rights of law enforcement officers, to enhance the rights of crime victims, to address the problem of gangs and serious juvenile offenders, to restore an enforceable Federal death penalty, to impose minimum mandatory sentences without release, to establish mandatory judicial reforms, to reform the lives of prisoners and the prison system, and for other purposes; to the Committee on the Judiciary.

STRATEGY TO ELIMINATE CRIME IN THE URBAN AND RURAL ENVIRONMENT ACT

Mr. KASTEN. Mr. President, I rise today to introduce the Strategy to Eliminate Crime in the Urban and Rural Environment Act, a comprehensive reform initiative designed to focus congressional attention on the effects of rising crime rates both in our cities and in our rural areas.

The most important domestic role of government is to secure the lives and liberties of its citizens—to keep them secure from attack on their persons and their property. This bill includes both new initiatives, in the areas of rural crime and women's and children's safety, as well as reforms of current law that I think are essential to our success in this important task.

The major criminal law initiative introduces, for the first time, a new comprehensive strategy for preventing rural crime, an area of law enforcement which for too many years has been overlooked by Washington. In addition, it also includes many aspects of the President's 1991 crime control package, provisions of Senator GRAMM's previously introduced 1990 crime bill, as well as crime initiatives developed in the House of Representatives.

Mr. President, 3 months ago President Bush called upon the Congress to adopt a comprehensive and tough crime bill that he could sign into law within 100 days.

Mr. President, 105 days have passed. Where is the President's bill? The American people in public opinion poll after public opinion poll have demanded concrete answers to the national plague of crime now afflicting our States, counties, cities, and neighborhoods.

The number of violent crimes—rapes, aggravated assaults, robberies, and murders—reported in Milwaukee in 1990 increased by 47.3 percent over 1989, according to statistics released, May 21 by the Department of Justice.

In Milwaukee, all crimes were up a reported 10.7 percent over last year. Robberies were up an alarming 71.7 percent over last year, and vehicle thefts were up 44.9 percent. Although the number of murders in the 17 suburbs that surround Milwaukee has declined, the number of reported rapes in the suburbs increased by 37.9 percent.

Shockingly, robberies in the suburbs increased by 16.8 percent, and aggravated assaults were up 33.4 percent. In the city of Milwaukee, the rate of increase in rapes was 8.6 percent with 495 cases, and the increase in aggravated assaults was 16 percent with 1,486 cases.

From the national perspective, Tom Everson, Director of the Crime Reporting Center at the Justice Department, has said that the growing number of

robberies in the United States was particularly worrisome. He went on to say, "I think robbery is becoming the crime of choice for people who need to get money to support their drug habits."

And as we are well aware, the picture doesn't get any better when we look at the situation outside our major metropolitan areas. Rural crime, perhaps one of the most insidious problems facing law enforcement today, has been on the upswing all across the Nation and any crime bill that reaches the President's desk must include a substantive rural crime component.

Mr. President, let me now turn to a brief overview of the comprehensive proposal being introduced today. Title 1 of this legislation focuses exclusively on the problem of rural crime in America.

My bill develops a comprehensive, national action plan or strategy to rid our smaller towns and rural areas of crime. We are not talking about taking some random dollar amount and throwing it at rural law enforcement. Instead, we are talking about developing an intelligent strategy for combatting the problem through, among other elements: an increase in education, training, and safety programs of proven effectiveness; the development of an efficient national network of communication between rural, metropolitan, and Federal law enforcement officials; confronting the problem of clandestine drug labs and the manufacture of precursor chemicals; and the systematic integration of rural law enforcement with the activities of local community officials.

As my colleague Senator STROM THURMOND pointed out earlier this year, nearly 19,000 murders were reported nationwide in 1989. During the same year, there were an estimated 94,504 forcible rapes committed in the United States. Clearly, a substantial number of these crimes occurred in rural America.

The time has come to begin to focus added resources for rural law enforcement. This bill will provide that focus.

Mr. President, title 2 of the bill doubles the existing penalties for any crime committed against individuals age 65 or over. Crimes against the elderly, no matter whether committed in rural or urban America, must be halted. Increased penalties for crimes committed against our seniors will provide a substantial deterrence for criminals contemplating such despicable offenses.

Title 3 of this comprehensive proposal is dedicated to eliminating child abuse, sexual violence and violence against women. This section includes: New provisions regarding the admissibility of evidence of similar crimes in sexual assault and child molestation cases, a new initiative mandating recordkeeping on child molesters through the National Crime Information Center, increased penalties for the distribution of illegal drugs to pregnant women, an enhanced program for campus reporting of sexual assaults, new proposals in the area of HIV testing and penalty enhancement in sexual offense cases, a provision for the payment of the costs of HIV testing for victims, the establishment of a National Task Force on Violence Against Women and a new provision aimed at reversing the increase of domestic violence in our communities.

Title 4 creates a Law Enforcement Community's "Bill of Rights". For too long, liberal special interest groups, such as the ACLU, have focused our attention solely on the rights of criminals. It is time to pay as much heed to the equally important rights of our law enforcement professionals.

Title 5 establishes a Victims' "Bill of Rights" by including victims' restitution provisions and eliminating the "cap" on the victims' rights fund. If criminals have rights as the result of congressional enactments during the 1960's, clearly it is time to recognize the rights of the victims of violent crime.

Title 6 of the bill deals with the prosecution of juvenile offenders and provides for increased penalties on criminals who are convicted of crimes committed while participating in street gangs, and includes additional penalties for felonies committed in furtherance of the activities of such gangs.

Title 7 establishes enforceable death penalty procedures, similar to S. 147, the Federal Death Penalty Act of 1991, which was introduced the first day of this Congress by Senator STROM THURMOND.

This title restores an enforceable Federal death penalty by establishing constitutional procedures for the implementation of a death sentence. It authorizes the death penalty for, among other things, murder, murder for hire, and certain attempts to assassinate the President.

In addition to these sections, I propose adding new sections to current Federal law involving the murder of individuals who are exercising their civil rights, and murders which are committed as a result of sexual assaults and child molestation.

Title 8 of this bill provides for stiff mandatory minimum sentences, without release, for drug pushers, and stiffer mandatory sentences for those who involve juveniles in drug use or drug trafficking activities. A new proposal to directly attack the use of firearms in drug and other violent crimes is included in this title, which imposes mandatory minimum sentences, without release, for the use of such weapons.

Title 9 deals with mandatory judicial reforms. Habeas corpus reform, along the lines previously proposed by Senator THURMOND, would speed and streamline the judicial appeal process while protecting the existing constitutional rights of convicted felons. It also includes the President's proposed reform of the exclusionary rule so as to permit the use of evidence obtained by law enforcement officers in good faith. This reform will prevent criminals from being released by Federal courts because of technical evidentiary problems.

This title also provides for accountability in the Federal judiciary by requiring the compilation and publication of an annual report on the sentencing patterns of Federal district court judges in relation to drug crimes; it requires that every individual convicted in a Federal court of a violent crime or a drug felony must serve the full sentence, up to a cap of 5 years; and it also provides for new temporary facilities for the housing of prisoners, including the utilization of closed Federal military bases.

Lastly, Federal courts will be permitted to limit, or "cap", inmate population levels in State prisons only when it has been proven by objective standards that: First, overcrowding has imposed cruel and unusual punishment on an individual prisoner and, second, when no other remedy exists.

Title 10 of this proposal deals with the treatment of convicted criminals. Among other provisions, is a new proposal which will mandate work for every prisoner in order to defray the cost to the taxpayer of keeping the criminal behind bars; mandating prisoner literacy as a precondition for parole; and a new requirement regarding the drug testing of both State and Federal prisoners.

Mr. President, each and every title of this comprehensive proposal has the same goal—to protect the life, liberty and pursuit of happiness of all Americans no matter where they live. Crime, both rural and urban, is a sword of Damocles hanging over the head of every American; no one knows who will be struck next.

Congress has a mandate to reduce this threat to America. The President has demanded action and the American people strongly support his call.

We must welcome this opportunity for a vigorous debate on a strong Federal crime policy—and enact a comprehensive rural and urban crime package that the American people need and deserve.

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

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

S. 1335

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 "Strategy to Eliminate Crime in the Urban and Rural Environment Act of 1991".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—RURAL CRIME PREVENTION STRATEGY

Sec. 101. Findings.
Sec. 102. Strategy to address rural crime.
Sec. 103. National Institute of Justice national assessment.
Sec. 104. Pilot programs.
Sec. 105. Funding.

TITLE II—VIOLENT FELONIES AGAINST THE ELDERLY

Sec. 201. Violent felonies against the elderly.

TITLE III—CHILD ABUSE, SEXUAL VIOLENCE, AND VIOLENCE AGAINST WOMEN

Sec. 301. Admissibility of evidence of similar crimes in sexual assault and child molestation cases.
Sec. 302. Registration of offenders convicted of acts involving child abuse.
Sec. 303. Drug distribution to pregnant women.
Sec. 304. Statutory presumption against child custody.
Sec. 305. Definition of sexual act for victims below 16.
Sec. 306. Increased penalties for recidivist sex offenders.
Sec. 307. Restitution for victims of sex offenses.
Sec. 308. Required campus reporting of sexual assault.
Sec. 309. HIV testing and penalty enhancement in sexual abuse cases.
Sec. 310. Payment of cost of HIV testing for victim.
Sec. 311. National task force on violence against women.
Sec. 312. Domestic violence prevention act of 1991.
Sec. 313. Right of the victim to an impartial jury.
Sec. 314. Rules of professional conduct for lawyers in Federal practice.
Sec. 315. Full faith and credit for protective orders.

TITLE IV—LAW ENFORCEMENT OFFICERS BILL OF RIGHTS

Sec. 401. Law enforcement officers bill of rights.
Sec. 402. Table of contents.

TITLE V—VICTIMS' BILL OF RIGHTS

Sec. 501. Amendment of restitution provisions.
Sec. 502. Expansion of restitution.
Sec. 503. Suspension of Federal benefits.
Sec. 504. Victim's right of allocation in sentencing.
Sec. 505. Crime victims fund.
Sec. 506. Percentage change in crime victim compensation formula.
Sec. 507. Administrative costs for crime victim compensation.
Sec. 508. Relationship of crime victim compensation to certain Federal programs.
Sec. 509. Use of unspent 1402(d)(2) money.
Sec. 510. Underserved victims.
Sec. 511. Grants for demonstration projects.
Sec. 512. Administrative costs for crime victim assistance.
Sec. 513. Change of due date for required report.
Sec. 514. Maintenance of effort.
Sec. 515. Maintaining current funding levels.

TITLE VI—GANGS AND JUVENILE OFFENDERS

Sec. 601. Amendments concerning records of crimes committed by juveniles.
Sec. 602. Adult prosecution of serious juvenile offenders.
Sec. 603. Serious drug offenses by juveniles as Armed Career Criminal Act predicates.
Sec. 604. Increased penalty for travel act crimes involving violence.
Sec. 605. Increased penalty for conspiracy to commit murder for hire.
Sec. 606. Additional penalties for street gang activities.

TITLE VII—DEATH PENALTY

Sec. 701. Short title.
Sec. 702. Death penalty procedures.
Sec. 703. Capital punishment for murders in connection with sexual assaults and child molestations.
Sec. 704. Death penalty for murder during the commission of an act in violation of civil rights.
Sec. 705. Conforming amendment relating to transporting explosives.
Sec. 706. Conforming amendment relating to malicious destruction of Federal property by explosives.
Sec. 707. Conforming amendment relating to malicious destruction of interstate property by explosives.
Sec. 708. Conforming amendment relating to murder.
Sec. 709. Murder by Federal prisoner.
Sec. 710. Conforming amendment relating to kidnapping.
Sec. 711. Conforming amendment relating to hostage taking.
Sec. 712. Conforming amendment relating to mailability of injurious articles.
Sec. 713. Conforming amendment relating to presidential assassination.
Sec. 714. Conforming amendment relating to murder for hire.
Sec. 715. Conforming amendment relating to violent crimes in aid of racketeering activity.
Sec. 716. Conforming amendment relating to wrecking trains.
Sec. 717. Conforming amendment relating to bank robbery.
Sec. 718. Conforming amendment to Controlled Substances Act.

TITLE VIII—IMPOSITION OF MANDATORY MINIMUM SENTENCES WITHOUT RELEASE

Sec. 801. Increased mandatory minimum sentences without release for criminals using firearms and other violent criminals.
Sec. 802. Longer prison sentences for those who sell illegal drugs to minors or for use of minors in drug trafficking activities.
Sec. 803. Longer prison sentences for drug trafficking.
Sec. 804. Mandatory penalties for illegal drug use in Federal prisons.
Sec. 805. Deportation of criminal aliens.
Sec. 806. Encouragement to States to adopt mandatory minimum prison sentences.

TITLE IX—MANDATORY JUDICIAL REFORMS

Sec. 901. Admissibility of certain evidence.
Sec. 902. Habeas corpus reform
Sec. 903. Proscription of use of drug profits.
Sec. 904. Jurisdiction of special masters.
Sec. 905. Sentencing patterns of Federal judges.
Sec. 906. Judicial remedies for prison crowding.
Sec. 907. Temporary prison facilities and expanded capacity.
Sec. 908. Imprisonment of drug traffickers and violent criminals.

TITLE X—PRISONER AND PRISON SYSTEM REFORMS

Sec. 1001. Mandatory work requirement for all prisoners.
Sec. 1002. Mandatory education for incarcerated adults.
Sec. 1003. Employment of prisoners.
Sec. 1004. Withholding prisoners' Federal benefits to offset incarceration costs.
Sec. 1005. Drug testing of Federal prisoners.
Sec. 1006. Drug testing of State prisoners.
Sec. 1007. Encouragement to States to adopt prisoner and prison system reforms.

TITLE I—RURAL CRIME PREVENTION STRATEGY

SEC. 101. FINDINGS.

The Congress makes the following findings:

(1) The traditional supportive roles of the family, church, school, and community have declined in importance as a positive social factor influencing the prevention and control of crime in rural areas. As a result in recent years rural areas have experienced a marked increase in crime rates. This increase is taking its toll on rural law enforcement practitioners who are already encumbered by numerous characteristics that are unique to their rural circumstances.

(2) Compounding the increase in crime rates, rural police unlike their urban counterparts, are likely to encounter a multitude of nontraditional police tasks such as fire and railroad emergencies, search and rescue missions, animal control problems, livestock theft, wildlife enforcement, illegal distilleries, illegal crop farming and drug manufacturing, rural drug trafficking, and toxic dumping.

(3) These problems are further exacerbated by the rural officer's distinct disadvantage with respect to the lack of adequate training to manage these varied assignments, the low degree of specialization of job tasks, unique job stress factors, and inadequate data resources. Inadequate rural crime statistics and data analysis capabilities further frustrate the rural police organization's ability to cope with the nature, extent, and trends of rural crime.

(4) Rural law enforcement agencies are at a critical juncture, and strategic planning and action are imperative. The Domestic Chemical Action Group as convened by the National Institute of Justice in October 1990 has recommended that rural police receive training in various safety issues related to the identification, investigation, and seizure of illicit drug and chemical laboratories located in rural areas. Without such specialized training officials will face a high probability of explosions endangering police personnel and the community. National Institute of Justice sponsored research of environmental crime in major urban areas, including Los Angeles, has revealed the lack of police training in the identification, investigation, and clean-up of toxic and hazardous waste areas. It can be said with certainty that this recognized need for hazardous materials training is equally critical for rural police organizations.

SEC. 102. STRATEGY TO ADDRESS RURAL CRIME.

The purpose of this title is to address the growing problems of rural crime in a system-

atic and effective manner with a program of practical and focused research, development, and dissemination designed to assist States and units of local government in rural areas throughout the country in implementing specific programs and strategies which offer a high probability of improving the functioning of their criminal justice systems.

SEC. 103. NATIONAL INSTITUTE OF JUSTICE NATIONAL ASSESSMENT.

(a) IN GENERAL.—The Director of the National Institute of Justice (referred to in this title as the "Director") shall conduct a national assessment of the nature and extent of rural crime in the United States, the needs of law enforcement and criminal justice professionals in rural States and communities, and promising strategies to respond effectively to those challenges, including—

(1) the problem of clandestine drug laboratories; changing patterns in their location and operation; safety and liability issues for both law enforcement officers and the community in the identification, investigation, seizure, and clean-up of clandestine laboratories;

(2) other environmental crimes, such as the dumping of hazardous and toxic wastes; the pollution of streams, rivers, and ground water; and access of rural communities to the expertise necessary to successfully identify, investigate, and prosecute such crimes;

(3) the cultivation of illegal crops, such as marijuana, including changing patterns in location and techniques for identification, investigation, and destruction;

(4) the problems of drug and alcohol abuse in rural communities, including law enforcement and criminal justice response and access to treatment services;

(5) the problems of family violence and child abuse, including law enforcement and criminal justice response and access to services for victims of such crimes;

(6) the problems of juvenile delinquency and vandalism as they affect rural communities;

(7) the access of law enforcement and criminal justice professionals in rural communities to the services of crime laboratories, the Automated Fingerprint Identification System, and other technological support;

(8) the access of law enforcement and criminal justice professionals in rural communities to professional training and development and the identification of models for the delivery of such training; and

(9) the special problems of drug abuse in jurisdictions with populations of 50,000 or less.

(b) FINAL REPORT.—The Director shall submit the national assessment to the President and Congress not later than 12 months after the date of enactment of this title.

(c) DISSEMINATION OF REPORT.—Based on the results of the national assessment and analysis of successful and promising strategies in these areas, the Director shall disseminate the results not only through reports, publications, and clearinghouse services, but also through programs of training and technical assistance, designed to address the realities and challenges of rural law enforcement.

SEC. 104. PILOT PROGRAMS.

(a) IN GENERAL.—The Director is authorized to make grants to local law enforcement agencies for pilot programs and field tests of particularly promising strategies and models, which could then serve as the basis for demonstration and education programs under the Bureau of Justice Assistance Discretionary Grant Program.

(b) TYPES OF PROGRAMS.—Pilot programs funded under this section may include—

(1) programs to develop and demonstrate new or improved approaches or techniques for rural criminal justice systems;

(2) programs of training and technical assistance to meet the needs of rural law enforcement and criminal justice professionals including safety;

(3) a rural initiative to study and improve the response to traffic safety problems and drug interdiction;

(4) an ongoing program to assist law enforcement professionals in dealing with the hazards of clandestine drug laboratories;

(5) victim assistance information to assist departments in beginning and maintaining strong programs to assist victims and witnesses of crime;

(6) emergency preparedness information for community groups concerned about disaster preparedness on the family and community level; and

(7) a program targeted at communities of less than 50,000 stressing the need for production of public safety through extensive partnership efforts between law enforcement, other local government agencies, businesses, schools, community and social organizations, and citizens.

SEC. 105. FUNDING.

There are authorized to be appropriated $5,000,000 to to carry out the national assessment and pilot programs required by this title.

TITLE II—VIOLENT FELONIES AGAINST THE ELDERLY

SEC. 201. VIOLENT FELONIES AGAINST THE ELDERLY.

(a) IN GENERAL.—Chapter 227 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 3581. Mandatory sentence for felony against individual of age sixty-five or over

"(a) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of a defendant of a crime of violence under this title, if any victim of such crime is an individual who had attained age sixty-five on or before the date that the offense was committed, the court shall sentence the defendant to imprisonment—

"(1) for a term of not less than one-half of the maximum term of imprisonment provided for such crime under this title, in the case of a first offense to which this section is applicable; and

"(2) for a term of not less than three-fourths of the maximum term of imprisonment provided for such crime under this title, in the case of a second or subsequent offense to which this section is applicable.

"(b) Notwithstanding any other provision of law, with respect to a sentence imposed under subsection (a) of this section—

"(1) the court shall not suspend such sentence;

"(2) the court shall not give the defendant a probationary sentence;

"(3) no defendant shall be eligible for release on parole before the end of such sentence;

"(4) such sentence shall be served consecutively to any other sentence imposed under this title; and

"(5) the court shall reject any plea agreement which would result in the imposition of a term of imprisonment less than that which would have been imposed under subsection (a) of this section in connection with any charged offense.

"(c) As used in this section, the term—

"(1) 'crime of violence' means—

"(A) a felony that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or

"(B) a felony that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense; and

"(2) 'victim' means an individual against whom an offense has been or is being committed.".

(b) AMENDMENT TO TABLE OF SECTIONS.—The table of sections for chapter 227 of title 18, United States Code, is amended by adding at the end the following new item:

"3581. Mandatory sentence for felony against individual of age sixty-five or over.".

(c) OTHER TECHNICAL AMENDMENTS.—(1) Section 3731 of title 18, United States Code, is amended by inserting after the second paragraph the following new paragraph:

"An appeal by the United States shall lie to a court of appeals from an otherwise final decision, judgment, or order of a district court sentencing a defendant on the ground that such sentence is less severe than that required under section 3581 of this title.".

(2) Rule 32(c) of the Federal Rules of Criminal Procedure is amended—

(A) by adding at the end of the first paragraph in paragraph (1) the following new sentence: "Neither the defendant nor the court may waive a presentence investigation and report unless there is in the record information sufficient for the court to determine whether a mandatory sentence must be imposed pursuant to title 18, United States Code, section 3581."; and

(B) in paragraph (2)(D), by inserting after "the offense" the following: "and information relating to whether any victim of the offense had attained age 65 on the date that the offense was committed".

(3) Rule 11(e)(1) of the Federal Rules of Criminal Procedure is amended by striking out "The" after "*In General.*" and inserting in lieu thereof "Except as provided in title 18, United States Code, section 3581, the".

TITLE III—CHILD ABUSE, SEXUAL VIOLENCE, AND VIOLENCE AGAINST WOMEN

SEC. 301. ADMISSIBILITY OF EVIDENCE OF SIMILAR CRIMES IN SEXUAL ASSAULT AND CHILD MOLESTATION CASES.

The Federal Rules of Evidence are amended by adding after rule 412 the following new rules:

"Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

"(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

"(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

"(d) For purposes of this rule and rule 415, 'offense of sexual assault' means a crime under Federal law or the law of a State that involved—

"(1) any conduct proscribed by chapter 109A of title 18, United States Code;

"(2) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

"(3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

"(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

"(5) an attempt or conspiracy to engage in conduct described in paragraphs (1)–(4).

"Rule 414. Evidence of Similar Crimes in Child Molestation Cases

"(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

"(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

"(d) For purposes of this rule and rule 415, "child" means a person below the age of fourteen, and "offense of child molestation" means a crime under Federal law or the law of a State that involved—

"(1) any conduct proscribed by chapter 109A of title 18, United States Code, that was committed in relation to a child;

"(2) any conduct proscribed by chapter 110 of title 18, United States Code;

"(3) contact between any part of the defendant's body or an object and the genitals or anus of a child;

"(4) contact between the genitals or anus of the defendant and any part of the body of a child;

"(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or

"(6) an attempt or conspiracy to engage in conduct described in paragraphs (1)–(5).

"Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

"(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in rule 413 and rule 414 of these rules.

"(b) A party who intends to offer evidence under this rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.".

SEC. 302. REGISTRATION OF OFFENDERS CONVICTED OF ACTS INVOLVING CHILD ABUSE.

(a) SHORT TITLE.—This section may be cited as the "National Child Abuser Registration Act of 1991".

(b) DEFINITIONS.—For the purposes of this section—

(1) the term "child" means a person who is a child for the purposes of the criminal child abuse law of a State;

(2) the term "child abuse" means the physical, psychological, or emotional injuring, sexual abuse or exploitation, neglectful treatment, or maltreatment of a child by any person in violation of the criminal child abuse law of a State;

(3) the term "child abuser information" means the following facts concerning a person who has violated the criminal child abuse laws of a State:

(A) name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence, and a brief description of the crime or crimes committed by the offender; and

(B) any other information that the Federal Bureau of Investigation or the National Crime Information Center determines may be useful in identifying child abusers;

(4) the term "criminal child abuse law of a State" means the law of a State that establishes criminal penalties for the commission of child abuse by a parent or other family member of a child or by any other person;

(5) the term "National Crime Information Center" means the division of the Federal Bureau of Investigation that serves as a computerized information source on wanted criminals, persons named in arrest warrants, runaways, missing children, and stolen property for use by Federal, State, and local law enforcement authorities;

(6) the term "State" means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific; and

(7) the term "State child abuser information repository" means a division or office of a State that acts as a central repository for child abuse information.

(c) FINDINGS.—The Congress finds that—

(1) disturbing increases have occurred in recent years in the number of children who are abused by persons who have previously committed crimes of child abuse;

(2) many children who run away from home, who fall prey to pornography and prostitution, who suffer from a dependency on alcohol and drugs, and who become juvenile offenders, have been victims of child abuse;

(3) research has shown that child abuse tends to repeat itself, and many parents who abuse their children were once victims themselves;

(4) in recognition of the increased cases of child abuse, several States have established agencies to receive and maintain data relating to cases of child abuse;

(5) currently there exists no centralized national source through which a law enforcement agency can obtain data relating to persons who have committed crimes of child abuse;

(6) partly because of the lack of available and accurate information at the national level, persons who have committed acts of child abuse in one State have been able to go to another State to commit the crime again, in many cases in a position of authority over children; and

(7) the Nation cannot afford to ignore the importance of preventing child abuse.

(d) PURPOSES.—The purposes of this section are—

(1) to establish a national system through which current, accurate information concerning persons who commit crimes of child abuse can be obtained from a centralized source;

(2) to assist in the prevention of second incidents of child abuse by providing information about persons who have been convicted of a crime of child abuse to organizations whose primary concern is that of child welfare and care; and

(3) to understand the problem of child abuse in the United States by providing statistical and informational data to the Department of Justice, the National Center on Child Abuse and Neglect, the Congress, and other interested parties.

(e) REPORTING BY THE STATES.—

(1) IN GENERAL.—A State child abuse information repository may report child abuser information to the National Crime Information Center.

(2) GUIDELINES.—(A) The Attorney General shall establish guidelines for the reporting of child abuser information, including procedures for carrying out the purposes of this section.

(B) The guidelines established under subparagraph (A) shall require that—

(i) a reporting State ensure that reports of all convictions under the criminal child abuse law of the State are maintained by a State child abuser information repository; and

(ii) a State child abuser information repository maintain close liaison with the National Center on Child Abuse and Neglect and the National Center for Missing and Exploited Children for exchange of information and technical assistance in cases of child abuse.

(3) ANNUAL SUMMARY.—The Attorney General shall publish an annual statistical summary of the child abuser information reported under this section.

(f) COMPLIANCE.—Compliance with subsection (e) shall be a condition to the receipt by a State of any grant, cooperative agreement, or other assistance under—

(1) section 1404 of the Victims of Crime Act (42 U.S.C. 10603); and

(2) the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.).

SEC. 303. DRUG DISTRIBUTION TO PREGNANT WOMEN.

Section 418 of the Controlled Substances Act is amended by inserting ", or to a woman while she is pregnant," after "to a person under twenty-one years of age" in subsection (a) and subsection (b).

SEC. 304. STATUTORY PRESUMPTION AGAINST CHILD CUSTODY.

(a) FINDINGS.—The Congress finds that—

(1) State courts have often failed to recognize the detrimental effects of having as a custodial parent an individual who physically abuses his or her spouse, insofar as the courts do not hear or weigh evidence of domestic violence in child custody litigation;

(2) joint custody forced upon hostile parents can create a dangerous psychological environment for a child;

(3) physical abuse of a spouse is relevant to child abuse in child custody disputes;

(4) the effects of physical abuse of a spouse on children include actual and potential emotional and physical harm, the negative effects of exposure to an inappropriate role model, and the potential for future harm where contact with the batterer continues;

(5) children are emotionally traumatized by witnessing physical abuse of a parent;

(6) children often become targets of physical abuse themselves or are injured when they attempt to intervene on behalf of a parent;

(7) even children who do not directly witness spousal abuse are affected by the cli-

mate of violence in their homes and experience shock, fear, guilt, long lasting impairment of self-esteem, and impairment of developmental and socialization skills;

(8) research into the intergenerational aspects of domestic violence reveals that violent tendencies may be passed on from one generation to the next;

(9) witnessing an aggressive parent as a role model may communicate to children that violence is an acceptable tool for resolving marital conflict; and

(10) few States have recognized the interrelated nature of child custody and battering and have enacted legislation that allows or requires courts to consider evidence of physical abuse of a spouse in child custody cases.

(b) SENSE OF THE CONGRESS.—(1) It is the sense of the Congress that, for purposes of determining child custody, credible evidence of physical abuse of a spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.

(2) This section is not intended to encourage States to prohibit supervised visitation.

SEC. 305. DEFINITION OF SEXUAL ACT FOR VICTIMS BELOW 16.

Paragraph (2) of section 2245 of title 18, United States Code, is amended—

(1) in subparagraph (B) by striking "or" after the semicolon;

(2) in subparagraph (C) by striking "; and" and inserting in lieu thereof "; or"; and

(3) by inserting a new subparagraph (D) as follows:

"(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;".

SEC. 306. INCREASED PENALTIES FOR RECIDIVIST SEX OFFENDERS.

(a) Section 2245 of title 18, United States Code, is redesignated section 2246.

(b) Chapter 109A of title 18, United States Code, is amended by inserting the following new section after section 2244:

"§ 2245. Penalties for subsequent offenses

"Any person who violates a provision of this chapter after a prior conviction under a provision of this chapter or the law of a State (as defined in section 513 of this title) for conduct proscribed by this chapter has become final is punishable by a term of imprisonment up to twice that otherwise authorized.".

(c) The table of sections for chapter 109A of title 18, United States Code, is amended by—

(1) striking "2245" and inserting in lieu thereof "2246"; and

(2) inserting the following after the item relating to section 2244:

"2245. Penalties for subsequent offenses.".

SEC. 307. RESTITUTION FOR VICTIMS OF SEX OFFENSES.

Section 3663(b)(2) of title 18, United States Code, is amended by inserting "or an offense under chapter 109A or chapter 110 of this title" after "an offense resulting in bodily injury to a victim".

SEC. 308. REQUIRED CAMPUS REPORTING OF SEXUAL ASSAULT.

Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)), as added by section 204(a) of the Crime Awareness and Campus Security Act of 1990 (Public Law 101-542), is amended—

(1) in paragraph (1)(F), to read as follows:

"(F) Statistics concerning the occurrence on campus, during the most recent school year, and during the 2 preceding school years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies—

"(i) murder;

"(ii) rape, sexual assault, or any other abusive sexual conduct;

"(iii) robbery;

"(iv) aggravated assault;

"(v) burglary; and

"(vi) motor vehicle theft."; and

(2) in paragraph (3), to read as follows:

"(3) Each institution participating in any program under this section shall make timely reports on criminal offenses described in paragraph (1)(F) that the institution considers to be a threat to other students and employees. The institution shall provide the reports to students, parents or guardians of students, and employees, at the institution, and to local police agencies, in a manner that is timely and that will aid in the prevention of similar occurrences.".

SEC. 309. HIV TESTING AND PENALTY ENHANCEMENT IN SEXUAL ABUSE CASES.

(a) Chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new section:

"§ 2247. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty

"(a) TESTING AT TIME OF PRE-TRIAL RELEASE DETERMINATION.—In a case in which a person is charged with an offense under this chapter, a judicial officer issuing an order pursuant to section 3142(a) of this title shall include in the order a requirement that a test for the human immunodeficiency virus be performed upon the person, and that follow-up tests for the virus be performed six months and twelve months following the date of the initial test, unless the judicial officer determines that the conduct of the person created no risk of transmission of the virus to the victim, and so states in the order. The order shall direct that the initial test be performed within twenty-four hours, or as soon thereafter as feasible. The person shall not be released from custody until the test is performed.

"(b) TESTING AT LATER TIME.—If a person charged with an offense under this chapter was not tested for the human immunodeficiency virus pursuant to subsection (a), the court may at a later time direct that such a test be performed upon the person, and that follow-up tests be performed six months and twelve months following the date of the initial test, if it appears to the court that the conduct of the person may have risked transmission of the virus to the victim. A testing requirement under this subsection may be imposed at any time while the charge is pending, or following conviction at any time prior to the person's completion of service of the sentence.

"(c) TERMINATION OF TESTING REQUIREMENT.—A requirement of follow-up testing imposed under this section shall be canceled if any test is positive for the virus or the person obtains an acquittal on, or dismissal of, all charges under this chapter.

"(d) DISCLOSURE OF TEST RESULTS.—The results of any test for the human immunodeficiency virus performed pursuant to an order under this section shall be provided to the judicial officer or court. The judicial officer or court shall ensure that the results are disclosed to the victim (or to the victim's parent or legal guardian, as appropriate), the attorney for the Government, and the person tested.

"(e) EFFECT ON PENALTY.—The United States Sentencing Commission shall amend existing guidelines for sentences for offenses under this chapter to enhance the sentence if the offender knew or had reason to know that he was infected with the human immunodeficiency virus, except where the offender did not engage or attempt to engage in conduct creating a risk of transmission of the virus to the victim.".

(b) CLERICAL AMENDMENT.—The section analysis for chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new item:

"2247. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty.".

SEC. 310. PAYMENT OF COST OF HIV TESTING FOR VICTIM.

Section 503(c)(7) of the Victims' Rights and Restitution Act of 1990 is amended by inserting before the period at the end thereof the following: ", and the cost of up to two tests of the victim for the human immunodeficiency virus during the twelve months following the assault".

SEC. 311. NATIONAL TASK FORCE ON VIOLENCE AGAINST WOMEN.

(a) ESTABLISHMENT.—Not later than 30 days after the date of enactment of this section, the Attorney General shall establish a task force to be known as the "National Task Force on Violence against Women" (referred to in this section as the "task force").

(b) DUTIES OF TASK FORCE.—

(1) GENERAL PURPOSE OF TASK FORCE.—The task force shall develop a uniform Federal, State, and local law enforcement strategy aimed at protecting women against violent crime, punishing persons who commit such crimes, and enhancing the rights of victims of such crimes.

(2) DUTIES OF TASK FORCE.—The task force shall perform such functions as the Attorney General deems appropriate to carry out the purposes of the task force, including—

(A) considering the reports of past Federal and State task forces or commissions on violent crime, family violence, and crime victims, including the President's Task Force on Victims of Crime (1982), the Attorney General's Task Force on Family Violence (1984), and the task forces and commissions established by the States of Alabama, Alaska, Arkansas, Hawaii, Idaho, Indiana, Kansas, Louisiana, Michigan, Minnesota, Nebraska, New Mexico, New York, North Carolina, Rhode Island, Virginia, Texas, Wisconsin, and Wyoming;

(B) developing strategies for Federal, State, and local law enforcement designated to protect women against violent crime, and to prosecute and punish those responsible for such crime;

(C) evaluating the adequacy of sentencing, incarceration, and release of violent offenders against women, and making recommendations designated to ensure that such offenders receive appropriate punishment; and

(D) evaluating the adequacy of the treatment of victims of violent crime against women within the criminal justice system, and making recommendations designed to improve such treatment.

(c) Membership.—

(1) IN GENERAL.—The task force shall consist of up to 10 members, who shall be appointed by the Attorney General not later than 60 days after the date of enactment of this section. The Attorney General shall ensure that the task force includes representatives of State and local law enforcement, the State and local judiciary, and groups dedicated to protecting the rights of victims.

(2) CHAIRMAN.—The Attorney General or his designee shall serve as the chairman of the task force.

(d) PAY.—

(1) NO ADDITIONAL COMPENSATION.—Members of the task force who are officers or employees of a governmental agency shall receive no additional compensation by reason of their service on the task force.

(2) PER DIEM.—While away from their homes or regular places of business in the performance of duties for the task force, members of the task force shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

(e) EXECUTIVE DIRECTOR AND STAFF.—

(1) EXECUTIVE DIRECTOR.—

(A) APPOINTMENT.—The task force shall have an Executive Director who shall be appointed by the Attorney General not later than 30 days after the task force is fully constituted under subsection (c).

(B) COMPENSATION.—The Executive Director shall be compensated at a rate not to exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

(2) STAFF.—With the approval of the task force, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the task force.

(3) APPLICABILITY OF CIVIL SERVICE LAWS.—The Executive Director and the additional personnel of the task force appointed under paragraph (2) may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(4) CONSULTANTS.—Subject to such rules as may be prescribed by the task force, the Executive Director may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed $200 per day.

(f) POWERS OF TASK FORCE.—

(1) HEARINGS.—For the purpose of carrying out this section, the task force may conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the task force considers appropriate. The task force may administer oaths before the task force.

(2) DELEGATION.—Any member or employee of the task force may, if authorized by the task force, take any action that the task force is authorized to take under this section.

(3) ACCESS TO INFORMATION.—The task force may secure directly from any executive department or agency such information as may be necessary to enable the task force to carry out this section, to the extent access to such information is permitted by law. On request of the Attorney General, the head of such a department or agency shall furnish such permitted information to the task force.

(4) MAIL.—The task force may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(g) REPORT.—Not later than 1 year after the date on which the task force is fully constituted under subsection (c), the Attorney General shall submit a detailed report to the Congress on the findings and recommendations of the task force.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 1992, $500,000 to carry out the purposes of this section.

(i) TERMINATION.—The task force shall cease to exist 30 days after the date on which the Attorney General's report is submitted under subsection (g). The Attorney General may extend the life of the task force for a period of not to exceed one year.

SEC. 312. DOMESTIC VIOLENCE PREVENTION ACT OF 1991.

(a) SHORT TITLE.—This section may be cited as the "Domestic Violence Prevention Act of 1991".

(b) EXPANSION OF PURPOSE.—Section 302(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10401(1)) is amended by striking "to prevent" and inserting "to increase public awareness about and prevent".

(c) EXPANSION OF STATE DEMONSTRATION GRANT PROGRAM.—Section 303(a)(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(a)(1)) is amended by striking "to prevent" and inserting "to increase public awareness about and prevent".

(d) GRANTS FOR PUBLIC INFORMATION CAMPAIGNS.—The Family Violence Prevention and Services Act is amended by adding at the end thereof the following new section:

"GRANTS FOR PUBLIC INFORMATION CAMPAIGNS

"SEC. 314. (a) The Secretary may make grants to public or private nonprofit entities to provide public information campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

"(b) No grant, contract, or cooperative agreement shall be made or entered into under this section unless an application that meets the requirements of subsection (c) has been approved by the Secretary.

"(c) An application submitted under subsection (b) shall—

"(1) provide such agreements, assurances, and information, be in such form and be submitted in such manner as the Secretary shall prescribe through notice in the Federal Register, including a description of how the proposed public information campaign will target the population at risk, including pregnant women;

"(2) include a complete description of the plan of the application for the development of a public information campaign;

"(3) identify the specific audiences that will be educated, including communities and groups with the highest prevalence of domestic violence;

"(4) identify the media to be used in the campaign and the geographic distribution of the campaign;

"(5) describe plans to test market a development plan with a relevant population group and in a relevant geographic area and give assurance that effectiveness criteria will be implemented prior to the completion of the final plan that will include an evaluation component to measure the overall effectiveness of the campaign;

"(6) describe the kind, amount, distribution, and timing of informational messages and such other information as the Secretary may require, with assurances that media organizations and other groups with which such messages are placed will not lower the current frequency of public service announcements; and

"(7) contain such other information as the Secretary may require.

"(d) A grant, contract, or agreement made or entered into under this section shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information that the Secretary determines to be appropriate.

"(e) The criteria for awarding grants shall ensure that an applicant—

"(1) will conduct activities that educate communities and groups at greatest risk;

"(2) has a record of high quality campaigns of a comparable type; and

"(3) has a record of high quality campaigns that educate the population groups identified as most at risk.".

(e) STATE COMMISSIONS ON DOMESTIC VIOLENCE.—Section 303(a)(2) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following new subparagraph:

"(G) provides assurances that, not later than 1 year after receipt of funds, the State shall have established a Commission on Domestic Violence, which will include as members representatives of antidomestic violence organizations and whose expenses will be paid out of funds other than those dedicated to providing services in domestic violence cases, to examine issues including—

"(i) the use of mandatory arrest of accused offenders;

"(ii) the adoption of 'no-drop' prosecution policies;

"(iii) the use of mandatory requirements for presentencing investigations;

"(iv) the length of time taken to prosecute cases or reach plea agreements;

"(v) the use of plea agreements;

"(vi) the testifying by victims at post-conviction sentencing and release hearings;

"(vii) the consistency of sentencing practices;

"(viii) restitution of victims;

"(ix) the reporting practices of and significance to be accorded to prior convictions (both felonies and misdemeanors); and

"(x) such other matters as the Commission believes merit investigation.

(f) INDIAN TRIBES.—Section 303(b)(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(b)(1)) is amended by striking "is authorized" and inserting "shall make no less than $1,000,000 available for".

(g) FUNDING LIMITATIONS.—Section 303(c) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(c)) is amended by striking ", and" and all that follows through "fiscal years".

(h) GRANTS TO ENTITIES OTHER THAN STATES; LOCAL SHARE.—The first sentence of section 303(f) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(f)) is amended to read as follows: "No demonstration grant may be made under this section to an entity other than a State unless the entity provides 50 percent of the funding of the program or project funded by the grant.".

(i) SHELTER AND RELATED ASSISTANCE; RURAL AREAS.—Section 303(g) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(g)) is amended to read as follows:

"(g)(1) The Secretary shall ensure that, of the funds distributed under subsection (a) or (b)—

"(A) not less than 60 percent of the funds shall be distributed to entities for the pur-

pose of providing shelter and related assistance to victims of family violence and their dependents, such as—

"(i) food, shelter, medical services, and counseling with respect to family violence, including counseling by peers individually or in groups;

"(ii) transportation, legal assistance, referrals, and technical assistance with respect to obtaining financial assistance under Federal and State programs;

"(iii) comprehensive counseling about parenting, preventive health (including nutrition, exercise, and prevention of substance abuse), educational services, employment training, social skills (including communication skills), home management, and assertiveness training; and

"(iv) day care services for children who are victims of family violence or the dependents of such victims; and

"(B) not less than 20 percent of the funds (which may include funds distributed under subparagraph (A)) shall be distributed to entities in rural areas.

"(2) As used in this subsection, the term 'rural area' means a territory of a State that is not within the outer boundary of any city or town that has a population of 20,000 or more, based on the latest decennial census of the United States.".

(j) LAW ENFORCEMENT TRAINING AND TECHNICAL ASSISTANCE GRANTS.—Section 311(b) of the Family Violence Protection and Services Act (42 U.S.C. 10410(b)) is amended by adding at the end thereof the following new subparagraph:

"(C) Training grants may be made under this section only to private nonprofit organizations that have experience in providing training and technical assistance to law enforcement personnel on a national or regional basis.".

(k) AUTHORIZATION OF APPROPRIATIONS.—Section 310 of the Family Violence Prevention and Services Act (42 U.S.C. 10409) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 310. (a) There are authorized to be appropriated to carry out this title, $40,000,000 for each of fiscal years 1992, 1993, and 1994.

"(b) Of the sums appropriated under subsection (a) for any fiscal year, not less than 85 percent shall be used by the Secretary for making grants under section 303.

"(c) Of the sums authorized to be appropriated under subsection (a) for any fiscal year, not more than 3 percent shall be used by the Secretary for making grants under section 314.".

(l) REPORT ON RECORDKEEPING.—Not later than 1 year after the date of enactment of this section, the Attorney General shall complete a study of, and shall submit to Congress a report and recommendations on, problems of recordkeeping of criminal complaints involving domestic violence. The study and report shall examine—

(1) the efforts that have been made by the Department of Justice, including the Federal Bureau of Investigation, to collect statistics on domestic violence; and

(2) the feasibility of requiring that the relationship between an offender and victim be reported in Federal records of crimes of aggravated assault, rape, and other violent crimes.

SEC. 313. RIGHT OF THE VICTIM TO AN IMPARTIAL JURY.

(a) FEDERAL RULES OF CRIMINAL PROCEDURE.—Rule 24(b) of the Federal Rules of Criminal Procedure is amended by striking "the Government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges" and inserting "each side is entitled to 6 peremptory challenges".

(b) PROHIBITION OF DISCRIMINATION IN SELECTION OF JURY.—Section 243 of title 18, United States Code, is amended by designating the text of the section as subsection (a) and by adding a new subsection at the end thereof as follows:

"(b) In a proceeding in a court of the United States, an attorney representing a criminal defendant shall not exercise peremptory challenges to exclude any person from the jury on the basis of race or color, or on the basis of any other classification that could not lawfully be used by a prosecutor as the basis for exercising peremptory challenges. The prosecutor shall have the same right as the defense attorney to challenge the exercise of peremptory challenges on this ground. In determining whether a defense attorney has engaged in discrimination in violation of this subsection, a court shall apply the same standards that would apply in making a like determination concerning the exercise of peremptory challenges by a prosecutor, and shall have the authority to grant the same relief that would be available in case of unlawful discrimination by a prosecutor.".

SEC. 314. RULES OF PROFESSIONAL CONDUCT FOR LAWYERS IN FEDERAL PRACTICE.

The following rules, to be known as the Rules of Professional Conduct for Lawyers in Federal Practice, are enacted and shall be included as an appendix to title 28, United States Code:

"RULES FOR PROFESSIONAL CONDUCT FOR LAWYERS IN FEDERAL PRACTICE

"Rule 1. Scope
"Rule 2. Litigation Abuses Prohibited
"Rule 3. Expediting Litigation
"Rule 4. Duty to Prevent Commission of Crime

"Rule 1. Scope

"(a) These rules apply to the conduct of lawyers in their representation of clients in relation to proceedings and potential proceedings before Federal tribunals.

"(b) For purposes of these rules, 'Federal tribunal' and 'tribunal' mean a court of the United States or an agency of the Federal Government that carries out adjudicatory or quasi-adjudicatory functions.

"Rule 2. Litigation Abuses Prohibited

"(a) A lawyer shall not engage in any action or course of conduct for the purpose of increasing the expense of litigation for any person, other than a liability under an order or judgment of a tribunal.

"(b) A lawyer shall not engage in any action or course of conduct that has no substantial purpose other than to distress, harass, embarrass, burden, or inconvenience another person.

"(c) A lawyer shall not offer evidence that the lawyers knows to be false or attempt to discredit evidence that the lawyer knows to be true.

"Rule 3. Expediting Litigation

"(a) A lawyer shall seek to bring about the expeditious conduct and conclusion of litigation.

"(b) A lawyer shall not seek a continuance or otherwise attempt to delay or prolong proceedings in the hope or expectation that—

"(1) evidence will become unavailable;

"(2) evidence will become more subject to impeachment or otherwise less useful to another party because of the passage of time; or

"(3) an advantage will be obtained in relation to another party because of the expense, frustration, distress, or other hardship resulting from prolonged or delayed proceedings.

"Rule 4. Duty to Prevent Commission of Crime

"(a) A lawyer may disclose information relating to the representation of a client to the extent necessary to prevent the commission of a crime or other unlawful act.

"(b) A lawyer shall disclose information relating to the representation of a client where disclosure is required by law. A lawyer shall also disclose such information to the extent necessary to prevent—

"(1) the commission of a crime involving the use or threatened use of force against another, or a substantial risk of death or serious injury to another; or

"(2) the commission of a crime of sexual assault or child molestation.

"(c) For purposes of this rule, the term 'crime' means a crime under Federal law or the law of a State, and the term 'unlawful act' means an act in violation of the law of the United States or the law of a State.".

SEC. 315. FULL FAITH AND CREDIT FOR PROTECTIVE ORDERS.

(a) ENFORCEMENT.—A protective order issued by a court of a State shall have the same full faith and credit in a court in another State that the order would have in a court of the State in which issued, and shall be enforced by the courts of any State as if it were issued in the State.

(b) DEFINITIONS.—As used in this section:

(1) The term "protective order" means an order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(2) The term "State" has the meaning given the term in section 513(c)(5) of title 18, United States Code.

TITLE IV—LAW ENFORCEMENT OFFICERS BILL OF RIGHTS

SEC. 401. LAW ENFORCEMENT OFFICERS BILL OF RIGHTS.

Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding at the end thereof the following new section:

"LAW ENFORCEMENT OFFICERS BILL OF RIGHTS

"SEC. 819. (a) Beginning with the first fiscal year commencing not less than 2 years after the date of enactment of this section, a grant under part B or C of this title that would otherwise be made, directly or indirectly, to any State, unit of general local government, or public agency, shall be reduced by 5 percent unless there is in effect with respect to such State, unit of general local government, or public agency, a law enforcement officers bill of rights which substantially provides to the law enforcement officers of such State, unit of general local government, or public agency as a minimum the rights set forth in subsection (b).

"(b) The rights referred to in subsection (a) are as follows:

" 'BILL OF RIGHTS

" 'SECTION 1. RIGHTS OF LAW ENFORCEMENT OFFICERS WHILE UNDER INVESTIGATION.

" 'Whenever a law enforcement officer is under investigation for alleged malfeasance, misfeasance, or nonfeasance of official duty, with a view to possible disciplinary action, demotion, dismissal, or transfer, the following minimum standards shall apply:

" '(1) The interrogation shall be conducted at a reasonable hour, preferable when the

law enforcement officer is on duty, unless exigent circumstances otherwise require.

" '(2) The interrogation of a law enforcement officer shall take place at the offices of those conducting the investigation, the place where such law enforcement officer reports for duty, or such other reasonable place as the investigator may determine.

" '(3) The law enforcement officer being investigated shall be informed, at the commencement of any interrogation, of the name, rank, and command of the officer conducting the investigation. All questions asked in any such interrogation shall be asked by or through a single interrogator.

" '(4) The officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation. Upon completion of the investigation, the law enforcement officer shall be notified of the name of the witness and all charges not less than 10 days prior to any hearing.

" '(5) No formal proceeding which has authority to penalize a law enforcement officer may be brought except upon charges signed by the appropriate law enforcement officer in charge of the investigation.

" '(6) Any interrogation of a law enforcement officer in connection with an investigation shall be for a reasonable period of time, and shall allow for reasonable periods for the rest and personal necessities of such law enforcement officer.

" '(7) No threat, harassment, promise, or reward shall be made to any law enforcement officer in connection with an investigation in order to induce the answering of any question, but immunity from prosecution may be offered to induce such answering.

" '(8) All interrogations of any law enforcement officer in connection with the investigation shall be recorded in full, either written or taped or transcribed.

" '(9) The law enforcement officer shall be entitled to the presence of his or her counsel or any other one person of his or her choice at any interrogation in connection with the investigation.

" 'SEC. 2. REPRESENTATION ON COMPLAINT REVIEW BOARDS.

" 'Whenever a police complaint review board has been established which includes in its membership persons other than law enforcement officers of the agencies under jurisdiction of such board, such board shall also include a fair representation of such officers.

" 'SEC. 3. OPPORTUNITIES FOR A HEARING.

" '(a) If the investigation or interrogation of a law enforcement officer results in the recommendation of some disciplinary action, such as demotion, dismissal, transfer, or similar action, then, except in the case of summary punishment or emergency suspension as set forth below, the law enforcement agency shall give notice to the law enforcement officer that he is entitled to a hearing on the issues by a hearing board or a designated person.

" '(b) The States shall determine the makeup of the board and the procedures for the hearing.

" 'SEC. 4. SUMMARY PUNISHMENT, ADMINISTRATIVE ACTION, AND EMERGENCY SUSPENSION.

" '(a) The States may determine that the provisions of this bill are not intended to prohibit or apply to summary punishment, administrative action, or emergency suspension.

" '(b) For purposes of this section—

" '(1) the terms 'summary punishment' and 'administrative action' refer to punishment imposed for minor violations of department rules and regulations, which does not result in dismissal, demotion, transfer, or similar action; and

" '(2) the term 'emergency suspension' refers to situations where the head of the law enforcement agency determines such action is in the best interest of the public and the law enforcement agency.

" 'SEC. 5. CIVIL SUITS OF LAW ENFORCEMENT AGENCIES.

" 'Any law enforcement officer shall have the right to recover pecuniary and other damages from any law enforcement agency that violates the rights established under the law enforcement officer's bill of rights.

" 'SEC. 6. NOTICE OF DISCIPLINARY ACTION.

" 'Whenever a personnel action which will result in any loss of pay or benefits, or is otherwise punitive is taken against a law enforcement officer, such law enforcement officer shall be notified of such action and the reasons therefor a reasonable time before such action takes effect.

" 'SEC. 7. RETALIATION FOR EXERCISING RIGHTS.

" 'There shall be no penalty nor threat of any penalty to a law enforcement officer for the exercise of the officer's rights under this bill of rights.

" 'SEC. 8. OTHER REMEDIES NOT DISPARAGED.

" 'Nothing in this bill of rights shall disparage or impair any other legal remedy any law enforcement officer shall have with respect to any rights under this bill of rights.

" 'SEC. 9. DEFINITIONS.

" 'As used in this bill of rights—

" '(1) the term 'law enforcement officer' means any sworn officer of a public agency, if the principal official function of such officer is to investigate crimes, or to apprehend or hold in custody persons charged or convicted of crimes, and include police, sheriffs, and corrections guards or as defined by the statutory laws of the State;

" '(2) the term 'complaint review board' means any public body with specific lawful authority to investigate and take public action, including making reports, on charges of improper conduct by law enforcement officers, but is not a law enforcement agency, a grand jury, or other entity similar to a grand jury; and

" '(3) the term 'law enforcement agency' means any public agency charged by law with the duty to investigate crimes, apprehend and hold in custody persons charged with crimes.'.

"(c) This section is not intended to preempt any existing State law that meets the minimum requirements set forth in this section.".

SEC. 402. TABLE OF CONTENTS.

The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting after the item relating to section 818 the following new item:

"Sec. 819. Law enforcement officers bill of rights.".

TITLE V—VICTIMS' BILL OF RIGHTS

SEC. 501. AMENDMENT OF RESTITUTION PROVISIONS.

(a) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a) by—

(A) striking "(a) The court" and inserting "(a)(1) The court";

(B) striking "may order" and inserting "shall order"; and

(C) adding at the end thereof the following new paragraph:

"(2) In addition to ordering restitution of the victim of the offense of which a defendant is convicted, a court may order restitution of any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

"(A) the criminal episode during which the offense occurred; or

"(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.";

(2) in subsection (b)(1)(A) by striking "impractical" and inserting "impracticable";

(3) in subsection (b)(2) by inserting "emotional or" after "resulting in";

(4) in subsection (c) by striking "If the Court decides to order restitution under this section, the" and inserting "The";

(5) by striking subsections (d), (e), (f), (g), and (h); and

(6) by adding at the end thereof the following new subsections:

"(d)(1) The court shall order restitution to a victim in the full amount of the victim's losses as determined by the court and without consideration of—

"(A) the economic circumstances of the offender; or

"(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the offender;

"(B) projected earnings and other income of the offender; and

"(C) any financial obligations of the offender, including obligations to dependents.

"(3) A restoration order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender.

"(4) An in-kind payment described in paragraph (3) may be in the form of—

"(A) return of property;

"(B) replacement of property; or

"(C) services rendered to the victim or to a person or organization other than the victim.

"(e) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

"(f) When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution of each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

"(g)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

"(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the vic-

tim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensation to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

"(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(h) A restitution order shall provide that—

"(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to the clerk of the court for accounting and payment by the clerk in accordance with this subsection;

"(2) the clerk of the court shall—

"(A) log all transfers in a manner that tracks the offender's obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court determines that continued recordkeeping under this subparagraph would not be useful;

"(B) notify the court and the interested parties when an offender is 90 days in arrears in meeting those obligations; and

"(C) disburse money received from an offender so that each of the following obligations is paid in full in the following sequence:

"(i) a penalty assessment under section 3013 of title 18, United States Code;

"(ii) restitution of all victims; and

"(iii) all other fines, penalties, costs, and other payments required under the sentence; and

"(3) the offender shall advise the clerk of the court of any change in the offender's address during the term of the restitution order.

"(i) A restitution order shall constitute a lien against all property of the offender and may be recorded in any Federal or State office for the recording of liens against real or personal property.

"(j) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the restitution order.

"(k) An order of restitution may be enforced—

"(1) by the United States—

"(A) in the manner provided for the collection and payment of fines in subchapter (B) of chapter 229 of this title; or

"(B) in the same manner as a judgment in a civil action; and

"(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

"(l) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.".

(b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664 of title 18, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d);

(3) by amending subsection (a), as redesignated by paragraph (2), to read as follows:

"(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs."; and

(4) by adding at the end thereof the following new subsection:

"(e) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.".

SEC. 502. EXPANSION OF RESTITUTION.

Section 3663(b) of title 18, United States Code, is amended by striking "and" following the semicolon in paragraph (3), redesignating paragraph (4) as paragraph (5), and adding after paragraph (3) the following:

"(4) in any case, reimburse the victim for necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and".

SEC. 503. SUSPENSION OF FEDERAL BENEFITS.

Subsections (g) and (h) of section 3663 of title 18, United States Code, are redesignated as subsections (h) and (i), respectively, and a new subsection (g) is inserted as follows:

"(g)(1) If the defendant is delinquent in making restitution in accordance with any schedule of payments established under subsection (f)(1) of this section, or any requirement of immediate payment under subsection (f)(3) of this section, the court may, after a hearing, suspend the defendant's eligibility for all Federal benefits until such time as the defendant demonstrates to the court good-faith efforts to return to such schedule.

"(2) For purposes of this subsection—

"(A) the term 'Federal benefits'—

"(i) means any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

"(ii) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

"(B) the term 'veterans benefit' means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.".

SEC. 504. VICTIM'S RIGHT OF ALLOCATION IN SENTENCING.

Rule 32 of the Federal Rules of Criminal Procedure is amended by—

(1) striking "and" following the semicolon in subdivision (a)(1)(B);

(2) striking the period at the end of subdivision (a)(1)(C) and inserting in lieu thereof "; and";

(3) inserting after subdivision (a)(1)(C) the following: "(D) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement and to present any information in relation to the sentence.";

(4) in the second to last sentence of subdivision (a)(1), striking "equivalent opportunity" and inserting in lieu thereof "opportunity equivalent to that of the defendant's counsel";

(5) in the last sentence of subdivision (a)(1) inserting "the victim," before ", or the attorney for the Government."; and

(6) adding at the end the following:

"(f) DEFINITIONS.—For purposes of this rule—

"(1) 'victims' means any individual against whom an offense for which a sentence is to be imposed has been committed, but the right of allocution under subdivision (a)(1)(D) may be exercised instead by—

"(A) a parent or legal guardian in case the victim is below the age of eighteen years or incompetent; or

"(B) one or more family members or relatives designated by the court in case the victim is deceased or incapacitated;

if such person or persons are present at the sentencing hearing, regardless or whether the victim is present; and

"(2) 'crime or violence or sexual abuse' means a crime that involved the use or attempted or threatened use of physical force against the person or property of another, or a crime under chapter 109A of title 18, United States Code.".

SEC. 505. CRIME VICTIMS FUND.

(a) ELIMINATION OF FUND CEILINGS AND SUNSET PROVISION.—Subsection (c) of section 1402 (42 U.S.C. 10601) of the Victims of Crime Act of 1984 is repealed.

(b) ALLOCATIONS.—

(1) GENERALLY.—Section 1402(d)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(2)) is amended to read as follows:

"(2) The Fund shall be available as follows:

"(A) Of the total deposited in the Fund during a particular fiscal year—

"(i) 7 percent shall be available for grants under section 1404A of this title;

"(ii) 4 percent shall be available for grants under section 1404(c)(1);

"(iii) 89 percent shall be available in equal amounts for grants under section 1403 and section 1404(a) of this title.

"(B) The Director may retain any portion of the Fund that was deposited during a fiscal year that is in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as a reserve for use in a year in which the Fund falls below the amount available in the previous year. Such reserve may not, however, exceed $20,000,000.

"(C) If the amount deposited in the Fund during a fiscal year exceeds $150,000,000, then the reserved portion of such excess the Fund shall be made available to the judicial branch for administrative costs to carry out the functions of that branch under sections 3611 and 3612 of title 18, United States Code. The reserved portion referred to in the preceding sentence is the first $6,200,000 in each

of fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter.".

(2) CONFORMING CROSS-REFERENCE.—Section 1402(g)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(g)(1)) is amended by striking "(iv)" and inserting "(i)" in lieu thereof.

SEC. 506. PERCENTAGE CHANGE IN CRIME VICTIM COMPENSATION FORMULA.

Section 1403(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)(1)) is amended by striking "40 percent" and inserting "45 percent".

SEC. 507. ADMINISTRATIVE COSTS FOR CRIME VICTIM COMPENSATION.

(a) CREATION OF EXCEPTION.—The final sentence of section 1403(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)(1)) is amended by striking "A grant" and inserting "Except as provided in paragraph (3), a grant".

(b) REQUIREMENTS OF EXCEPTION.—Section 1403(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(a)) is amended by adding at the end the following:

"(3) Not more than 5 percent of a grant made under this section may be used for the administration of the crime victim compensation program receiving the grant.".

SEC. 508. RELATIONSHIP OF CRIME VICTIM COMPENSATION TO CERTAIN FEDERAL PROGRAMS.

Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by adding at the end the following:

"(e) Notwithstanding any other provision of law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay, then—

"(1) such crime victim compensation program shall not pay that compensation; and

"(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.".

SEC. 509. USE OF UNSPENT 1402(d)(2) MONEY.

Section 1404(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)(1)) is amended—

(1) by striking "or for the purpose of grants under section 1403 but not used for that purpose"; and

(2) by adding at the end the following:

"The Director, in the Director's discretion, may use amounts made available under section 1402(d)(2) for the purposes of grants under section 1403 but not used for that purpose, for grants under this subsection, either in the year such amounts are not so used, or the next year.".

SEC. 510. UNDERSERVED VICTIMS.

Section 1404(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)) is amended by adding at the end the following:

"(6) In making the certification required by paragraph (2)(B), the chief executive shall give particular attention to children who are victims of violent street crime.".

SEC. 511. GRANTS FOR DEMONSTRATION PROJECTS.

Section 1404(c)(1)(A) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(c)(1)(A)) is amended by inserting "demonstration projects and" before "training".

SEC. 512. ADMINISTRATIVE COSTS FOR CRIME VICTIM ASSISTANCE.

(a) CREATION OF EXCEPTION.—Section 1404(b)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(B)(2)) is amended by striking "An eligible" and inserting "Except as provided in paragraph (3), an eligible".

(b) REQUIREMENTS OF EXCEPTION.—Section 1404(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(B)) is amended by adding at the end the following:

"(3) Not more than 5 percent of sums received under subsection (a) may be used for the administration of the crime victim assistance program receiving such sums.".

SEC. 513. CHANGE OF DUE DATE FOR REQUIRED REPORT.

Section 1407(g) of the Victims of Crime Act of 1984 (42 U.S.C. 10604(g)) is amended—

(1) by striking "December 31, 1990", and inserting "May 31, 1993"; and

(2) by striking "December 31" the second place it appears and inserting "May 31" in lieu thereof.

SEC. 514. MAINTENANCE OF EFFORT.

Section 1407 of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by adding at the end the following:

"(h) Each entity receiving sums made available under this Act for administrative purposes shall certify that such sums will not be used to supplant State or local funds, but will be used to increase the amount of such funds that would, in the absence of Federal funds, be made available for these purposes.".

SEC. 515. MAINTAINING CURRENT FUNDING LEVELS.

The allocation provisions of sections 1402(d)(2)(A)(i), 1402(d)(2)(A)(ii), 1403(a)(3), and 1404(b)(3) of the Victims of Crime Act of 1984 shall take effect in a fiscal year upon certification by the Director that there are sufficient funds in the Victims Assistance Fund and the Victims Compensation Fund at the end of the previous fiscal year so that the allocations provided by such sections will not reduce the current funding levels in such funds.

TITLE VI—GANGS AND JUVENILE OFFENDERS

SEC. 601. AMENDMENTS CONCERNING RECORDS OF CRIMES COMMITTED BY JUVENILES.

(a) Section 5038 of title 18, United States Code, is amended by striking subsections (d) and (f), redesignating subsection (e) as subsection (d), and adding at the end thereof new subsections (e) and (f) as follows:

"(e) Whenever a juvenile has been found guilty of committing an act which if committed by an adult would be an offense described in clause (3) of the first paragraph of section 5032 of this title, the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation, Identification Division. The court shall also transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult, shall be made available in the manner applicable to adult defendants.

"(f) In addition to any other authorization under this section for the reporting, retention, disclosure or availability of records or information, if the law of the State in which a Federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure or availability is permitted under this section whenever the same circumstances exist.".

(b) Section 3607 of title 18, United States Code, is repealed, and the corresponding reference in the section analysis for chapter 229 of title 18 is deleted.

(c) Section 401(b)(4) of the Controlled Substances Act (21 U.S.C. 841(b)(4)) is amended by striking the words "and section 3607 of title 18".

SEC. 602. ADULT PROSECUTION OF SERIOUS JUVENILE OFFENDERS.

Section 5032 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b) (1), (2), (3)),'' and inserting in lieu thereof "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1003, 1005, 1009, 1010(b) (1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b) (1), (2), or (3), or 963),"; and

(B) by striking "922(p)" and inserting in lieu thereof "924 (b), (g), or (h)";

(2) in the fourth undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959)" and inserting in lieu thereof "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844 or 846), section 1002(a), 1005, 1009, 1010(b) (1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959, 960(b) (1), (2), or (3), or 963), or section 924 (b), (g), or (h) of this title,"; and

(B) by striking "subsection (b)(1) (A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), (3))" and inserting in lieu thereof "or an offense (or conspiracy or attempt to commit an offense) described in section 401(b)(1) (A), (B), or (C), (d), or (e), or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841(b)(1) (A), (B), or (C), (d), or (e), 844 or 846) or section 1002(a), 1003, 1009, 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), or (3), or 963)"; and

(3) in the fifth undesignated paragraph by adding at the end the following: "In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such factor, if found to exist, shall weigh heavily in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.".

SEC. 603. SERIOUS DRUG OFFENSES BY JUVENILES AS ARMED CAREER CRIMINAL ACT PREDICATES.

Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking "or" at the end of clause (i);

(2) by striking "and" at the end of clause (ii) and inserting in lieu thereof "or"; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be a serious drug offense described in this paragraph; and".

SEC. 604. INCREASED PENALTY FOR TRAVEL ACT CRIMES INVOLVING VIOLENCE.

Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both" and inserting in lieu thereof "and thereafter performs or attempts to perform (A) any of the acts specified in subparagraphs (1) and (3) shall be fined under this title or imprisoned for not more than five years, or both, or (B) any of the acts specified in subparagraph (2) shall be fined under this title or imprisoned for not more than twenty years, or both, and if death results shall be imprisoned for any term of years or for life".

SEC. 605. INCREASED PENALTY FOR CONSPIRACY TO COMMIT MURDER FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by inserting "or who conspires to do so" before "shall be fined" the first place it appears.

SEC. 606. ADDITIONAL PENALTIES FOR STREET GANG ACTIVITIES.

(a) IN GENERAL.—Chapter 95 of title 18, United States Code, is amended by adding at the end the following:

"§ 1960. Street gangs

"(a) Whoever is convicted of a felony crime of violence (in or affecting commerce) for the benefit of, at the direction of, or in association with any criminal street gang, shall in addition to the punishment provided by law for such crime, be fined under this title and imprisoned not more than three years, or both. Any imprisonment imposed under this section shall not run concurrently with any imprisonment imposed for such crime.

"(b) As used in this section—

"(1) the term 'criminal street gang' means an ongoing organization, association, or group of three or more individuals, whether formal or informal, that—

"(A) has a common name or identifying sign or symbol; and

"(B) whose members individually or collectively—

"(1) engage in or have engaged in a pattern of predicate crimes; and

"(2) unlawfully carry or use firearms (as defined in section 921 of this title);

"(2) the term 'predicate crimes' means—

"(A) any crime that is racketeering activity when the meaning given that term in section 1961(1) of this title; or

"(B) any crime that is punishable under Federal, State, or local law that consists of—

"(i) an assault with a dangerous weapon or resulting in serious bodily injury;

"(ii) a shooting at a dwelling or occupied motor vehicle; or

"(iii) a theft of a motor vehicle;

"(3) the term 'felony crime of violence' means a crime of violence punishable by imprisonment for longer than one year."; and

"(4) the term 'pattern of predicate crimes' means 2 or more predicate crimes, one of which occurred after the date of the enactment of this section and the last of which occurred within 10 years (excluding any period of imprisonment) after the commission of a prior predicate crime.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 96 of title 18, United States Code, is amended by adding at the end the following:

"1960. Street gangs.".

TITLE VII—DEATH PENALTY

SEC. 701. SHORT TITLE.

This title may be cited as the "Capital Punishment Procedures Act of 1991".

SEC. 702. DEATH PENALTY PROCEDURES.

Title 18 of the United States Code is amended—

(1) by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH PENALTY PROCEDURES

"Sec.
"3591. Sentence of death.
"3592. Factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
"3597. Use of State facilities.
"3598. Appointment of counsel.
"3599. Collateral Attack on Judgment Imposing Sentence of Death.

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(a) an offense described in section 794 or section 2381 of this title;

"(b) an offense described in section 1751(c) of this title if the offense, as determined beyond a reasonable doubt at a hearing under section 3593, constitutes an attempt to murder the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President;

"(c) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section;

"(d) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or member of the family or household of such a person;

"(e) an offense constituting a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, acting with a state of mind described in subsection (f), engages in such a violation, and the death of another person results in the course of the violation or from the use of the controlled substance involved in the violation; or

"(f) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at a hearing under section 3593, caused the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or caused the death of a person through the intentional infliction of serious bodily injury;

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified: *Provided*, That no person may be sentenced to death who was less than eighteen years of age at the time of the offense.

"§ 3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) DURESS.—The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant's participation in the offense, which was committed by another, was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's background, character or record or any other circumstance of the offense that the defendant may proffer as a mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3519 (b) or (f), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) CONDUCT OCCURRED DURING COMMISSION OF SPECIFIED CRIMES.—The conduct resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 1203 (hostage taking), section 1751 (violence against the President or Presidential staff), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2381 (treason) of this title, section 1826 of title 28 (persons in custody as

recalcitrant witnesses or hospitalized following insanity acquittal), or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n) (aircraft piracy)).

"(2) INVOLVEMENT OF FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—The defendant—

"(A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used or possessed a firearm as defined in section 921 of this title; or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use of attempted or threatened use of a firearm, as defined in section 921 of this title, against another person.

"(3) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(4) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(5) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense or in escaping or attempting to escape apprehension, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) HEINOUS, CRUEL OR DEPRAVED MANNER OF COMMISSION.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(7) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(8) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(9) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(10) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(11) TYPE OF VICTIM.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if there was no Vice President, the officer next in order of succession to the office of the President of the United States, or any person acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if that official was in the United States on official business; or

"(D) a Federal public servant who was outside of the United States or who was a Federal judge, a Federal law enforcement officer, an employee (including a volunteer or contract employee) of a Federal prison, or an official of the Federal Bureau of Prisons—

"(i) while such public servant was engaged in the performance of his official duties;

"(ii) because of the performance of such public servant's official duties; or

"(iii) because of such public servant's status as a public servant.

For purposes of this paragraph, the terms 'President-elect' and 'Vice President-elect' mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2; a 'Federal law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense; 'Federal prison' means a Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and 'Federal judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge. The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(d) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section 3591 (c)–(e), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist—

"(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm, as defined in section 921 of this title, to threaten, intimidate, assault, or injure a person.

"(5) DISTRIBUTION TO PERSONS UNDER TWENTY-ONE.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant. The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"§ 3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the Government, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, shall sign and file with the court, and serve on the defendant, a notice that the Government in the event of conviction will seek the sentence of death. The notice shall set forth the aggravating factor or factors enumerated in section 3592, and any other aggravating factor not specifically enumerated in section 3592, that the Government, if the defendant is convicted, will seek to prove as the basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court may permit the attorney for the Government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—When the attorney for the Government has filed a notice as required under subsection (a) and the defendant is found guilty of an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under the section is necessary; or

"(3) before the court alone, upon motion of the defendant and with the approval of the attorney for the Government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to—

"(1) any matter relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

"(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

The information presented may include the trial transcript and exhibits. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the Government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of an aggravating factor is on the Government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591 (a), an aggravating factor required to be considered under section 3592(b) is found to exist;

"(2) an offense described in section 3591 (b) or (f), an aggravating factor required to be considered under section 3592(c) is found to exist; or

"(3) an offense described in section 3591(c)-(e), an aggravating factor required to be considered under section 3592(d) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist under subsection (d) outweigh any mitigating factor or factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not be influenced by prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon the recommendation under section 3593(e) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without the possibility of release.

"§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor;

"(B) the evidence and information support the special findings of the existence of an aggravating factor or factors; and

"(C) the proceedings did not involve any other prejudicial error requiring reversal of the sentence that was properly preserved for and raised on appeal;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593 or for imposition of another authorized sentence as appropriate.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"§ 3596. Implementation of a sentence of death

"(a) IN GENERAL.—A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

"(b) SPECIAL BARS TO EXECUTION.—A sentence of death shall not be carried out upon a person who lacks the mental capacity to understand the death penalty and why it was imposed on that person, or upon a woman while she is pregnant.

"(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—No employee of any State department of corrections, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"§ 3597. Use of State facilities

"A United States Marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"§ 3598. Appointment of counsel

"(a) REPRESENTATION OF INDIGENT DEFENDANTS.—Notwithstanding any other provision of law, this section shall govern the appointment of counsel for any defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed,

for an offense against the United States, where the defendant is or becomes financially unable to obtain adequate representation. Such a defendant shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in section 3599(b) of this title has occurred.

"(b) REPRESENTATION BEFORE FINALITY OF JUDGMENT.—A defendant within the scope of this section shall have counsel appointed for trial representation as provided in section 3005 of this title. At least one counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel.

"(c) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the district court that imposed the sentence. Within ten days of receipt of such notice, the district court shall proceed to make a determination whether the defendant is eligible under this section for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order: (1) appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel; (2) finding, after a hearing if necessary, that the defendant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or (3) denying the appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation. Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(d) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under this section, at least one counsel appointed for trial representation must have been admitted to the bar for at least five years and have at least three years of experience in the trial of felony cases in the federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to the bar for at least five years and have at least three years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

"(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—Except as otherwise provided in this section, the provisions of section 3006A of this title shall apply to appointments under this section.

"(f) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"§ 3599. Collateral attack on judgment imposing sentence of death

"(a) TIME FOR MAKING SECTION 2255 MOTION.—In a case in which sentence of death has been imposed, and the judgment has become final as described in section 3598(c) of this title, a motion in the case under section 2255 of title 28, United States Code, must be filed within ninety days of the issuance of the order relating to appointment of counsel under section 3598(c) of this title. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding sixty days. A motion described in this section shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) STAY OF EXECUTION.—The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence, and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such motion by a district court; or

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the motion under that section is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of his decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

"(c) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim was (A) the result of governmental action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed."; and

(2) in the chapter analysis of part II, by adding the following new item after the item relating to chapter 227:

"228. Death penalty procedures ..... 3591.".

SEC. 703. CAPITAL PUNISHMENT FOR MURDERS IN CONNECTION WITH SEXUAL ASSAULTS AND CHILD MOLESTATIONS.

Title 18 of the United States Code is amended—

(1) by adding at the end of chapter 51 the following new section:

"§ 1118. Capital Punishment for Murders in Connection with Sexual Assaults and Child Molestations

"(a) OFFENSE.—It is an offense to cause the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or to cause the death of a person through the intentional infliction of serious bodily injury.

"(b) FEDERAL JURISDICTION.—There is Federal jurisdiction over an offense described in this section if the conduct resulting in death occurs in the course of another offense against the United States.

"(c) PENALTY.—An offense described in this section is a Class A felony. A sentence of death may be imposed for an offense described in this section as provided in this title."; and

(2) by adding the following at the end of the table of sections for chapter 51:

"1118. Capital punishment for murders in connection with sexual assaults and child molestations.".

SEC. 704. DEATH PENALTY FOR MURDER DURING THE COMMISSION OF AN ACT IN VIOLATION OF CIVIL RIGHTS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(b) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.—Section 242 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(c) FEDERALLY PROTECTED ACTIVITIES.—Section 245(b) of title 18, United States Code, is amended in the matter following paragraph (5) by inserting ", or may be sentenced to death" after "or for life".

(d) DAMAGE TO RELIGIOUS PROPERTY; OBSTRUCTION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.—Section 247(c)(1) of title 18, United States Code, is amended by inserting ", or may be sentenced to death" after "or both".

SEC. 705. CONFORMING AMENDMENT RELATING TO TRANSPORTING EXPLOSIVES.

Section 844(d) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 706. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF FEDERAL PROPERTY BY EXPLOSIVES.

Section 844(f) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 707. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF INTERSTATE PROPERTY BY EXPLOSIVES.

Section 844(i) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 708. CONFORMING AMENDMENT RELATING TO MURDER.

The second paragraph of section 1111(b) of title 18 of the United States Code is amended to read as follows:

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

SEC. 709. MURDER BY FEDERAL PRISONER.

Chapter 51 of title 18 of the United States Code is amended—

(1) by adding at the end thereof the following:

"§ 1118. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal prison under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of release.

"(b) For purposes of this section—

"(1) 'Federal prison' means any Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government;

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death."; and

(2) by amending the section analysis to add:

"1118. Murder by a Federal prisoner.".

SEC. 710. CONFORMING AMENDMENT RELATING TO KIDNAPPING.

Section 1201 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 711. CONFORMING AMENDMENT RELATING TO HOSTAGE TAKING.

Section 1203 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 712. CONFORMING AMENDMENT RELATING TO MAILABILITY OF INJURIOUS ARTICLES.

The last paragraph of section 1716 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the paragraph.

SEC. 713. CONFORMING AMENDMENT RELATING TO PRESIDENTIAL ASSASSINATION.

Subsection (c) of section 1751 of title 18 of the United States Code is amended to read as follows:

"(c) Whoever attempts to murder or kidnap any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to murder the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President.".

SEC. 714. CONFORMING AMENDMENT RELATING TO MURDER FOR HIRE.

Subsection (a) of section 1958 of title 18 of the United States Code is amended by deleting the words "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting in lieu thereof "and if death results, shall be punished by death or life imprisonment, or shall be fined in accordance with this title, or both".

SEC. 715. CONFORMING AMENDMENT RELATING TO VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Paragraph (1) of subsection (a) of section 1959 of title 18 of the United States Code is amended to read as follows: "for murder, by death or life imprisonment, or a fine in accordance with this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine in accordance with this title, or both";

SEC. 716. CONFORMING AMENDMENT RELATING TO WRECKING TRAINS.

The second to the last paragraph of section 1992 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 717. CONFORMING AMENDMENT RELATING TO BANK ROBBERY.

Section 2113(e) of title 18 of the United States Code is amended by striking the words "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof "or if death results shall be punished by death or life imprisonment".

SEC. 718. CONFORMING AMENDMENT TO CONTROLLED SUBSTANCES ACT.

Section 408 of the Controlled Substances Act is amended by striking subsections (g)-(r).

TITLE VIII—IMPOSITION OF MANDATORY MINIMUM SENTENCES WITHOUT RELEASE

SEC. 801. INCREASED MANDATORY MINIMUM SENTENCES WITHOUT RELEASE FOR CRIMINALS USING FIREARMS AND OTHER VIOLENT CRIMINALS.

(a) USE OF FIREARMS.—Section 924(c)(1) of title 18, United States Code, is amended to read as follows:

"(c)(1) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States or during and in relation to any felony punishable under chapter 25 of this title (relating to counterfeiting and forgery)—

"(A) uses, carries, or otherwise possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for not less than 10 years without release;

"(B) discharges a firearm with intent to injure another person, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for not less than 20 years without release; or

"(C) uses, carries, or otherwise possesses a firearm that is a machinegun, or is equipped with a firearm silencer or firearm muffler shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for 30 years without release.

In the case of a second conviction under this subsection, a person shall be sentenced to imprisonment for not less than 20 years without release for possession or not less than 30 years without release for discharge of a firearm, and if the firearm is a machinegun, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. In the case of a third or subsequent conviction under this subsection, a person shall be sentenced to life imprisonment without release. If the death of a person results from the discharge of a firearm, with intent to kill another person, by a person during the commission of such a crime, the person who discharged the firearm shall be sentenced to death or life imprisonment without release. A person shall be subjected to the penalty of death under this subsection only if a hearing is held in accordance with section 408 of the Controlled Substances Act (21 U.S.C. 848). Notwithstanding any other law, a court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used. No person sentenced under this subsection shall be released for any reason whatsoever during a term of imprisonment imposed under this paragraph.".

SEC. 802. LONGER PRISON SENTENCES FOR THOSE WHO SELL ILLEGAL DRUGS TO MINORS OR FOR USE OF MINORS IN DRUG TRAFFICKING ACTIVITIES.

(a) DISTRIBUTION TO PERSONS UNDER AGE 21.—Section 405 of the Controlled Substances Act (21 U.S.C. 845) is amended—

(1) in subsection (a) by striking "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year." and inserting "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than 10 years without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence and such person shall not be released during the term of such sentence."; and

(2) in subsection (b) by striking "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year." and inserting "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than 20 years without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence and such person shall not be released during the term of such sentence.".

(b) EMPLOYMENT OF PERSONS UNDER 18 YEARS OF AGE.—Section 420 of the Controlled Substances Act (21 U.S.C. 861) is amended—

(1) in subsection (a) by striking "Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall be not less than one year." and inserting "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than 10 years without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence and such person shall not be released during the term of such sentence"; and

(2) in subsection (c) by striking "Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall be not less than one year." and inserting "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than 20 years without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the preceding sentence and such person shall not be released during the term of such sentence.".

SEC. 803. LONGER PRISON SENTENCES FOR DRUG TRAFFICKING.

(a) SCHEDULE I AND II SUBSTANCES.—Section 401(b)(1)(C) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(C)) is amended—

(1) in the first sentence by striking "of not more than 20 years" and inserting "which shall be not less than 5 years without release nor more than 20 years";

(2) in the second sentence by striking "of not more than 30 years" and inserting "which shall be not less than 10 years without release nor more than 30 years"; and

(3) in the fourth sentence by striking "which provide for a mandatory term of imprisonment if death or serious bodily injury results".

(b) MARIJUANA.—Section 401(b)(1)(D) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(D)) is amended—

(1) in the first sentence by striking "of not more than 5 years" and inserting "not less than 5 years without release";

(2) in the second sentence by striking "of not more than 10 years" and inserting "which shall be not less than 10 years without release"; and

(3) by adding the following new sentence at the end thereof: "Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

(c) SCHEDULE IV SUBSTANCES.—Section 401(b)(2) of the Controlled Substances Act (21 U.S.C. 841(b)(2)) is amended—

(1) in the first sentence by striking "of not more than 3 years" and inserting "which shall be not less than 5 years without release";

(2) in the second sentence by striking "of not more than 6 years" and inserting "which shall be not less than 10 years without release"; and

(3) by adding the following new sentence at the end thereof: "Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

(d) SCHEDULE V SUBSTANCES.—Section 401(b)(3) of the Controlled Substances Act (21 U.S.C. 841(b)(3)) is amended—

(1) in the first sentence by striking "of not more than one year" and inserting "which shall be not less than 5 years without release";

(2) in the second sentence by striking "of not more than 2 years" and inserting "which shall be not less than 10 years without release"; and

(3) by adding the following new sentence at the end thereof: "Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

SEC. 804. MANDATORY PENALTIES FOR ILLEGAL DRUG USE IN FEDERAL PRISONS.

(a) DECLARATION OF POLICY.—It is the policy of the Federal Government that the use or distribution of illegal drugs in the Nation's Federal prisons will not be tolerated and that such crimes shall be prosecuted to the fullest extent of the law.

(b) AMENDMENT.—Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by adding the following new paragraph at the end thereof:

"(7)(A) In a case involving possession of a controlled substance within a Federal prison or other Federal detention facility, such person shall be sentenced to a term of imprisonment of not less than 1 year without release in addition to any other sentence imposed for the possession itself.

"(B) In a case involving the smuggling of a controlled substance into a Federal prison or other Federal detention facility or the distribution of a controlled substance within a Federal prison or other Federal detention facility, such person shall be sentenced to a term of imprisonment of not less than 10 years without release in addition to any other sentence imposed for the possession or distribution itself.

"(C) Notwithstanding any other law, the court shall not place on probation or suspend the sentence of a person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed under this paragraph.".

SEC. 805. DEPORTATION OF CRIMINAL ALIENS.

(a) DEPORTATION OF ALIENS CONVICTED OF CRIMES OF VIOLENCE.—Section 241(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(14)) is amended by inserting after "convicted" the following: "of a drug trafficking crime or a crime of violence (as those terms are defined in paragraphs (2) and (3) of section 924(c) of title 18, United States Code) and who has served any term of imprisonment imposed by a court, or".

(b) REENTRY OF DEPORTED ALIENS.—Section 276(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1326(b)(2)) is amended to read as follows:

"(2) whose deportation was subsequent to a conviction for a drug trafficking crime or a crime of violence (as those terms are defined in section 924(c) (2) and (3) of title 18, United States Code), or for commission of an aggravated felony, such alien shall be fined under such title and imprisoned for not less than 20 years without release, and in the case of a second violation of subsection (a) shall be imprisoned for life without release. Notwithstanding any other law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph and such person shall not be released during the term of such sentence.".

SEC. 806. ENCOURAGEMENT TO STATES TO ADOPT MANDATORY MINIMUM PRISON SENTENCES.

(a) PRIORITY.—Beginning on the date that is 2 calendar years after the date of enactment of this Act, a request for Federal drug law enforcement assistance funds from the Bureau of Justice Assistance Grant Programs by a State whose law provides for mandatory minimum sentences equal to or greater than the sentences authorized in sections 801, 802, 803, 804, and 805 for the commission of crimes against the State that are equivalent to the Federal crimes punished in those sections shall receive priority over a request by a State whose law does not so provide.

(b) REDISTRIBUTION.—Beginning on the date that is 2 calendar years after the date of enactment of this Act, the formula for determining the amount of funds to be distributed from the Drug Control and System Improvement Grant Program to State and local governments shall be adjusted by—

(1) reducing by 10 percent the amount of funds that would, except for the application of this paragraph, be allocated to States whose laws do not provide as stated in subsection (a); and

(2) allocating the amount of the reduction pro rata to the other States.

TITLE IX—MANDATORY JUDICIAL REFORMS

SEC. 901. ADMISSIBILITY OF CERTAIN EVIDENCE.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"§ 3509. Admissibility of evidence obtained by search or seizure

"(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—

"(1) FEDERAL PROCEEDINGS.—Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

"(2) STATE PROCEEDINGS.—The law of the United States does not require the exclusion of evidence in a proceeding in any court under circumstances in which the evidence would be admissible in a proceeding in a court of the United States pursuant to paragraph (1) of this subsection.

"(b) FIREARMS SEIZED AS EVIDENCE BY FEDERAL LAW ENFORCEMENT OFFICERS.—

"(1) ADMISSIBILITY OF EVIDENCE.—In addition to the limitations on the exclusion of evidence set forth in subsections (a) and (c) of this section, a firearm obtained as a result of a search or seizure shall not be excluded as evidence in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out by a Federal law enforcement officer, and the firearm will be used as evidence against a defendant who—

"(A) is being prosecuted for a crime of violence or a serious drug offense; or

"(B) is ineligible to possess such firearm pursuant to section 922(g) of this title.

"(2) RULES FOR CONDUCT AND SANCTIONS.—The Attorney General shall promulgate rules and regulations relating to compliance by law enforcement officers of the Department of Justice with the fourth amendment to the Constitution. Such rules and regulations shall include specifications concerning—

"(A) the training of such officers in the law of search and seizure;

"(B) procedures and standards of conduct to be observed in carrying out searches and seizures;

"(C) procedures for reporting and investigating incidents involving possible violations of legal or administrative requirements relating to searches and seizures;

"(D) sanctions to be imposed when such violations are determined to have occurred; and

"(E) standards and procedures for settling claims for damages by victims of unlawful searches or seizures that are presented under section 2675 of title 28, United States Code.

"(3) RULES FOR CONDUCT AND SANCTIONS BY OTHER DEPARTMENTS AND AGENCIES.—The head of any other department or agency, following consultation with the Attorney General, may promulgate rules and regulations relating to compliance with the fourth amendment by law enforcement officers of such department or agency. Such rules and regulations shall meet the specifications set forth in paragraph (2) of this subsection.

"(4) REVIEW BOARDS.—The Attorney General, and any other head of a department or agency that promulgates rules and regulations pursuant to paragraph (3) of this subsection, shall establish a review board to consider all allegations of violations of the fourth amendment by law enforcement officers of the department or agency, and to recommend or impose appropriate sanctions in cases where violations are determined to have occurred. A review board so constituted may also be charged with recommending the settlement of claims for damages by victims of unlawful searches and seizures that are presented under section 2675 of title 28, United States Code.

"(5) REPORT TO CONGRESS.—The Attorney General, and any other head of a department or agency that promulgates rules and regulations pursuant to paragraph (3) of this subsection, shall report annually to Congress concerning—

"(A) allegations received by the review board established under paragraph (4) of this subsection, and claims presented under section 2675 of title 28, United States Code, that relate to search or seizure violations by law enforcement officers of the department or agency;

"(B) the actions taken on such allegations and claims; and

"(C) the bases for such actions.

"(6) DEFINITIONS.—As used in this subsection, the term—

"(A) 'firearm' has the meaning given such term in section 921(a)(3) of this title and also includes ammunition for such firearm;

"(B) 'law enforcement officer' has the meaning given such term in section 408(e)(2) of the Controlled Substances Act (21 U.S.C. 848(e)(2));

"(C) 'crime of violence' has the meaning given such term in section 924(c)(3) of this title; and

"(D) 'serious drug offense' has the meaning given such term in section 924(e)(2)(A) of this title.

"(7) EFFECTIVE DATE.—Paragraph (1) of this subsection shall take effect with respect to searches and seizures conducted by law enforcement officers of a department or agency following the promulgation of the regulations required under paragraph (2) or (3) of this subsection and the establishment of a review board pursuant to paragraph (4) of this subsection.

"(c) EVIDENCE NOT EXCLUDABLE BY STATUTE OR RULE.—Evidence shall not be excluded in a proceeding in a court of the United States on the ground that it was obtained in violation of a statute, an administrative rule or regulation, or a rule of procedure unless exclusion is expressly authorized by statute or by a rule prescribed by the Supreme Court pursuant to statutory authority.

"(d) RULE OF CONSTRUCTION.—This section shall not be construed to require or authorize the exclusion of evidence in any proceeding.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"3509. Admissibility of evidence obtained by search or seizure.".

SEC. 902. HABEAS CORPUS REFORM.

(a) GENERAL HABEAS CORPUS REFORM.—

(1) PERIOD OF LIMITATION.—Section 2244 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of the following times:

"(1) the time at which State remedies are exhausted;

"(2) the time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action;

"(3) the time at which the Federal right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.".

(2) APPEAL.—Section 2253 of title 28, United States Code, is amended to read as follows:

"§ 2253. Appeal

"In a habeas corpus proceeding or a proceeding under section 2255 of this title before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

"There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, or from the final order in a proceeding under section 2255 of this title, unless a circuit justice or judge issues a certificate of probable cause."

(3) AMENDMENT TO RULES OF APPELLATE PROCEDURE.—Federal Rule of Appellate Procedure 22 is amended to read as follows:

"RULE 22

"HABEAS CORPUS AND SECTION 2255 PROCEEDINGS

"(a) APPLICATION FOR AN ORIGINAL WRIT OF HABEAS CORPUS.—An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

"(b) NECESSITY OF CERTIFICATE OF PROBABLE CAUSE FOR APPEAL.—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and in a motion proceeding pursuant to section 2255 of title 28, United States Code, an appeal by the applicant or movant may not proceed unless a circuit judge issues a certificate of probable cause. If a request for a certificate of probable cause is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or the Government or its representative, a certificate or probable cause is not required.".

(4) SECTION 2254 AMENDMENTS.—Section 2254 of title 28, United States Code, is amended by redesignating subsections "(e)" and "(f)" as subsections "(f)" and "(g)", respectively, and is further amended—

(A) by amending subsection (b) to read as follows:

"(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.";

(B) by redesignating subsection "(d)" as subsection "(e)", and amending it to read as follows:

"(e) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a full and fair determination of a factual issue made in the case by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting this presumption by clear and convincing evidence.";

(C) by adding a new subsection (d) reading as follows:

"(d) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that has been fully and fairly adjudicated in State proceedings."; and

(D) by adding a new subsection (h) reading as follows:

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

(5) SECTION 2255 AMENDMENTS.—Section 2255 of title 28, United States Code, is amended by deleting the second paragraph and the penultimate paragraph thereof, and by adding at the end thereof the following new paragraphs:

"A two-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of the following times:

"(1) the time at which the judgment of conviction becomes final;

"(2) the time at which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, where the movant was prevented from making a motion by such governmental action;

"(3) the time at which the right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.

"In all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for a movant

who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by the provisions of section 3006A of title 18, United States Code.".

(b) DEATH PENALTY LITIGATION PROCEDURES.—Title 28, United States Code, is amended by inserting the following new chapter immediately following chapter 153:

"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

"Sec.

"2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.
"2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.
"2258. Filing of habeas corpus petition; time requirements; tolling rules.
"2259. Evidentiary hearings; scope of Federal review; district court adjudication.
"2260. Certificate of probable cause inapplicable.
"2261. Application to state unitary review procedures.
"2262. Limitation periods for determining petitions.
"2263. Rule of construction.

"§ 2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

"(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

"(b) This chapter is applicable if a State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(c) Any mechanism for the appointment, compensation and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record: (1) appointing one or more counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer; (2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or (3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

"(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(e) The ineffectiveness or incompetence of counsel during State or Federal collateral postconviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254 of this chapter. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal postconviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

"§ 2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

"(a) Upon the entry in the appropriate State court of record of an order under section 2256(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application must recite that the State has invoked the postconviction review procedures of this chapter and that the scheduled execution is subject to stay.

"(b) A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus petition under section 2254 within the time required in section 2258, or fails to make a timely application for court of appeals review following the denial of such a petition by a district court; or

"(2) upon completion of district court and court of appeals review under section 2254 the petition for relief is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a court of competent jurisdiction, in the presence of counsel and after having been advised of the consequences of his decision, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254.

"(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution or grant relief in a capital case unless:

"(1) the basis for the stay and request for relief is a claim not previously presented in the State or Federal courts;

"(2) the failure to raise the claim is (A) the result of State action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal postconviction review; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

"§ 2258. Filing of habeas corpus petition; time requirements; tolling rules

"Any petition for habeas corpus relief under section 2254 must be filed in the appropriate district court within one hundred and eighty days from the filing in the appropriate State court of record of an order under section 2256(c). The time requirements established by this section shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

"(2) during any period in which a State prisoner under capital sentence has a properly filed request for postconviction review pending before a State court of competent jurisdiction; if all State filing rules are met in a timely manner, this period shall run continuously from the date that the State prisoner initially files for postconviction review until final disposition of the case by the highest court of the State, but the time requirements established by this section are not tolled during the pendency of a petition for certiorari before the Supreme Court except as provided in paragraph (1); and

"(3) during an additional period not to exceed sixty days, if (A) a motion for an extension of time is filed in the Federal district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254; and (B) a showing of good cause is made for the failure to file the habeas corpus petition within the time period established by this section.

"§ 2259. Evidentiary hearings; scope of Federal review; district court adjudication

"(a) Whenever a State prisoner under a capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall:

"(1) determine the sufficiency of the record for habeas corpus review based on the claims actually presented and litigated in the State courts except when the prisoner can show that the failure to raise or develop a claim in the State courts is (A) the result of State action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State postconviction review; and

"(2) conduct any requested evidentiary hearing necessary to complete the record for habeas corpus review.

"(b) Upon the development of a complete evidentiary record, the district court shall rule on the claims that are properly before it, but the court shall not grant relief from a judgment of conviction or sentence on the basis of any claim that was fully and fairly adjudicated in State proceedings.

"§ 2260. Certificate of probable cause inapplicable

"The requirement of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to the provisions of this chapter except when a second or successive petition is filed.

"§ 2261. Application to state unitary review procedure

"(a) For purposes of this section, a "unitary review" procedure means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. The provisions of this chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in the

unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(b) A unitary review procedure, to qualify under this section, must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2256(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(c) The provision of sections 2257, 2258, 2259, 2260, and 2262 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State 'post-conviction review' and 'direct review' in those sections shall be understood as referring to unitary review under the State procedure. The references in sections 2257(a) and 2258 to 'an order under section 2256(c)' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, then the start of the one hundred and eighty day limitation period under section 2258 shall be deferred until a transcript is made available to the prisoner or his counsel.

"§ 2262. Limitation periods for determining petitions

"(a) The adjudication of any petition under section 2254 of title 28, United States Code, that is subject to this chapter, and the adjudication of any motion under section 2255 of title 28, United States Code, by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters. The adjudication of such a petition or motion shall be subject to the following time limitations:

"(1) The district court shall determine such a petition or motion within one hundred and eighty days of the filing of the petition or motion.

"(2) The court of appeals shall determine an appeal relating to such a petition or motion within one hundred and eighty days of the filing of the record in the court of appeals. If the court of appeals grants en banc consideration, the en banc court shall determine the appeal within one hundred and eighty days of the decision to grant such consideration.

"(b) The time limitations under subsection (a) shall apply to an initial petition or motion, and to any second or successive petition or motion. The same limitations shall also apply to the re-determination of a petition or motion or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings, and in such a case the limitation period shall run from the date of the remand.

"(c) The time limitations under this section shall not be construed to entitle a petitioner or movant to a stay of execution, to which the petitioner or movant would otherwise not be entitled, for the purpose of litigating any petition, motion, or appeal.

"(d) the failure of a court to meet or comply with the time limitations under this section shall not be a ground for granting relief from a judgment of conviction or sentence. The State or Government may enforce the time limitations under this section by applying to the court of appeals or the Supreme Court for a writ of mandamus.

"§ 2263. Rule of construction

"The provisions of this chapter shall be construed to promote the expeditious conduct and conclusion of State and Federal court review in capital cases.".

SEC. 903. PROSCRIPTION OF USE OF DRUG PROFITS.

(a) LIST OF ASSETS.—Section 511(d) of the Controlled Substances Act (21 U.S.C. 881(d)) is amended by—

(1) inserting "(1)" after "(d)"; and

(2) adding at the end thereof the following new paragraph:

"(2)(A) Prior to sentencing a defendant on conviction in a Federal court of a felony under this title, the court shall compile a list of all assets owned by the defendant not subject to forfeiture.

"(B) After the release of a defendant described in subparagraph (A), upon request of the Attorney General, the court shall require the defendant to provide proof that any asset owned by the defendant not listed on the list described in subparagraph (A) was legally obtained.

"(C) In order to prove that a defendant legally obtained an asset not listed on the list described in subparagraph (A), the defendant shall be required to produce documentation of the same nature as that required of a taxpayer by the Internal Revenue Service.

"(D) Assets that a defendant does not prove were legally obtained under subparagraph (B) may be seized by the Attorney General through attachment and foreclosure proceedings, and the proceeds of such proceedings shall be deposited in the Department of Justice's Assets Forfeiture Fund and shall be available for transfer to the building and facilities account of the Federal prison system.".

SEC. 904. JURISDICTION OF SPECIAL MASTERS.

Notwithstanding any other law, a special master appointed to serve in a United States court to monitor compliance with a court order, including special masters who have been appointed prior to the date of enactment of this Act—

(1) shall be appointed for a term of no more than 1 year;

(2) may be reappointed for terms of 1 year;

(3) shall be given a clear and narrow mandate by the court and shall have no authority in any area where a specific mandate is not granted; and

(4) shall not have jurisdiction to enforce any judicial order with respect to the management of prisons or jails.

SEC. 905. SENTENCING PATTERNS OF FEDERAL JUDGES.

(a) IN GENERAL.—Chapter 49 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 757. Sentencing patterns

"(a) The Administrative Office of the United States Courts shall annually publish a cumulative report on sentencing by United States District Judges. The report shall be compiled for the purpose of enabling the reader to assess criminal sentencing patterns among Federal judges and post-sentencing treatment to determine the judicial accuracy of forecasting future responsible and lawful behavior by those whom they sentence.

"(b) The report shall—

"(1) identify the judge that pronounced each criminal sentence;

"(2) give a brief description of the crime or crimes perpetrated by the criminal and the prison, probation, parole, furlough, recidivism, and other history of the criminal that is reasonably available for compilation; and

"(3) include such charts, profiles, and narratives as are necessary.".

(b) TECHNICAL AMENDMENT.—The table of sections for chapter 49 of title 28, United States Code, is amended by adding at the end thereof the following:

"757. Sentencing patterns.".

SEC. 906. JUDICIAL REMEDIES FOR PRISON CROWDING.

(a) PURPOSE.—The purpose of this section is to provide for reasonable and proper enforcement of the eighth amendment.

(b) FINDINGS.—The Congress finds that—

(1) the Federal courts are unreasonably endangering the community by sweeping prison and jail cap orders as a remedy for detention conditions that they hold are in conflict with the eighth amendment; and

(2) eighth amendment holdings frequently are unjustified because of the absence of a plaintiff inmate who has proven that detention conditions inflict cruel and unusual punishment of that inmate.

(c) AMENDMENT OF TITLE 18, UNITED STATES CODE.—(1) Subchapter C of chapter 229 of part 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3626. Appropriate remedies with respect to prison crowding

"(a)(1) A Federal court shall not hold prison or jail crowding unconstitutional under the eighth amendment except to the extent that an individual plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment of that inmate.

"(2) The relief in a case described in paragraph (1) shall extend no further than necessary to remove the conditions that are causing the cruel and unusual punishment of the plaintiff inmate.

"(b)(1) A Federal court shall not place an inmate ceiling on any Federal, State, or local detention facility as an equitable remedial measure for conditions that violate the eighth amendment unless crowding is inflicting cruel and unusual punishment on individual prisoners.

"(2) Federal judicial power to issue equitable relief other than that described in paragraph (1), including the requirement of improved medical or health care and the imposition of civil contempt fines or damages, where appropriate, shall not be affected by paragraph (1).

"(c) Each Federal court order seeking to remedy an eighth amendment violation shall be reopened at the behest of a defendant for recommended alteration at a minimum of two-year intervals.

"(d) This section shall expire on the date that is 5 years after the date of enactment of this section.".

(2) Section 3626 of title 18, United States Code, as added by paragraph (1), shall apply to all outstanding court orders on the date of enactment of this section. Any State or municipality shall be entitled to seek modification of any outstanding eighth amendment decree pursuant to that section.

(3) The table of sections for subchapter C of chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"3626. Appropriate remedies with respect to prison crowding.".

SEC. 907. TEMPORARY PRISON FACILITIES AND EXPANDED CAPACITY.

(a) USE OF MILITARY INSTALLATIONS.—(1) In order to remove violent criminals from the streets and protect the public safety, the Attorney General shall take such action as may be necessary to ensure that sufficient facilities exist to house individuals whom the courts have ordered incarcerated. In order to provide facilities for incarceration, the Secretary of Defense, the Commission on Alternative Utilization of Military Facilities, and the Director of the Bureau of Prisons shall—

(A) identify military installations that could be used as confinement facilities for Federal or State prisoners; and

(B) examine the feasibility of using temporary facilities for housing prisoners.

(2) Not later than 90 days after the date of enactment of this Act, the Director of the Bureau of Prisons shall submit to the Congress a description and summary of the results of the examination conducted pursuant to paragraph (1).

(c) PRIORITY FOR DISPOSAL OF CLOSED MILITARY INSTALLATIONS.—Section 204(b)(3) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note) is amended to read as follows:

"(3)(A) Notwithstanding any other provision of this title and any other law, before any action is taken with respect to the disposal or transfer of any real property or facility located at a military installation to be closed or realigned under this title the Secretary shall—

"(i) notify the Attorney General and the Governor of each of the territories and possessions of the United States of the availability of such real property or facility, or portion thereof; and

"(ii) transfer such real property or facility, or portion thereof, as provided in subparagraph (B).

"(B) Subject to subparagraph (C), the Secretary shall transfer real property or a facility, or portion thereof, referred to in subparagraph (A) in accordance with the following priorities:

"(i) If the Attorney General certifies to the Secretary that the property or facility, or portion thereof, will be used as a prison or other correctional institution, to the Department of Justice for such use.

"(ii) If the Governor of a State, the Mayor of the District of Columbia, or the Governor of a territory or possession of the United States certifies to the Secretary that the property or facility, or portion thereof, will be used as a prison or other correctional institution, to that State, the District of Columbia, or that territory or possession for such use.

"(iii) To any other transferee pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

"(C) Within each priority specified in clauses (i) and (ii) of subparagraph (B), the Secretary shall give a priority for the transfer of any real property or facility referred to in that subparagraph, or any portion thereof, to any department, agency, or other instrumentality referred to in such clauses that agrees to pay the Department of Defense the fair market value of the real property, facility, or portion thereof.

"(D) In this paragraph, the term 'fair market value' means, with respect to any real property or facility, or any portion thereof, the fair market value determined on the basis of the use of the real property or facility on December 31, 1989.".

(d) REVIEW OF CURRENT STANDARDS OF PRISON CONSTRUCTION.—(1) The Director of the Bureau of Prisons (referred to as the "Director") shall—

(A) review current construction standards and methods used in building Federal prisons; and

(B) examine and recommend any cost cutting measures that could be employed in prison construction (consistent with security requirements), especially expenditures for air conditioning, recreational activities, color television, social services, and similar amenities.

(2) Not later than 90 days after the date of enactment of this Act, the Director shall submit to Congress a description and summary of the results of the review conducted pursuant to paragraph (1).

(e)(1) Chapter 301 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 4014. Private construction and operation of Federal prisons

"(a) IN GENERAL.—The Attorney General may contract with private persons to—

"(1) construct, own, and operate Federal prison facilities; or

"(2) construct or operate Federal prison facilities owned by the United States,

including the provision of subsistence, care, and proper employment of United States prisoners.

"(b) COOPERATION WITH STATES.—The Attorney General shall consult and cooperate with State and local governments in exercising the authority provided by subsection (a).

"(c) FINANCING OPTIONS FOR PRISON CONSTRUCTION AND OPERATION.—(1) To the greatest extent possible, the Attorney General shall utilize creative and cost-effective private financing alternatives and private construction and operation of prisons.

"(2) Operating costs of privately-operated prisons shall be covered through rent charged to participating units of Government placing inmates in a prison.

"(3) The Attorney General may finance the construction of facilities through lease or lease-purchase agreements.

"(4) In order to gain full cost advantages from economies of scale and specialized knowledge from private innovation, the Attorney General may contract with consortia or teams of private firms to design, construct, and manage, as well as finance, prison facilities.".

(2) The table of sections for chapter 301 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"4014. Private construction and operation of Federal prisons.".

(f) SURPLUS FEDERAL PROPERTY.—(1) For the purpose of expanding the number of correctional facilities, the Administrator of the General Services Administration, in consultation with the Attorney General, shall, not later than 90 days after the date of enactment of this Act, identify and make available a list of not less than 20 parcels of surplus Federal property, which the Attorney General has certified are not needed for Federal correctional facilities but which may be suitable for State or local correctional facilities.

(2) During the period beginning on the date of enactment of this Act and ending 5 years after such date and notwithstanding any other law, any property that is determined to be excess to the needs of a Federal agency that may be suitable for use as a correctional facility shall be made available for such use, in order of priority, first, to the Attorney General, and second, to a State, the District of Columbia, or a local government.

(g) STATE AND LOCAL GOVERNMENT USE OF FACILITIES.—State and local governments shall be permitted to use Federal temporary incarceration facilities, when they are not needed to accommodate Federal prisoners, for the purpose of incarcerating prisoners at a per diem fee to be paid to the Bureau of Prisons.

SEC. 908. IMPRISONMENT OF DRUG TRAFFICKERS AND VIOLENT CRIMINALS.

During the period beginning on the date of enactment of this Act and ending 5 years after such date and notwithstanding any other law, every person who is convicted in a Federal court of committing a crime of violence or drug trafficking crime, shall be sentenced to and shall serve a full term of no less than 5 years' imprisonment, and no such person shall be released from custody for any reason or for any period of time prior to completion of the sentence imposed by the court unless the sentence imposed is greater than 5 years and is not a mandatory minimum sentence without release.

TITLE X—PRISONER AND PRISON SYSTEM REFORMS

SEC. 1001. MANDATORY WORK REQUIREMENT FOR ALL PRISONERS.

(a) IN GENERAL.—(1) It is the policy of the Federal Government that convicted prisoners confined in Federal prisons, jails, and other detention facilities shall work. The type of work in which they will be involved shall be dictated by appropriate security considerations and by the health of the prisoner involved. Such labor may include, but not be limited to—

(A) local public works projects and infrastructure repair;

(B) construction of new prisons and other detention facilities;

(C) prison industries; and

(D) other appropriate labor.

(2) It is the policy of the Federal Government that States and local governments have the same authority to require all convicted prisoners to work.

(b) PRISONERS SHALL WORK.—Medical certification of 100 percent disability, security considerations, or disciplinary action shall be the only excuse to remove a Federal prisoner from labor participation.

(c) USE OF FUNDS.—(1) Subject to paragraph (2), any funds generated by labor conducted pursuant to this section shall be deposited in a separate fund in the Treasury of the United States for use by the Attorney General for payment of prison construction and operating expenses or for payment of compensation judgments. Notwithstanding any other law, such funds shall be available without appropriation.

(2) Prisoners shall be paid a share of funds generated by their labor conducted pursuant to this section.

SEC. 1002. MANDATORY EDUCATION FOR INCARCERATED ADULTS.

Section 321 of the Adult Education Act (20 U.S.C. 1203) is amended—

(1) by striking "From" and inserting the following:

"(a) PROGRAM AUTHORIZED.—Subject to subsection (b), from"; and

(2) by adding at the end the following:

"(b) MANDATORY LITERACY PROGRAM.—

"(1) Before the expiration of the two-year period beginning on the date of the enactment of this Act, each State correctional system and each local jail or detention center with an over one hundred fifty inmate population shall have in effect a mandatory functional literacy program in at least one major correctional facility.

"(2) Provided that adequate funds are available, each State correctional system

and each local jail or detention center with an over one hundred and fifty inmate population shall have in effect a functional literacy program in each correctional facility, before the expiration of the five-year period beginning on the date of the enactment of this Act.

"(3) Each mandatory functional literacy program required by paragraphs (1) and (2) shall include—

"(A) a requirement that each individual incarcerated in a State corrections system, or in a local jail or detention center with an over one hundred and fifty inmate population, who is serving a sentence of at least one year, and who is not functionally literate participate in such program until such individual—

"(i) achieves functional literacy;

"(ii) is granted parole;

"(iii) completes his or her sentence; or

"(iv) is released pursuant to a court order;

"(B) a prohibition on granting parole to any individual described in subparagraph (A) who refuses to participate in such program;

"(C) adequate opportunities for appropriate educational services and testing of all inmates at reception for functional literacy; and

"(D) an inmate participation incentive program which may include—

"(i) better housing opportunities;

"(ii) monetary incentives for achievement; and

"(iii) positive reports from the education department to the parole authorities for inmates who participate and progress in the literacy program.

"(4) For purposes of this subsection, the term 'functional literacy' means either:

"(A) an eighth grade equivalence in reading on a nationally recognized standardized test;

"(B) functional competency or literacy on a nationally recognized criterion-referenced test; or

"(C) a combination of subparagraphs (A) and (B).

"(5) Any individual serving a life sentence without parole, or who is terminally ill, or under a sentence of death shall not be required to participate in a mandatory functional literacy program.

"(6) The Secretary may waive the application of paragraph (3)(B) in any case in which a court order requires early release of an individual due to a constitutional consideration.

"(7) Each State facility and jail required to participate in this program shall make an annual report to the Secretary on the results of its mandatory literacy program. Such report shall include the—

"(A) number of individuals tested for eligibility;

"(B) number of individuals eligible for the program;

"(C) number of individuals participating in the program;

"(D) numbers of hours of instruction per week;

"(E) sample data on achievement of students; and

"(F) data on cost of literacy program.

"(8) Parole agencies are encouraged to make educational recommendations for those being released who do not have a marketable job skill or a high school diploma.

"(9) Jails with less than a one hundred and fifty inmate population are encouraged to develop mandatory functional literacy programs as described in paragraph (3).".

SEC. 1003. EMPLOYMENT OF PRISONERS.

(a) IN GENERAL.—The Attorney General may enter into contracts with private businesses for the use of inmate skills that may be of commercial use to such businesses.

(b) USE OF FEES AND PAYMENTS.—A portion of the fees and payments collected for the use of inmate skills under contracts entered into pursuant to subsection (a) shall be deposited in the fund described in section 131(c)(1), and a portion shall be paid to the prisoners who conduct the labor.

(c) SECURITY REQUIREMENT.—In the case of contracts described in subsection (a) in which the provision of inmate skills would require prisoners to leave the prison—

(1) prisoners shall be permitted to travel directly to a work site and to remain at the work site during the work day and shall be returned directly to prison at the end of each work day; and

(2) only prisoners with no history of violent criminal activity and who are able to meet strict security standards to insure that they pose no threat to the public, shall be eligible to participate.

SEC. 1004. WITHHOLDING PRISONERS' FEDERAL BENEFITS TO OFFSET INCARCERATION COSTS.

(a) IN GENERAL.—The Federal benefits received by any prisoner (not including those of a prisoner's spouse or dependents) who has been convicted of a crime of violence or drug trafficking crime under Federal or State law and who is incarcerated in a Federal or State prison shall, during the period of the prisoner's incarceration, be withheld to offset the costs of—

(1) any victim compensation award against such prisoner; and

(2) any incarceration costs of the prisoner incurred by the prison system.

(b) PAYMENT.—(1) In the case of a Federal Prisoner, Federal benefits withheld for the purpose of subsection (a)(2) shall be paid into the fund established by section 131(c).

(2) In the case of a State prisoner, Federal benefits withheld for the purpose of subsection (a)(2) shall be paid to the State.

(c) EXCEPTION.—The withholding of Federal benefits of a prisoner with a spouse or other dependents under subsection (a) shall be adjusted by the court to provide adequate support to and to prevent the impoverishment of dependents.

(d) DEFINITIONS.—As used in this section the term "Federal benefit" means the issuance of any payment of money, by way of grant, loan, or statutory entitlement, provided by an agency of the United States or by appropriated funds or trust funds of the United States but does not include a right to payment under a contract.

SEC. 1005. DRUG TESTING OF FEDERAL PRISONERS.

(a) DRUG TESTING PROGRAM.—Subchapter A of chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3608. Drug testing of defendants on post-conviction release

"(a) The Attorney General, in consultation with the Director of the Administrative Office of the United States Courts shall, as soon as is practicable after the effective date of this section, establish by regulation a program of drug testing of selected arrestees, individuals in jails, prisons, and other correctional facilities, and persons on conditional or supervised release before or after conviction, including probationers, parolees, and persons released on bail.

"(b)(1) The Attorney General shall, not later than 6 months after the date of enactment of this section, promulgate regulations for drug testing programs under this section.

"(2) The regulations issued pursuant to paragraph (1) shall be based in part on scientific and technical standards determined by the Secretary of Health and Human Services to ensure reliability and accuracy of drug test results. In addition to specifying acceptable methods and procedures for carrying out drug testing, the regulations may include guidelines or specifications concerning—

"(A) the selection of persons to be tested;

"(B) the drugs to be tested for;

"(C) the frequency and duration of testing; and

"(D) the effect of test results in decisions concerning the sentence, the conditions to be imposed on release before or after conviction, and the granting, continuation, or termination of such release.

"(c) In each district where it is feasible to do so, the chief probation officer shall arrange for the drug testing of defendants on post-conviction release pursuant to a conviction for a felony or other offense described in section 3563(a)(4) of this title.".

(b) TECHNICAL AMENDMENT.—The section analysis for subchapter A of chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following:

"3608. Drug testing of defendants on post-conviction release.".

SEC. 1006. DRUG TESTING OF STATE PRISONERS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end of part E (42 U.S.C. 3750–3766b) the following:

"DRUG TESTING PROGRAMS

"SEC. 523. (a) PROGRAM REQUIRED.—No funding shall be provided under this part, whether by direct grant, cooperative agreement, or assistance in any form, to any State or to any political subdivision or instrumentality of a State that has not formulated and implemented a drug testing program, subject to periodic review by the Attorney General, as specified in the regulations described in subsection (b), for selected arrestees, individuals in jails, prisons, and other correctional facilities, and persons on conditional or supervised release before or after conviction, including probationers, parolees, and persons released on bail.

"(b) REGULATIONS.—(1) The Attorney General shall, not later than 6 months after the enactment of this section, promulgate regulations for drug testing programs under this section.

"(2) The regulations issued pursuant to paragraph (1) shall incorporate the standards applicable to drug testing of Federal prisoners under section 3608 of title 18, United States Code.

"(c) EFFECTIVE DATE.—This section shall take effect with respect to any State, subdivisions, or instrumentality receiving or seeking funding under this subchapter at a time specified by the Attorney General, but no earlier than the date of promulgation of the regulations required by subsection (b).".

(b) AMENDMENT TO TABLE OF CONTENTS.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting at the end of the item relating to part E the following:

"Sec. 523. Drug testing program.".

SEC. 1007. ENCOURAGEMENT TO STATES TO ADOPT PRISONER AND PRISON SYSTEM REFORMS.

(a) PRIORITY.—Beginning on the date that is 2 calendar years after the date of enact-

ment of this Act, a request for Federal drug law enforcement assistance funds from the Bureau of Justice Assistance Grant Programs by a State whose law provides mandatory work requirements, mandatory education requirements, and drug testing of prisoners as provided in this title shall receive priority over a request by a State whose law does not so provide.

(b) REDISTRIBUTION.—Beginning on the date that is 2 calendar years after the date of enactment of this title, the formula for determining the amount of funds to be distributed from the Drug Control and System Improvement Grant Program to State and local governments shall be adjusted by—

(1) reducing by 10 percent the amount of funds that would, except for the application of this paragraph, be allocated to States whose laws do not provide as stated in subsection (a); and

(2) allocating the amount of the reduction pro rata to the other States.

By Mr. HATFIELD:

S. 1336. A bill to amend Title XI of the Higher Education Act of 1965 in order to encourage urban education institutions to form partnerships to use their knowledge and resources for the solution of severe urban problems; to the Committee on Labor and Human Resources.

HIGHER EDUCATION ACT AMENDMENTS

Mr. HATFIELD. Mr. President, when we talk in the Congress about higher education in the United States, much of the discussion centers on financial access. As college education costs approach home mortgage dimensions, growing concerns about the availability of grants and loans are reflected in pending legislation. For example, of the bills introduced this year in the Senate as amendments to the Higher Education Act, more than 70 percent pertain to financial aid, which is only one of 16 titles of the act.

I share the apprehensions of my colleagues in the Congress as education costs soar, and I can empathize with the growing indignation of parents and students. It is ironic that, in a nation where a college education is an inherent part of the "American dream," we sometimes build barriers instead of bridges between students and higher education.

I rise today, Mr. President, to address another bridge that merits our attention, a span across a trough of severe problems that afflict urban areas: problems of the elderly, of families and children, of the poor in inner cities; urban housing and infrastructure; economic development and workforce preparation; crime prevention and interventions; health care; inner city school systems and their disadvantaged students. As familiar and widespread as these problems are, they have been left to school boards and superintendents, city halls and county governments to deal with. The primary responsibility may be the local government's, but the magnitude of these problems calls for the participation and commitment of other constituencies, as well.

In some cities, businesses and industries have started their own initiatives or joined municipal agency programs in efforts to address economic and workforce problems.

In these same urban areas, there are people with the skills, knowledge and experience to tackle these problems but whose talents are underutilized on metropolitan issues. These same people have the capacity to recruit scores of others into the battle against urban despair. They have access to the resources and processes to conduct community-based action research.

I speak of the faculty of universities and community colleges in these urban areas, whose students were born and live amid those urban problems.

As a political science professor, I developed great respect for the commitment and capabilities of my colleagues on university faculties. Later, as Governor of Oregon, while supporting the growth of our State system of higher education, I met and worked with administrators and faculties of universities and community colleges from different settings around the State. The land grant colleges, which address agricultural and rural issues, were impressive in their ability to confront their focused concerns. Later, there was talk of sea grant colleges. Why not urban grant universities?

Today, I rise to introduce legislation to amend title XI of the Higher Education Act of 1965. This bill will encourage urban universities to take the lead in forming partnerships and to use their knowledge and resources toward solving severe urban problems. Collaboration with local governments, business and industry, other educational institutions, nonprofit groups, and civic associations will bring great benefits to urban communities, merging the research and planning expertise of university people and the vigor and stamina brought to the consortium by its diverse membership.

We cannot expect to divert university faculty attention from academic teaching and scholarly research toward pragmatic and serious municipal problems without providing funding. After all, we cannot jeopardize the operation and mission of our urban universities. The funds authorized in my legislation would sponsor partnership activities to combat urban problems in at least 50 urban areas—possibly one per State—providing each partnership $500,000 each year, for projects up to 3 years' duration. For partnerships to help disadvantaged urban students graduate from high school, increase their opportunities for postsecondary education, and improve their prospects for productive employment, this bill provides for at least 30 grants of $500,000 each year for up to 3 years.

These are modest sums, Mr. President, yet the prospects are bright that this approach may generate innovative solutions to pressing and severe problems of our American cities.

And, finally, these programs represent the power of collaboration and shared purpose. The partnerships formed by a diversity of people and organizations and they tackle the problems in their back yards, main streets, side alleys and campuses—these coalitions may prove to be vigorous agents of change in the renewal of our nation's urban regions.

Mr. President, I ask unanimous consent that the bill I am introducing today be printed in the RECORD following my remarks.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REVISION OF TITLE XI.

Title XI of the Higher Education Act of 1965 is amended to read as follows:

"TITLE XI—URBAN COMMUNITY SERVICE

"SEC. 1101. FINDINGS.

"The Congress finds that—

"(1) the Nation's urban centers are facing increasingly pressing problems and needs in the areas of economic development, community infrastructure and service, social policy, public health, housing, education, environmental concerns, planning and work force preparation;

"(2) there are, in the Nation's urban institutions of higher education, people with underutilized skills, knowledge, and experience who are capable of providing a vast range of services toward the amelioration of the problems described in paragraph (1);

"(3) the skills, knowledge and experience in these urban institutions, if applied in a systematic and sustained manner, can make a significant contribution to the solution of such problems; and

"(4) the application of such skills, knowledge and experience is hindered by the limited funds available to redirect attention to solutions to such urban problems.

"PART A—URBAN COMMUNITY SERVICE

"SEC. 1111. PURPOSE.

"It is the purpose of this part to provide incentives to urban institutions to enable such institutions to devise and implement solutions to pressing and severe problems in their communities.

"SEC. 1112. APPLICATION FOR URBAN COMMUNITY SERVICE GRANTS.

"(a) APPLICATION.—

"(1) IN GENERAL.—An eligible institution of higher education seeking assistance under this part shall submit to the Secretary an application at such time, in such form, and containing or accompanied by such information and assurances as the Secretary may require by regulation.

"(2) CONTENTS.—The application submitted pursuant to paragraph (1) shall—

"(A) describe the activities and services for which assistance is sought; and

"(B) include documentation of the formation of a consortium that includes, in addition to the eligible urban institution of higher education, one or more of the following entities:

"(i) an urban school system;

"(ii) a local government;

"(iii) a business or other employer; and

"(iv) a nonprofit institution.

"(3) WAIVER.—The Secretary may waive the consortium requirements described in paragraph (2) for any applicant who can demonstrate to the satisfaction of the Secretary that the applicant has devised an integrated and coordinated plan which meets the purpose of this part.

"(b) PRIORITY IN SELECTION OF APPLICATIONS.—The Secretary shall give priority to applications that propose to conduct joint projects supported by other local, State, and Federal programs.

"(c) SELECTION PROCEDURES.—The Secretary shall, by regulation, develop a formal procedure for the submission of applications under this part and shall publish in the Federal Register an announcement of that procedure and the availability of funds under this part.

"SEC. 1113. ALLOWABLE ACTIVITIES.

"(a) IN GENERAL.—Funds made available under this part shall be used to design and implement programs to assist urban communities to address pressing and severe problems.

"(b) AUTHORIZED ACTIVITIES.—Activities conducted with funds made available under this part may include research on, or planning and implementation of, resource exchanges, technology transfers, technical training, the delivery of services, or technical assistance in the following areas—

"(1) Work force preparation.

"(2) Urban poverty and the alleviation of such poverty.

"(3) Health care, including delivery and access.

"(4) Underperforming school systems and students.

"(5) Problems faced by the elderly in urban settings.

"(6) Problems faced by families and children.

"(7) Crime prevention and alternative interventions.

"(8) Urban housing.

"(9) Urban infrastructure.

"(10) Economic development.

"(11) Urban environmental concerns.

"(12) Other problem areas which participants in the consortium described in section 1112(a)(2)(B) concur are of high priority in the urban area.

"PART B—URBAN COLLEGE, UNIVERSITY, AND SCHOOL PARTNERSHIPS

"SEC. 1121. PURPOSE.

"It is the purpose of this part to encourage eligible partnerships serving low-income and disadvantaged urban students to enable such partnerships to support programs that may improve the retention and graduation rates of secondary schools serving such students, improve the academic skills of such students, increase such students' opportunities to continue their education beyond high school, and improve such students' prospects for productive employment. It is the further purpose of this part to help institutions of higher education serve more effectively both non-traditional students and unemployed or under-employed adults by filling the defined skill needs of the nation's employers in both the public and private sectors, particularly in urban and rural areas where unemployment rates exceed the national average.

"SEC. 1122. DEFINITION.

"For the purpose of this part, the term 'eligible partnership'—

"(1) shall include—

"(A) an urban institution of higher education; and

"(B) a secondary school or local educational agency; and

"(2) may include a local government, business, labor organization, professional association, community-based group or other public or private agency or organization.

"SEC. 1123. GRANTS AUTHORIZED.

"(a) IN GENERAL.—

"(1) IN GENERAL.—The Secretary is authorized to award grants to eligible partnerhips in accordance with the provision of this part.

"(2) USE OF GRANT.—Each grant awarded under this part shall be used to support partnership activities which are directly related to the purposes set forth in section 1121.

"(b) PREFERENCES.—In making grants under this part, the Secretary shall give a preference to applications describing programs that—

"(1) serve predominantly low-income neighborhoods, families or individuals;

"(2) are conducted during both the regular school year and the summer; and

"(3) serve educationally disadvantaged students, potential dropouts, pregnant teens, and teen-aged parents.

"(c) MATCHING REQUIREMENT.—

"(1) IN GENERAL.—In order to receive a grant under this part, each eligible partnership shall provide matching funds in amounts equal to—

"(A) 30 percent of the funds received in the first year in which an eligible partnership receives a grant payment under this part;

"(B) 40 percent for the second such year; and

"(C) 50 percent for the third such year.

"(2) SPECIAL RULE.—The non-Federal share of grants awarded under this part may be in cash or in kind fairly evaluated, including services, supplies or equipment.

"(3) WAIVER.—The Secretary may waive the matching requirement described in paragraph (1) for any eligible partnership that demonstrates to the satisfaction of the Secretary a unique hardship that prevents compliance with such matching requirement.

"(d) MAINTENANCE OF EFFORT.—Any local educational agency participating in a partnership assisted under this part shall not reduce its combined fiscal effort per student or its aggregate expenditures on education.

"SEC 1124. AGREEMENTS.

"(a) AGREEMENTS.—To be eligible for a grant under this part, an urban institution of higher education participating in an eligible partnership under this part shall enter into a written eligible partnership agreement with a secondary school or a local educational agency participating in an eligible partnership under this part.

"(b) CONTENTS OF AGREEMENT.—The agreement described in subsection (a) shall include—

"(1) a list of all organizations participating in the eligible partnership and designation of the official representatives of each such organization;

"(2) a description of the responsibilities of each organization participating in eligible partnership activities; and

"(3) a list of the resources to be contributed by each member of the eligible partnership.

"SEC. 1125. GRANT APPLICATIONS.

"(a) APPLICATIONS REQUIRED.—An eligible partnership desiring to receive a grant under this part shall submit an application to the Secretary, at such time, in such form and containing or accompanied by such information as the Secretary, by regulation, shall require.

"(b) CONTENTS OF APPLICATIONS.—The application described in subsection (a) shall include—

"(1) a description of the activities and services for which assistance is sought;

"(2) a copy of the eligible partnership agreement;

"(3) a list of all schools to be involved in the program;

"(4) a description of the programs to be developed and operated by the eligible partnership; and

"(5) assurances to the Secretary—

"(A) that the eligible partnership shall establish a governing body including one representative from each organization participating in the eligible partnership;

"(B) that the eligible partnership will comply with the provisions of section 1123(c);

"(C) that any local educational agency participating in an eligible partnership shall utilize any Federal funds the local educational agency shall receive from a grant under this Part to supplement and, to the extent practicable, increase the resources that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of low-income and disadvantaged urban students described in this part; and

"(D) that in no case shall grant funds under this part be used to supplant non-Federal funds available for the same purpose for which such grant funds are awarded.

"PART C—ADMINISTRATIVE PROVISIONS

"SEC. 1131. PEER REVIEW.

"The Secretary shall designate a peer review panel to review applications submitted under this title and make recommendations for funding to the Secretary. In selecting the peer review panel, the Secretary shall consult with officials of other Federal agencies and with non-Federal organizations to ensure that the panel membership shall be geographically balanced and be composed of representatives from public and private institutions of elementary, secondary, and higher education, labor, business, and State and local governments, who have expertise in urban community service or in education.

"SEC. 1132. DISBURSEMENT OF FUNDS.

"(a) LIMITATION ON AMOUNTS.—

"(1) DURATION.—Each grant awarded under this title may be awarded for a period not to exceed 3 years.

"(2) ANNUAL AMOUNT.—The Secretary shall not make a grant payment under this title which exceeds $500,000 in any 1 year.

"(b) EQUITABLE GEOGRAPHIC DISTRIBUTION.—The Secretary shall award grants under this title in a manner that achieves equitable geographic distribution of such grants.

"SEC. 1133. DESIGNATION OF 'URBAN GRANT INSTITUTIONS.'

"The Secretary shall publish a list of the institutions of higher education which are awarded grants under this title and shall designate these institutions of higher education as 'Urban Grant Institutions' for the duration of their grant award. Such list will benefit Federal and local government agencies and business and civic groups. Such list will also serve as a notice to interested entities that the designated 'Urban Grant Institutions' are ready to help their constituencies in a manner analogous to the land grant, space grant, and sea grant universities. The Secretary shall establish a national network of urban grant institutions so that the results of individual projects achieved in one metropolitan area can then be generalized, disseminated, replicated and applied throughout the nation.

"SEC. 1134. DEFINITIONS.

"As used in this title—

"(1) the term 'urban area' means a metropolitan statistical area having a population

of not less than 400,000; or, in any State which does not have a metropolitan statistical area which has such a population, the entity of the State having an agreement or submitting an application under Section 1203 may, or, if no such entity has an agreement, the Secretary shall designate one urban area for the purposes of this title; and

"(2) the term 'urban institution of higher education' means a non-profit institution of higher education, or a consortium of such institutions, any one of which meets all the requirements of this paragraph, which—

"(A) is located in an urban area;

"(B) draws a substantial portion of its undergraduate students from the urban area in which such institution is located, or from contiguous areas;

"(C) carries out programs to make post-secondary educational opportunities more accessible to residents of such urban area, or contiguous areas;

"(D) has the present capacity to provide resources responsive to the needs and priorities of such urban area and contiguous areas;

"(E) offers a range of professional, technical, or graduate programs sufficient to sustain the capacity of such institution to provide such resources; and

"(F) has demonstrated and sustained a sense of responsibility to such urban area and contiguous areas and the people of such areas.

"SEC. 1135. AUTHORIZATION OF APPROPRIATIONS.

"(a) PART A.—There are authorized to be appropriated $25,000,000 for fiscal year 1992 and such sums as may be necessary for each of the 4 succeeding fiscal years to carry out the provisions of part A.

"(b) PART B.—There are authorized to be appropriated $15,000,000 for fiscal year 1993 and such sums as may be necessary for each of the 4 succeeding fiscal years to carry out the provisions of part B."

By Mr. SPECTER (for himself and Mr. SEYMOUR):

S. 1337. A bill to implement a Federal crime control and law enforcement program to stem gang violence, and for other purposes; to the Committee on the Judiciary.

ANTI-GANG VIOLENCE ACT

Mr. SPECTER. Mr. President, today I am reintroducing a bill to implement a Federal crime control and law enforcement program to stem gang violence. This bill was S. 746 in the last Congress and was first introduced by me on April 11, 1989. I am reintroducing this bill today for the record, to coincide with floor consideration of the crime bill with this notation that provisions of this bill (S. 746—101st Congress) have been incorporated in the pending legislative proposals.

Not since the 1920's has such widespread violence plagued our city streets. This lawlessness revolves around the illegal drug trade, and increasingly involves our Nation's young people. Children of 10 and 11 and sometimes even younger use and deal drugs. Unless we take immediate and vigorous action, we run the risk of fostering a permanent urban underclass living outside the common values of our society.

The escalating market for crack, a potent smokeable cocaine derivative, has transformed portions of our cities into battlegrounds where territory is violently secured and protected by both youth and adult gangs. Gang activity in America is fast becoming a social dilemma as deadly and debilitating as any epidemic in history. More than just autonomous drug organizations that operate on a small scale, gangs have evolved into a subculture with a national market, international connections, incredibly complex strategies, and a cult-like following which has emerged, copycat like, as if to mimic what is perceived to be a romantic lifestyle.

Frequently, these gangs are organized along racial and ethnic lines, although preserving cultural identification is less central to gang formation than it once was. Traffic in narcotics, the use of automatic and semiautomatic weapons, and indiscriminate violence, together represent a dire change in the motives behind gang organizations. Names that have become all too familiar to residents of our urban areas, in particular, are Jamaican Posses, which operate mainly on the east cost; and Bloods and Crips, which are among the most violent of west coast gangs, made up mostly of black youth identified by rituals and talismans. Hispanic gangs, Pacific Asian gangs, and older gangs such as Hell's Angels vie for pieces of the very lucrative illegal drug trade.

Los Angeles is the epicenter of the gang problem in this country today. Gang killings in unincorporated portions of Los Angeles County soared 69 percent during the first 8 months of 1990, a period during which all violent crimes in the same region rose 20 percent, according to the Los Angeles County Sheriff's Department. By year end, the 1990 total for gang-related killings stood at 169, compared with 116 for 1989. According to law enforcement authorities, the estimated number of gang members in the greater Los Angeles area has doubled in the past 5 years. In 1985, these officials estimated there were 50,000 gang members in the region. In 1990, that number was placed at 100,000. The Los Angeles Times, in its August 21, 1990 issue, reported that the worsening gang homicide statistics have prompted the Los Angeles county district attorney's office to consider reassigning prosecutors to its overloaded gang division, and has renewed calls for additional funding for antigang programs.

The most recent statistics on gang-related crime show a large growth in Hispanic gangs, according to the Washington Post on May 29, 1990. The Los Angeles County Sheriff's Department has identified 45,776 Hispanic gang members, far more than the 30,845 identified black gang members—22,594 Crips and 8,251 Bloods. As California State University Prof. Gerry Riposa told the Washington Post, recruitment is crucial for a gang's survival because the size of a gang determines its territorial power:

> Power rises and falls, according to their ability to recruit and to maintain their presence on the street. [That] is why they lean on the 12- and 13-year olds. When younger recruits see a gang is powerful, they join.

According to this same article, graffiti serves as the newspaper of the streets, revealing the names of new and deceased members and sometimes whether attacks by gangs can be expected. Graffiti identify territory, whether another gang is trying to infringe on it and how far into a gang's territory one has ventured.

Although Los Angeles is the epicenter of the gang crime crisis, it has in the last few years become a truly national problem. A New York Times report of November 25, 1988, quoted the Los Angeles Police Department's Sgt. Robert Jackson, who has gained national recognition as an expert on gangs, as remarking that "I would say there are only a few States they haven't reached yet. And the number of places could be in the hundreds." A more recent report in the Los Angeles Times of February 4, 1990, entitled "When L.A. Gangs Come to Town" described the substantial migration of Los Angeles gangs to small towns across the country, one of which was York, PA. Gang members from California began moving in to that city of 50,000 in 1987. Most of the cocaine was transported by air, with teenage girls used as "mules" to travel under false names with drugs strapped to their bodies. Local authorities realized they were dealing with a national organization when two men were arrested with $50,000 in crack and easily raised the $30,000 bail in cash. They quickly returned to California. Local police then began an ultimately successful effort to stem this tide in which undercover officers were brought in from out of town and a combined force of 80 local, State and Federal officers was deployed.

This story is being repeated across the country in cities big and small. Newspaper accounts recount the deadly gang violence in big cities like Boston and Atlanta and smaller cities like Oklahoma, Shreveport, LA and Ashton, ID. As James Ginger, deputy director of the Police Foundation, told the Christian Science Monitor in its March 15, 1990 edition:

> The general consensus is that if a given city doesn't have a problem with drug-related youth violence, it's on the way.

In Philadelphia, 110 out of 402 homicides in 1988 were gang-related, constituting 27 percent of homicides. In 1990, 168 out of 525 homicides were gang-related, reaching nearly 33 percent of all homicides. I might add that last year's total for homicides was an all-time record, a shocking statistic.

During my tenure as district attorney of Philadelphia, I witnessed a pre-

cipitous rise in the number of gang-related homicides. In 1962, according to the district attorney's office, one reported death was attributable to gang warfare. By 1966, there were 14 deaths, and in 1968, there were 30. I began personally to investigate the dynamics of gang conflict. In the summer of 1968, members of my staff and I intervened in a street-corner confrontation between rival gangs in the North Philadelphia neighborhood. Working with the leaders of the Diamond Streeters and the Zulu Nation, we secured a pledge that neither gang would initiate confrontations with the other.

Building on this, my office sought funding to establish a program to continue efforts to establish a program to continue efforts at mediation and juvenile rehabilitation. With a small grant from the Dolfinger-McMahon Foundation, we hired a representative from each rival gang to work during the summer in the family court division. Their presence gave staff members a rare opportunity to learn about the dynamics of gang membership and interaction. We used their information to launch an innovative gang control program called Safe Streets, Inc., which has received national recognition. I served as chairman of the board of this new corporation.

In 1969, I traveled to Washington, DC, to meet with newly appointed Attorney General John Mitchell to discuss obtaining Federal funding to establish one-stop comprehensive juvenile centers. We envisioned a facility that would offer education, recreational, job referral, and attitudinal training programs and that would include professional counselors and gang members as staff. In July 1969, the Department of Justice awarded funds sufficient to operate two such centers. To maximize the use of available manpower, I decided to form a separate, nonprofit corporation to run the gang-control project. Thus, the project could function without relying upon already overburdened personnel in the District Attorney's office, except when absolutely necessary.

These gang-control centers offered a variety of resources to redirect the attention of juveniles away from violence toward more constructive activities. For instance, in cooperation with the State Bureau of Employment Security and private industry, staff placed youths in appropriate jobs. Perhaps the most unique aspect of these neighborhood centers was the attitudinal training program. Experienced group conselors and gang members discussed antisocial behavior and the responsibility due to family, community, and self. Staff and board members accompanied small numbers of gang members on weekend retreats at camps and parks outside Philadelphia.

After the first year, the Safe Streets Program was awarded an amount almost double its previous grant. In February 1970, the Wall Street Journal praised the Safe Streets Program's imaginative work. A Philadelphia Bulletin editorial praised "a good balance between an attractive offer to the kids and a reorientation of them for the benefit of the city." After peaking in 1969, the number of gang-related homicides fell by one-third in 1970.

As a U.S. Senator, I have continued to work in the area of gangs and drug-related crime. During the 97th Congress, as chairman of the Judiciary Subcommittee on Juvenile Justice, I chaired a hearing on July 9, 1981, to study violent juvenile crime. And during the 99th Congress, as cochairman of the congressional crime caucus, I joined Congressman HUGHES in cochairing a hearing on violent street crime.

Mr. President, since 1970 the profile of the typical gang member has changed. Involvement in narcotics trafficking and possession and use of automatic and semiautomatic firearms are new traits. What has been made clear is that local law enforcement authorities, while they are crucial to solving the gang violence crisis, cannot do it alone. A Federal initiative is desperately needed to stem the rising tide of gang-related violence that is sweeping this Nation. The provisions in this bill will do just that.

ANTIGANG UNIT—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. President, we need more Federal agents and prosecutors to arrest and convict the growing number of drug traffickers in this country. Because we must place more emphasis on the enforcement of our firearms laws, this bill gives significant new powers to the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms [BATF], the Federal agency responsible for such enforcement. There are many Federal firearms offenses that have proven effective in removing the violent criminal from the street. My Armed Career Criminal Act, for example, provides a 15-year mandatory minimum term of imprisonment for repeat violent felons and repeat drug offenders caught in possession of a firearm.

My bill would authorize an additional $18 million to BATF to establish an antigang unit. The bill also authorizes $8 million to the Attorney General for prosecutorial assistance to this new unit. The bill provides for 180 agents and appropriate support staff within the antigang unit and 40 prosecutors and appropriate support staff to be appointed by the Attorney General.

The proposed legislation also codifies the current practice in establishing direct liaison with State and local law enforcement agencies responsible for investigations, to provide training, information, coordination and other enforcement efforts to combat gang-related firearms violations. To facilitate this effort, BATF will be given asset forfeiture authority—meaning that it can seize assets related to drug gang activity. The legislation also will provide additional funds for BATF's Repeat Offender Program, which targets the armed career criminal for prosecution.

GUN POSSESSION

This bill would amend 18 U.S.C. 924(c) to make possession of a firearm by drug traffickers or perpetrators of other violent crimes subject to more severe penalties.

As it stands now, 924(c)(1) prohibits carrying or using a firearm during and in relation to a drug trafficking crime. Problems have arisen regarding this section because the term "uses or carries" has been construed literally, resulting in the dismissal of 924(c) offenses even though defendants possessed firearms during drug related offenses. My bill would add the word "possesses" to the phrase "uses or carries," thereby eliminating confusion over application of existing law. This change will make justice swift and sure, a major source of deterrence.

GUN DEALERS

The legislation also would amend 18 U.S.C. 922(j) to make theft from a federally licensed gun dealer a Federal offense. This will enable Federal officials to charge suspects with the theft directly, rather than the current strained efforts to convict on the indirect charge of possessing stolen firearms or ammunition. This provision is directed in particular at Jamaican Posses, a gang which has in the past robbed federally licensed gun dealers.

USE OF MINORS

Employed as lookouts who keep track of the movement of police, as runners who transfer crack to the street from makeshift factories and as dealers, minors are valuable tools in the drug trade, insulating adults from arrest. They are being armed to protect territorial boundaries and the drug supplies for which they are responsible. This bill would amend title 21 of the United States Code to provide an enhanced sentence for drug dealers who employ juveniles to traffic in drugs and when such young persons possess firearms while doing so.

Increasingly, minors are used to traffic in drugs across State lines. This bill would amend title 21 of the United States Code to provide an enhanced penalty of $100,000 for drug dealers who employ minors in this way. Fines collected under this provision would be transferred to the Secretary of Health and Human Services to be distributed to State and local agencies for existing juvenile drug rehabilitation programs.

GANG VIOLENCE IN PRISONS

My bill not only seeks to put more gang members in prison, but also provides provisions to ensure that they are not able to continue their gang ac-

tivity while in prison. Violence in prisons between rival gang factions is an alarming phenomenon, placing heavy burdens on already overburdened facilities. This bill would authorize up to $1 million to the National Institute of Corrections for the Federal Bureau of Prisons to provide technical assistance to States to facilitate the separation of gang members in State prisons.

ANTIDRUG ABUSE GRANTS

In light of the importance of Federal support for local initiatives, my bill authorizes an additional $5 million to the Justice Department's Office of Justice Programs for Antidrug Abuse Grants for State and local task forces which have developed programs coordinating the efforts of law enforcement agencies, schools, and community organizations to combat youth gang crime and drug activity.

I want to note the success of one such effort, and to propose that it serve as a model for other antidrug abuse programs. In 1980, the Los Angeles County Board of Supervisors implemented the Inter-Agency Gang Task Force, to provide a forum where public agencies fighting street gangs can exchange information. The L.A. Police Department, the county sherrif's department, the probation department, the California Youth Department, the district attorney's office, the L.A. Unified School District and community-based organizations have worked together to develop, for example, the gang reporting, evaluating, and tracking system, a computer system to assist law enforcement agencies track gang members. The task force also provides a directory of agencies and services available to counsel communities.

While some members of youth gangs become hardened criminals by early adulthood, I believe that many still have personalities impressionable and vital enough to respond to legitimate social and education opportunities. Police and prosecutors must, of course, play a major role in the reduction of gang-related crime. But we must also allocate resources and develop programs that offer alternatives to gang life.

NATIONAL COMMISSION ON GANG INTERVENTION

The legislation I introduce today includes a provision expressing the sense of Congress calling for the President to establish a National Commission on Gang Intervention. The clear expansion of these gangs requires a national focus, one that will utilize national resources and national experts. The sharing of information from throughout the country on successful enforcement, rehabilitation, and prevention programs is essential. One of the issues on which the Commission will report is whether the Los Angeles-based gang information computerized database I have just referred to should be expanded and placed under the supervision of BATF.

ASSET FORFEITURE/NARCOTICS INVESTIGATIONS

My bill provides the Attorney General with the discretion to direct proceeds under the Department of Justice Assets Forfeiture Fund to U.S. Attorney's office for general narcotics prosecutions or specialized task forces. Under current practice, the Attorney General only may allocate assets forfeiture funds to law enforcement agencies for specified purposes such as the purchase of drugs, equipping vehicles, and the payment of awards. The bill I introduce today would extend the authority of the Attorney General to authorize the allocation of such funds for specific narcotics investigations and prosecution projects. I believe that this change is particularly warranted at a time when Federal law enforcement entities have stepped up their efforts to address burgeoning drug trafficking and criminal drug activity.

Mr. President, I ask for unanimous consent that the bill be printed in the RECORD.

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

S. 1337

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 "Anti-Gang Violence Act of 1991".

TITLE I—GANG VIOLENCE

SEC. 101. FINDINGS AND CONGRESSIONAL DECLARATION.

(a) FINDINGS.—The Congress finds—

(1) the explosion of drug trafficking in the cocaine derivative known as "crack" is transforming some of the country's toughest street gangs into highly organized drug-trafficking organizations;

(2) there is a consensus that these extremely violent gangs are establishing ties to major international drug suppliers and are expanding their operations across State lines; and

(3) an example of highly organized gang violence and drug trafficking is the Jamaican Posse which has transformed Jamaican enclaves throughout the country into bases of operations for their violent and lucrative crack distribution activities.

(b) DECLARATION.—Congress hereby declares that drug trafficking and the related violence by drug gangs requires coordinated and immediate Federal action.

SEC. 102. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS AND STATE AND LOCAL COORDINATION.

The Director of the Bureau of Alcohol, Tobacco and Firearms shall establish direct liaison with State and local law enforcement agencies having responsibility for gang investigations for the purpose of providing training, technical expertise, information, coordination, and other enforcement effort to combat gang related firearms violations.

SEC. 103. ANTI-GANG UNIT IN THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS.

(a) AUTHORIZATION.—

(1) AGENTS.—There is hereby authorized to be appropriated $18,000,000 for fiscal year 1992 to the Bureau of Alcohol, Tobacco and Firearms for the creation of a new Anti-Gang Unit. Funds appropriated pursuant to this section shall be used to provide 180 agents and necessary support staff.

(2) PROSECUTORS.—There is hereby authorized to be appropriated $8,000,000 for fiscal year 1992 to the Attorney General to provide 40 prosecutors and necessary support staff to aid the Anti-Gang Unit.

(b) COORDINATION OF RESOURCES.—The head of the Anti-Gang Unit shall work with Federal, State, and local law enforcement agencies to coordinate the resources necessary to fight gangs.

SEC. 104. ASSET FORFEITURE FOR THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS.

Section 924(d) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(4)(A) Any property (other than real property) subject to forfeiture under section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)), may be seized and forfeited in connection with an investigation of a violation of subsection (c) of this section, and all provisions of section 551 of the Controlled Substances Act shall apply to seizures and forfeitures under this paragraph.

"(B) For the purposes of subparagraph (A), the functions of the Attorney General under section 551 of the Controlled Substances Act with respect to the seizure, forfeiture, and disposition of property shall be carried out by the Secretary of the Treasury.".

SEC. 105. CRIMINAL PENALTIES FOR GANG VIOLENCE.

(a) FINDINGS.—The Congress finds that—

(1) an integral component of a drug gang is the use of sophisticated firearms;

(2) evidence indicates that these gangs have robbed federally licensed gun dealers for their sophisticated firearms and utilized these arms in driveby and other indiscriminate shootings; and

(3) the offenses provided in this section address the issues of use of sophisticated firearms.

(b) TRANSPORTATION OF MINORS FOR DRUG-RELATED ACTIVITY.—

(1) Section 420(a) of the Controlled Substances Act is amended in paragraphs (1) and (2) by inserting "transport," after "use,".

(2) Section 420(b) is amended by adding at the end thereof the following: "In addition to any fines imposed by other subsections of this section or by this subsection, the court shall impose a civil fine of $100,000 on a defendant found guilty of an offense under subsection (a). Any fine collected pursuant to the preceding sentence shall be transferred to the Secretary of Health and Human Services to be distributed to State and local agencies for juvenile drug rehabilitation through existing juvenile drug rehabilitation programs.".

(c) DISTRIBUTION OF FIREARMS TO A MINOR.—Section 420(d) of the Controlled Substances Act is amended by—

(1) striking "or" after the semicolon in paragraph (1);

(2) adding "transported" before "or used" in paragraph (2);

(3) striking the comma at the end of paragraph (2) and insering "; or"; and

(4) adding after paragraph (2) the following new paragraph:

"(3) by knowingly providing or distributing a firearm to any person employed, hired, used or transported who is under eighteen years of age,".

(d) GUN POSSESSION.—The first sentence of section 924(c)(1) of title 18, United States Code, is amended by—

(1) striking "uses or carries" and inserting "uses, carries, or possesses"; and

(2) striking "used or carried" and inserting "used, carried, or possessed."

SEC. 106. NATIONAL COMMISSION ON GANG INTERVENTION.

(a) ESTABLISHMENT.—It is the sense of the Congress that due to the escalation in violence, crime, and drug trafficking by organized gangs the President should direct the Secretary of the Treasury to establish a National Commission on Gang Intervention.

(b) DUTIES.—The Commission should—

(1) monitor and review gang activity nationwide to determine the extent, if any, of organized national gang activity;

(2) report on effective models for intervention, rehabilitation, and law enforcement;

(3) review the need for a national computerized database, located within the Bureau of Alcohol, Tobacco and Firearms, to track organized national gang activity more effectively; and

(4) recommend and report not later than 18 months after the date of enactment of this Act policies for effective approaches to gang activity for national dissemination.

SEC. 107. UNIFORM CRIME REPORTS.

(a) IN GENERAL.—

(1) GANG VIOLENCE.—Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire, for calendar year 1990 through calendar year 1995, data on the incidence of crimes that involve gang violence.

(a) CRIMES INVOLVED.—For purposes of this section, crimes involving gang violence are—

(A) homicide;

(B) assault;

(C) robbery;

(D) burglary;

(E) theft;

(F) arson;

(G) vandalism;

(H) trespass;

(I) threat; and

(J) such other crimes as the Attorney General considers appropriate.

(b) ANNUAL SUMMARY.—The Attorney General shall publish an annual summary of the data acquired under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for fiscal year 1992 through fiscal year 1997.

SEC. 108. ANTI-DRUG ABUSE GRANTS.

(a) IN GENERAL.—There is hereby authorized to be appropriated $5,000,000 for fiscal year 1992 to the Office of Justice Programs of the Department of Justice for anti-drug abuse grants.

(b) ALLOCATION OF GRANTS.—Grants made under this section shall be allocated to State and local task forces that—

(1) include law enforcement, educational systems, and community-based organizations; and

(2) have developed coordinated programs necessary to alleviate gang activity and drug trafficking.

SEC. 109. GANG VIOLENCE IN PRISONS.

(a) POLICY.—The Congress hereby encourages the States to separate in State institutions and juvenile correctional institutions inmates who are identified as members of "gang organizations" to ease the current violence in prisons between rival gang factions.

(b) FUNDING.—There is hereby authorized to be appropriated such sums as are necessary not to exceed $1,000,000, to the National Institute of Corrections of the Federal Bureau of Prisons to provide technical assistance to States to facilitate the separation of gang members in State prisons.

TITLE II—CAREER CRIMINALS

SEC. 201. AMENDMENTS TO THE ARMED CAREER CRIMINAL ACT OF 1984.

(a) INTENT OF ACT.—The Congress declares that the intent of the Armed Career Criminal Act of 1984 was to enact a sentencing enhancement provision.

(b) UNCONSTITUTIONAL PRIOR CONVICTIONS.—Section 924(e)(1) of title 18, United States Code, is amended by inserting "which have not been obtained in violation of the Constitution," after "from one another,".

SEC. 202. REPEAT OFFENDERS PROGRAM.

There is hereby authorized to be appropriated $10,000,000 for fiscal year 1992 to the Bureau of Alcohol, Tobacco and Firearms for the Repeat Offender Program and anti-gang activities to hire 100 additional special agents and support personnel.

SEC. 203. STUDIES.

(a) PROFILE CAREER CRIMINAL.—The National Institute of Justice shall conduct a study and report on the profile and number of career criminals in America. The Institute shall submit the report to Congress not later than 1 year after the date of the enactment of this section.

(b) STATISTICS ON CAREER CRIMINALS.—The Bureau of Justice Statistics of the Department of Justice shall compile and maintain statistics for the number of arrests, prosecutions, and convictions of career criminals nationwide under sections 924(c) and 924(e) of title 18, United States Code. The Bureau shall publish and make available to the public annual reports of such statistics.

TITLE III—NARCOTICS INVESTIGATIVE PROJECTS AND TASK FORCE PROJECTS

SEC. 301. ALLOWING PAYMENT OF COSTS FROM THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.

Section 524(c)(1) of title 28, United States Code, is amended by—

(1) striking "and" after the semicolon in subparagraph (G);

(2) redesignating subparagraph (H) as subparagraph (I); and

(3) addng after subparagraph (G) the following:

"(H) the payment of any expenses necessary for the implementation and execution of approved narcotics investigative projects and task force projects of the Unied States Attorneys' Offices under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 et seq.), at the discretion of the Attorney General; and".

Mr. SEYMOUR. Mr. President, I rise today to pledge my support as an original cosponsor of the Anti-Gang Violence Act of 1991.

For the past several months, Americans have lined the streets from Washington State to Washington, DC, waving to sons and daughters, fathers and mothers, neighbors and friends—the brave men and women of Operation Desert Storm. But each day, Americans in the south central section of Los Angeles stand on their neighborhood streets, but they stand in sadness, not in celebration. They stand to see friends and family as victims, not victors, of a different kind of war—a war in which a Los Angeles resident is more at risk of being a casualty than a member of the Armed Forces at the height of Desert Storm. The war I speak of is a gang war, its main combatants are known as Crips and Bloods, but they are Americans. And their victims are Americans.

Fueled primarily by drug trafficking, gang activity has brought destruction to parks, schools and neighborhoods across my State of California. In many Los Angeles high schools, gang violence is as common an event as a pep rally. In my State capital of Sacramento, Californians watched their TV's in horror as a youth gang opened fire on the hostages they were holding in an electronics store—just some of the thugs in a city reported to have more than 3,500 known gang members, some as young as 11 years old.

But violent gangs are not unique to California. Indeed, gang activity is a malignant tumor, a fatal cancer spreading across the United States. The California Department of Justice reported that from Dallas to Des Moines, from Phoenix, AZ to Fayetteville, GA, the Crips and Bloods are infecting Main Street, U.S.A., with dangerous drugs and naked violence.

Combating this growing national epidemic requires national action. With the same resolve that Americans pledged to liberate Kuwait, we must work together to take back our schools, our parks, our streets. To win this war of mindless terror requires a coordinated effort from leaders of law enforcement, of communities, and of government.

We have seen examples of effective coordinated activity. Last year, the FBI, the U.S. attorney's office, the California State Department of Justice, the San Diego District Attorney's Office and Police Department were just some of the players involved in Operation Blue Rag, an antigang and drug trafficking task force that targeted Crip gang activity in the San Diego area. Through their efforts, more than 70 members and associates of Crip street gangs were taken off the streets and placed behind bars.

But combating gang violence requires more than just coordinated action by law enforcement. It requires community spirit, pride and determination to take back their streets. It requires the concern shown by the citizens of San Jose who launched Project Crackdown. With the help of law enforcement, residents in this community cleaned up their streets, increased neighborhood activities for their kids, and launched other projects to bring meaning to the word "community." I had the privilege of visiting this neighborhood earlier this year, and you can see, just by walking down their streets, the pride of families who joined together to say "No! to drug and gang activity, and backed their determined words with tough and responsible action.

Operation Blue Rag and Project Crackdown are inspiring examples of effective law enforcement coordination and community empowerment—exam-

ples that, if replicated in other cities across our Nation, will represent a beginning of the end—the end of gang-related drug trafficking and violent crime.

Today, Senator SPECTER and I introduce legislation to facilitate this beginning. The Anti-Gang Violence Act directs the Bureau of Alcohol, Tobacco, and Firearms to establish an antigang unit—a unit that is to work directly with State and local law enforcement to combat gang-related drug trafficking and violence. This legislation also increase criminal firearms penalties, and adds new penalties for transporting minors in drug-related crimes and distributing firearms to a minor. The enhancements made in these criminal laws will allow the Federal Government to make an effective strike against the spread of interstate gang violence.

Finally, Mr. President, this legislation authorizes $5 million in grants for communities—store owners, teachers, parents, kids—who want to take back their streets—back from gang-related drug pushing, violent terror, and mindless destruction.

The distinguished senior Senator from Pennsylvania has shown tremendous leadership and vision on this issue, and I look forward to working with him to adopt the Anti-Gang Violence Act.

Mr. President, the Anti-Gang Violence Act is not the solution to ending gang violence. If passed, it will not mean the end to Crips and Bloods. It will not mean an end to the fear that forces families to hide in their very own homes.

Indeed, the secret to victory in the streets of America can be found in the known secret to our victory in the desert valleys of Iraq: a resolve to restore liberty and justice—a spirit found deep within all law-abiding Americans. Those brave young men and women who we've saluted for this great victory in the desert are normal people: factory workers, bookkeepers, teachers and clerks. And we can best celebrate their victory in the desert by working together to achieve victory in the streets. By passing the Anti-Gang Violence Act, we can give Americans the tools to take back their streets and be victors, not victims, of crime.

By Mr. SANFORD:

S. 1338. A bill for the relief of Chi Hsii Tsui, Jin Mie Tsui, Yin Whee Tsui, Yin Tao Tsui, and Yin Chao Tsui; to the Committee on the Judiciary.

RELIEF OF THE TSUI FAMILY

• Mr. SANFORD. Mr. President, I rise to introduce a bill to grant permanent residency to a very special person, Charlie Two Shoes, and his family. This is indeed an auspicious occasion because this bill would give permanent residency to a person who has a longstanding tie to the United States and the Marine Corps.

That tie was established 46 years ago, when in 1945, a group of marines from the 6th Division stationed in China after World War II adopted an 11-year-old boy. They saw something special in the little boy they nicknamed "Charlie Two Shoes". Charlie met the marines when he came to peddle eggs and peanuts to the marines to keep his family from starvation. His parents agreed to let Charlie accompany the marines back to their base so he could get an education.

They gave him a cut-down uniform, a bunk in the barracks, and a place in the mess hall line. He stood inspections, spit-shined his shoes, swabbed floors and suffered the daily indignities of a real marine.

The marines made sure he went to school to learn English. When they pulled out of China in 1949, Charlie Two Shoes begged to go with them. But it couldn't be arranged. The marines promised to stay in touch and to bring him to America as soon as they could.

After the Communists gained control of China, Charlie's friendship with the marines became a dangerous liability. Charlie's mother destroyed all visible traces of his ties to the marines.

In 1962, when Charlie refused to join an anti-America propaganda campaign, he was fired from his job, placed under house arrest, and stripped of his citizenship. He remained under house arrest for 20 years. His wife, Jin Mie, was fired from her teaching position when she refused to divorce her husband. She was forced to work in the fields at hard labor until 1979.

In 1980, with the normalization of relations between China and the United States, Charlie was finally allowed to write to the marines whose addresses he recalled after 35 years. Three years later, he arrived in America to be reunited with the marine veterans who had adopted him when he was only 11-years-old.

Charlie fell in love with America. He wanted to remain in the United States and bring his wife and three children from China to live. In 1985, Charlie was granted an indefinite stay of deportation and was allowed to bring his family to America.

Charlie Two Shoes and his family now live in Chapel Hill, NC, where they own and operate the Tsing Tao Restaurant. They have lived there for the past 5 years and are a beloved part of the community.

I bring forth this bill today because I believe that Charlie Two Shoes and his family should not be kept from gaining full citizenship any longer. Therefore, I am advocating taking the next step of granting this family permanent residency.

Charlie's love for America and the Marine Corps has been demonstrated over the past 49 years. I trust that my fellow Senators will find his story as compelling as I have.

I ask unanimous consent that the bill and news articles which I send to the desk be included in the RECORD following my remarks.

I hope my colleagues will join me in this effort to assist a fine North Carolina resident and long-time friend to many marines obtain his long hoped for goal of a chance at becoming a citizen of the United States.

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

S. 1338

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of the Immigration and Nationality Act, Chi Hsii Tsui, Jin Mie Tsui, Yin Whee Tsui, Yin Tao Tsui, and Yin Chao Tsui shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees. Upon the granting of permanent residence to such aliens as provided for in this Act, the Secretary of State shall instruct the proper officer to deduct five numbers from the total number of immigrant visas which are made available to natives of the country of the alien's birth under Section 203(a) of the Immigration and Nationalisty Act or, if applicable, from the total number of such visas that are made available to such natives under Section 202(e) of such Act.

[From the News and Observer, May 11, 1983]

HUG PLANNED TO END YEARS OF YEARNING

(By Ben Estes)

Sitting in Raleigh-Durham Airport Tuesday afternoon, William A. Bullard impatiently counted the hours before he would meet the friend he left in China 35 years ago.

As he gulped a cup of coffee and nervously waited for his airline ticket, Bullard said he found it hard to believe that he finally was going to see Charlie Two Shoes.

"It's all been a miracle," Bullard said. "It would be hard to explain any other way."

The day before, Bullard had not known he would be leaving his Autryville home in Sampson County and traveling to Cleveland to meet Cui Zhixi, nicknamed Charlie Two Shoes by a group of Marines stationed in China from about the end of World War II until 1948.

Bullard and other Marines took in young Charlie, who was poor, and with the consent of Charlie's parents they allowed the boy to live with them in their barracks at Qingdao. They sent him to missionary school and gave him a Marine uniform. "We treated him like a little brother," Bullard said.

Before leaving the country, the Marines promised to bring Charlie to live in America, but their promises could not be kept.

Bullard, who is in the insurance business, said he used to wonder about Charlie, but it was not until 1980 that he heard from him when Charlie wrote to ask whether he could meet with his old Marine buddies.

Bullard began an all-out effort to bring Charlie to the United States to live, battling red tape and even refurbishing the Sampson County house he was born in so Charlie and his family would have a place to call home. Bullard also set up a "Charlie Two Shoes" bank account for the many contributions to the effort that he received.

Charlie has come alone to the United States on a six-month visa but Bullard said he hoped Charlie could stay and bring his wife and children.

Bullard said he wants to bring Charlie to Autryville for a "big pig picking," although he does not know when that will be.

If Charlie can make the trip, Mayor Billy Martin of Autryville said in a telephone interview, the town would like to give Charlie "a warm welcome."

Bullard said he found out only last week from a marine friend that Charlie had received his passport and would be coming to America soon. It was only Monday night before he found out for sure that his friend would arrive in Cleveland Tuesday—Bullard's 58th birthday.

"It was about as big a birthday present as I've ever had," Bullard said. Charlie's reunion with Bullard and other ex-marines happened Tuesday night.

"He's been ecstatic; he hasn't slept for a week," said Bullard's daughter, Susan Wilson, who accompanied him to Cleveland.

Mrs. Wilson, a junior high school music teacher, said she also was anxious to meet Charlie. "This was a person I was raised to know but that I've never met," she said.

While waiting for his plane, Bullard, wearing a navy blue suit and puffing on a cigar, displayed several photographs of Charlie, one showing him as a 12-year-old and another more recent shot of him and his family standing in a plowed field. He also had several shots of the refurbished farmhouse that he planned to show Charlie.

Asked what would happen when he and Charlie met again, Bullard paused for a moment and smiled.

"I've got as much love for him now as I had for him when he was a boy," he said. "I guess we'll just hug."

[From the Greensboro News-Record, July 19, 1985]

JOY, TEARS MARK REUNION OF WAR PALS—"CHARLIE TWO SHOES" GETS HEARTY MARINE WELCOME

(By Jim Schlosser)

The scene was enough to make mighty Marines cry.

Several almost did Thursday when Cui Zhixi, better known as "Charlie Two Shoes," stepped off a plane at Regional Airport and embraced two aging buddies who had befriended him nearly 40 years ago in China.

"Don!" cried Zhixi, rushing toward ex-leatherneck Don Sexton, a Greensboro mechanic. "I'm so glad to see you."

Minutes later, Zhixi was embracing another face from the past, Charles Monnett Jr., a Greensboro carpet dealer who served as a Marine officer in China right after World War II.

Sexton had seen Zhixi in Ohio two years ago, but this was Monnett's first reunion with him since the post-war China days.

"Charlie Two Shoes," declared Monnett, using the nickname the Marines concocted because they thought it sounded like his Chinese name, "it's good to have you in Greensboro. You look great. It has been a long, long time."

Travelers passing through the airport were puzzled by the TV cameras, the reporters, the misty eyes and all the hugging.

"Who is Charlie Two Shoes?" several kept asking.

One woman told a friend she thought he is a dancer.

Far from it. Zhixi was a tiny, 12-year-old street peddler adopted by Sexton, Monnett and other Marines stationed at a base near the China coast in the late 1940s.

They gave him a Marine uniform, a bunk in the barracks and a place in the mess hall line. He stood inspections, spit-shined his shoes, swabbed floors and suffered the daily indignities of real Marines.

The Marines made sure he went to school to learn English. When they pulled out of China, Charlie Two Shoes begged to go with them. But it couldn't be arranged.

Later, the communist government, which took over China in 1949, kept Zhixi under house arrest for nearly 20 years because of his friendship with the Marines.

In 1980, a more liberal Chinese government allowed Zhixi to send a letter to several ex-Marines whose names he could recall. They arranged for Zhixi to visit America. His 1983 arrival appeared on the nightly network news. He has been living with an ex-Marine friend in Ohio. He makes civic club speeches, rides in parades and has fallen passionately in love with America.

He wants to stay and have his wife and three children join him. But the U.S. government says Zhixi will have to leave the country soon, despite intensive lobbying by ex-Marines throughout the country.

Thursday, Sexton led Zhixi through the airport terminal to the parking deck where—you guessed it—more Marines, present and past, were waiting.

A color guard in dress blues from the Marine Corps Reserve center stood at attention. The city's greeter, Mayor Pro Tem Jim Kirkpatrick—an ex-Marine, of course—gave Zhixi a gracious Greensboro welcome.

A tape recorder blared "From the Halls of Montezuma . . ." Zhixi stood ramrod straight, but he couldn't help blinking his eyes.

"I thank everyone in this beautiful country and in Greensboro," he said to the gathering.

Asked if Sexton and Monnett looked any different, Zhixi replied, "A lot—but one thing that never changes is that Marine spirit. Once a Marine, always a Marine. My faith in God and the Marine spirit kept me alive for these past 40 years."

The Marine color guard had never heard it put so beautifully. "Semper Fi, Charlie," one later declared. They demanded he visit their training center on Interstate 40.

Zhixi will be busy during his two-week visit to Greensboro. Trips to Guilford Courthouse National Military Park and other attractions are planned. Sunday, he will be the guest of honor at Sexton's church.

Next week, Sexton will take him to Parris Island, S.C., where Marines are made.

Under pressure from ex-Marines and several members of Congress, the government twice has extended Zhixi's stay in the country. A bill is before Congress to make him a permanent resident. This would make it possible for his family to join him. But the chairman of the congressional committee considering the bill, Romano L. Mazzoli, D-Ky., is staunchly opposed to the measure.

"He feels others in China are more deserving," Sexton said.

This view outrages Sexton and others who point out that Zhixi suffered greatly because of his devotion to the U.S. Marines

After the takeover, the communists at first didn't bother Zhixi. He went to college and earned an agricultural degree. Later, the government decided he posed a security threat because of past chumminess with the Marines.

"They asked me to make propaganda against America," he said. "I refused. I lost my job. They put me under house arrest. I couldn't leave my village. Each day, I had to go to the fields and do the worst kind of jobs."

His life improved when a more liberal Chinese government came to power during the Nixon administration.

"The current government is good," Zhixi said. "They have been cooperative. When I left China two years ago, they said if you want to stay in America, fine. If you want to come back, you are welcome."

The Chinese government is willing to let Zhixi's family join him in America, if only the U.S. government will give its blessing.

A decision must be made by Sept. 22. That's when Zhixi's visa expires.

"I just don't know how I can leave this country," he said. "We will just have to pray that everything works out."•

By Mr. SANFORD:

S. 1339. A bill to settle an agreement dated July 30, 1943, between the Secretary of the Interior of the United States, the State of North Carolina, and the Tennessee Valley Authority, and Swain County, NC; to the Committee on Energy and Natural Resources.

SWAIN COUNTY JUST COMPENSATION ACT

Mr. SANFORD. Mr. President, I rise today to introduce a bill, the Swain County Just Compensation Act of 1991. Allow me to speak briefly on an issue of which many of my Senate colleagues are aware—an issue that is now 48 years old and one that has been bogged down for many years. Over a number of years, the Senate has now and again discussed Swain County, NC, and how the Federal Government has failed to live up to a promise made to the county in 1943. I will repeat the background of what North Carolinians refer to as the 1943 agreement.

Mr. President, back in 1943, the Federal Government decided to build a lake near the Great Smoky Mountains National Park. We needed more electrical generation for the war effort, so the Federal Government built Fontana Dam—a 480-feet structure that was the fourth highest dam in the world at that time. The waters of the new Fontana lake generated hydroelectricity for critical production facilities in Tennessee, including those at Oak Ridge.

When Fontana Lake was built, many western North Carolinians were forced to leave their homes and their lands. Some 200 families who had been permanent residents of the present-day Fontana North Shore area were required to leave the area. They bore this burden with great patriotism, to help the war effort. However, many of these families feel they were mistreated, and bitterness lingers to this day.

The construction of the lake also resulted in the flooding of a highway, NC Highway 288, that had been paid for by Swain County. In 1943, the Federal Government agreed in writing to compensate Swain County for the loss of this highway. Such compensation was to take the form of a paved replacement road through what is now the North Shore area of the Great Smoky Mountains National Park, subject to the appropriation of funds for the road by Congress.

Mr. President, as is well known in western North Carolina, that road was started but never completed for a host

of economic and environmental reasons. The Federal Government clearly is obligated to grant fair compensation to Swain County. The net present value of the flooded road is now approximately $16 million, and Swain County deserves at least that much.

Mr. President, this legislation calls for a fair and equitable settlement for the 1943 agreement. It would pay $16 million to Swain County, representing the net present value of the flooded road. Most of that money would be held by the county to improve the local schools and to further economic development. In addition, the county could elect to use a portion of these funds for the construction of a road on the North Shore of Fontana Lake, although my discussions with leaders in the county suggest that this may not be their top priority for the use of these funds.

Swain County is not wealthy. In fact it has one of the highest unemployment rates and lowest per capital incomes in North Carolina. Swain County urgently needs funds to invest in its future development. This legislation would facilitate such investment. For a county in which the entire property tax income did not reach $1 million in 1990, the investment of a majority of the settlement funds will obviously substantially increase the county's revenue base.

Mr. President, I think there should be little argument that $16 million represents a very conservative figure of what the Government owes Swain County. Let me explain briefly what method the National Park Service used to arrive at this figure. A 5-percent annual rate of interest was applied to the original 1940 value of N.C. Highway 288, and this rate was applied each subsequent year through 1991. Similarly, compounding the original value of the road at 5 percent annually through 1980, then-Secretary Andrus of the National Parks Service agreed on November 28, 1980, that fair compensation to the county for the flooded road was $9.5 million. I have agreed to a value of $16 million rather than the $16.309 that the 5-percent calculation might suggest.

If Secretary Andrus and county officials believed that $9.5 million represented fair compensation in 1980 for the value of the flooded road, I think it logical for purposes of contrast to take this 1980 base figure and calculate the average 1-year treasury bond interest rates for each year through 1991 as a reasonable way to measure the true present value of the road. Using this method, the value of the road is approximately $22.427 million.

Mr. President, I believe the just compensation offered to Swain County in this act does the most to benefit the greatest number of residents there. A necessary portion of the $16 million compensation will be used to pay indebtedness incurred by the county for much-needed school system improvements. The remaining funds, which will be held by the county, will give adults as well as children a brighter future. This local government, which is strapped for funds and has 84 percent of its land tied up in Government ownership, desperately needs and deserves this boost.

Senator Howard Baker and both of Tennessee's present Senators have tried to justly compensate this rural mountain county, and Senator Robert Morgan and JESSE HELMS of my State have also made serious attempts, as have Congressmen from both Tennessee and North Carolina. Mr. President, I have attempted to settle this matter in the past in the context of broader legislation, but I believe the citizens of Swain County cannot afford to wait another 48 years; I know a generation of school children cannot.

This issue has received repeated committee attention over the years and this legislation is very clear in its intent. Let us pay this debt and move on. We must look forward, not back.

Mr. President, I ask unanimous consent to submit the following statement of support for this measure on behalf of the National Park Service for the RECORD.

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

DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Washington, DC, June 18, 1991.

Hon. TERRY SANFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR SANFORD: Thank you for your interest in initiating a final settlement of claims arising from the 1943 agreement between the Department of Interior, the Tennessee Valley Authority, and Swain County, North Carolina. We are convinced that this issue has remained unsolved far too long.

We favor settlement of the 1943 agreement claims through a reimbursement to Swain County as outlined in Secretary Andrus' November 28, 1980, decision. Providing this payment to Swain County will require legislative authorization and appropriation. The National Park Service is in full support of measures to get these legislative efforts under way. We stand ready to provide any information or assistance you may need to expedite the process.

Sincerely,

JAMES M. RIDENOUR,
Director.

By Mr. DASCHLE:

S. 1340. A bill to amend the Agricultural Adjustment Act to establish a long-term milk supply management system that is controlled by milk producers, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

NATIONAL DAIRY ACT

Mr. DASCHLE. Mr. President, the time has come for the Congress to undertake a serious review of dairy policy. The inequities of the current system have resulted in disaster for many producers around the country, and in the Upper Midwest in particular. Steps are required to assure the continued viability of our Nation's dairy farms and address the needs of the consuming public.

Nearly all of the commodity programs administered by the Government recognize the need to impose some type of supply controls to provide market stability. Dairy is the notable exception to this rule. The result is inherent instability. One year we can end up with large surpluses and low producer prices. The next year, after producers have cut back production because of low prices, we end up with tight supplies and high consumer prices. Effective mechanisms must be adopted to keep production in proportion to consumption.

People can talk all they want about deregulation and the virtues of the free market, but we only have to look to the lessons of the last 2 years to see what happens when we combine low support prices with a lack of supply controls. Dairy prices have been on a roller-coaster ride that harms producers and consumers alike. Today, producers receive 30 percent less in their milk checks than they did a year ago, but consumers are still paying the same for dairy products as when producer prices were higher.

This phenomenon is not unique to the agricultural sector. When the cost of a product for a retailer goes up, we are quick to see the change reflected in the purchase price of the item; but, when the retailer's costs drop, the consumer often waits in vain for that reduction to appear in the price of the produce he or she purchases.

As Congress begins consideration of dairy policy reform, it is important that all available options be considered. Other countries have developed dairy programs that have served both the producer and the consumer well, and there are many valuable lessons we can learn from their experiences.

Today, I am introducing a dairy package modeled in part on a system that has been in place in Canada since the mid-1970's. This legislation, known as the National Dairy Act, would keep milk supplies in step with demand and ensure the continued vitality of the family farm in the United States. The bill calls for the adoption of a two-tier pricing mechanism. The first-tier price would be paid for milk that is produced within a producer's marketing base. A lower, second-tier price would be paid for all milk produced in excess of a producer's marketing base. The result will be a fair, stable price for producers, and a reasonably priced, dependable supply for consumers.

The first-tier price that a producer receives would be set at a level that reflects a farmer's cost of production on a regional basis. Annual adjustments to the price would be made based on changes in the cost of inputs, such as

labor, feed and other producer costs. Prices would vary from region to region depending on the cost of production, but a minimum price of $13.60/ctw is the objective.

The use of class I differentials would be replaced as a mechanism to account for regional differences in the cost of production; however, differentials could be used in cases where it is necessary to encourage the production of adequate supplies of milk for fluid consumption. A regional pricing scheme based on local costs of production would eliminate the inequities caused by the current system that sets prices depending on how far a producer lives from Eau Claire, WI. Overproduction of milk would be eliminated by the second tier mechanism that levies a 75-percent assessment against milk that is produced in excess of a producer's marketing base.

A producer's marketing base would be established to reflect historical production. Bases may be transferred between family members without restrictions. Bases from retiring producers would revert to a county pool and distributed according to a set of preferences. Priority would be given to new milk producers purchasing existing facilities, established producers whose current production base is below the regional producer cap, and socially disadvantaged groups. It would also be possible for undistributed bases to be transferred between different milk marketing orders to respond to regional shifts in production.

The Secretary would be required to provide dairy products for the continuation of food and nutrition programs. Surplus products resulting from overbase production would be allocated to food programs, while producer assessments for overbase production, would be used for the funding of these programs. The adoption of this program would also result in dairy program savings that could be applied to nutrition programs if needed. Adequate emergency reserves would also be maintained to support necessary long-term and emergency food relief programs.

Finally, milk marketing boards made up of active producers would be elected on the county, milk marketing order, and national level to make base allocation decisions, determine annual production needs, and make other administrative decisions. These boards would allow producers to have a direct role in supervising the administration of the program.

This legislation should not be viewed in isolation, but as a piece of a puzzle. I worked for higher producer prices in the debate over the 1990 farm bill as well. I was ultimately forced to vote against the farm bill because the mechanisms it employed were not sufficient to maintain prices. Today, we can see the results in both grain and dairy prices. Wheat, corn, beans, oats and other commodities are at depressed prices. The debate we are about to enter on dairy policy sets the tone for future debates on other commodities. Failure to take a strong stand now and get a fair bill for our Nation's dairy producers would be a disturbing omen for the Nation's other agricultural producers.

The advantages of the program I have proposed are clear. It would eliminate the chronic problems of overproduction and underproduction. Furthermore, it would cost substantially less to administer than the current program at the same time it increases producer incomes. The critics of this program will raise several objections to it, including the likelihood of increased costs to consumers and a reduction in producer efficiency, but I feel that each concern can be adequately addressed.

The argument that supply controls will discourage increased production efficiency is unfounded. Typically, if a producer decides he needs more income, he can simply go out and add more cows to his milking herd. More cows mean more milk, which means more income. But it also means greater surpluses and additional Government costs. If we assign producers a production limit, they have to squeeze out more profits by improving management techniques and finding ways to produce within marketing bases with fewer cows and fewer inputs. Such a program encourages efficiency, rather than discouraging it.

Critics also claim the National Dairy Act will raise costs for consumers. There may be a slight increase. However, I encourage the public to look at the alternative to meaningful reform. If producer prices remain low, the forced exodus of farmers from rural areas will continue, leaving the rural economy severely damaged. Do our urban countrymen feel it is right and just that their rural friends be bled to death just so a gallon of milk will be a few cents cheaper? Other countries around the world answer a resounding "no." The people of this country must recognize that dairy farmers are entitled to a fair price for the vital service they provide to society.

Moreover, the argument that consumer prices will increase is based on a huge assumption. It assumes that the prices consumers pay in the store bear a direct relationship to the price producers receive on the farm.

Free marketeers would have us believe this dogma, but the facts prove otherwise. When milk prices started to take a nose dive on the farm last August, it was unnoticable on the grocery store shelves. I encourage anyone to approach the average person on the street of the Nation's Capital and seek empathy for the sorry state of the contemporary dairy farmer. I guarantee you'll be received with a blank stare. Consumers don't know there's anything wrong down on the farm because they are still paying the same prices they were paying when farmers were getting 25 percent more for their milk. I'd like someone to tell me where the benefit for the consumer is in a system like that.

Opponents of dairy reform often raise the specter of hungary children being denied the benefit of WIC and other nutrition programs so farmers can earn more money. The reform of the existing dairy program will save money and raise additional funds from assessments on overproduction. These funds can be distributed to offset increased costs that might result from changes in the dairy program. Also, I would point out that, even under the old system, nutrition programs were not immune from the effects of high costs.

Today, milk prices are as low now as they have been since 1978. There is a handy little book put out by the Milk Industry Foundation every year called "Milk Facts." The publishers of "Milk Facts" used to have a habit of putting a statistic in the booklet that told people what percentage of a dollar a farmer got for every dollar spent by a consumer. For almost every year from 1978 to 1989, that figure was above 60 percent. If you care to look at the latest version, the figure isn't even included. The reason is simple—they are too embarrassed to print it. In the past 2 years the percentage a dairy farmer gets from a consumer's dollar has dropped from the 60 percent range down to 40 percent. And if I might interject, a wheat farmer only gets about 5 percent.

In 1978, $10 milk translated into $1.74/gallon on the store shelf. Today, the same gallon of milk costs $2.70. The heralded cheap food policy in this country means one thing—cheap food on the farm. Support prices have been lowered to a point where producers can no longer survive, yet consumers are still paying the same high prices. If the ratio went back up to 60 percent, farmers could enjoy a healthy income increase without costing the consumer a dime. By raising producer prices to a realistic level, the National Dairy Act would force retailers to return to a more realistic ratio between retail and producer price.

When I speak to farmers in my State and around the country, I hear the same sentiment echoed over and over again. "We're not asking for a handout," they say, "all we are asking for is a chance." A chance to stay on their land and remain a part of the communities that their grandparents and great grandparents built out of empty, unsettled lands.

When I return home to the State of South Dakota to hold agriculture meetings the absence of youthful faces is alarming. Today, only 1 percent of

the Nation's farmers are under age 25 while almost 30 percent are over the age of 55. The number of farmers under 25 years of age has dropped 43 percent in the last 10 years, and nearly one-half of the farm assets in the United States today are controlled by farmers who are likely to retire in the next 10 years.

This Congress should take note of the reality of modern day farming and start asking itself whether it really desires to sacrifice rural society by devaluing the fruits of the farmer's labor. If the answer is that it does not, meaningful dairy policy reform that raises producer prices to reasonable levels would be a good place to start.

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

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

S. 1340

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 "National Dairy Act of 1991".

SEC. 2. MILK SUPPLY MANAGEMENT SYSTEM.

The Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by inserting after section 8c (7 U.S.C. 608c) the following new section:

"SEC. 8c-1. MILK SUPPLY MANAGEMENT SYSTEM.

"(a) DEFINITIONS.—As used in this section:

"(1) BASE.—The term 'base' means the production base established for a milk producer under subsection (h).

"(2) BEGINNING MILK PRODUCER.—The term 'beginning milk producer' means a milk producer who is establishing a milk production operation and who has not assumed the full control and risk of the operation for longer than 5 years.

"(3) COUNTY COMMITTEE.—The term 'county committee' means a county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

"(4) DAIRY COMMITTEE.—The term 'Dairy Committee' means a Dairy Committee established under subsection (c).

"(5) FAMILY MEMBER.—The term 'family member' means a spouse, parent, sibling, child, or grandchild.

"(6) LOCAL MILK MARKETING BOARD.—The term 'Local Board' means a Local Milk Marketing Board established under subsection (d).

"(7) MARKETING YEAR.—The term 'marketing year' means the period beginning on July 1 and ending on the following June 30.

"(8) NATIONAL BOARD.—The term 'National Board' means the National Milk Marketing Board established under subsection (e).

"(9) NEW MILK PRODUCER.—The term 'new milk producer' means a person who has no milk marketing history or who has returned the base of the person to the county pool.

"(10) NONFARM CORPORATION.—The term 'nonfarm corporation' means a corporation that derives less than 50 percent of its gross annual earnings from the sale of raw milk.

"(11) ORDER.—The term 'order' means an order issued under section 8c and this section that is applicable to handlers of milk and its products.

"(12) SECRETARY.—The term 'Secretary' means the Secretary of Agriculture.

"(13) SOCIALLY DISADVANTAGED GROUP.—The term 'socially disadvantaged group' has the same meaning provided such term by section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)).

"(b) ISSUANCE OF ORDERS APPLICABLE TO ALL MILK.—Notwithstanding any other provision of this Act, not later than June 1, 1992, the Secretary shall issue or amend orders that are applicable to all handlers of milk and its products.

"(c) DAIRY COMMITTEES.—

"(1) IN GENERAL.—A county committee, acting through a Dairy Committee, shall be responsible for local administration of the base program established under an order applicable to the county, including decisions regarding base allocations and appeals.

"(2) ELECTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), milk producers in each county shall elect a Dairy Committee.

"(B) COMBINED COUNTIES.—If there are less than five active milk producers in a county, milk producers in the county shall elect a Dairy Committee in combination with milk producers in other counties, in a manner determined by the Secretary.

"(3) COMPOSITION.—A Dairy Committee established for a county or combined counties shall be composed of three active milk producers operating in the county or combined counties.

"(4) TERMS.—A member of a Dairy Committee shall serve for a 1-year term and may be elected for an additional 1-year term, except that a member may not serve on a Dairy Committee for more than 2 consecutive terms.

"(d) LOCAL MILK MARKETING BOARDS.—

"(1) IN GENERAL.—Milk producers under an order shall elect a Local Milk Marketing Board composed of six active milk producers, and three consumers, in the area subject to the order.

"(2) TERMS.—A member of a Local Board shall serve for a 3-year term and may be elected for an additional 3-year term, except that—

"(A) initial members elected to a Local Board shall serve staggered terms, as determined by the Secretary; and

"(B) a member may not serve on a Local Board for more than 2 consecutive terms.

"(3) NOMINATIONS AND VOTING.—Nominations and voting for a Local Board shall be conducted in a manner similar to nominations and voting for county committees, as determined by the Secretary.

"(4) DUTIES.—A Local Board shall—

"(A) develop and supervise the administration of programs and referendums established under this section to carry out the order in the area subject to the order;

"(B) monitor and review milk price increases at retail establishments located in the area; and

"(C) administer the milk supply management program established by this section in the area.

"(5) APPROVAL OF ADDITIONAL PROVISIONS.—If the Local Board determines that an additional provision is necessary to carry out the purposes of an order, to be effective, the provision must be approved in a referendum by a majority of milk producers that are subject to the order. The Local Board shall not permit bloc voting in the referendum.

"(6) ADMINISTRATION.—A Local Board shall carry out this section in a manner that promotes family farming, the entry of beginning farmers, and the nonmonetary transfer of base between milk producers.

"(e) NATIONAL MILK MARKETING BOARD.—

"(1) IN GENERAL.—Members of Local Boards shall annually elect, from among the members of Local Boards, a National Milk Marketing Board, composed of one member from each region of the United States, as determined by the Secretary.

"(2) DUTIES.—The National Board shall—

"(A) provide general oversight for administration of the national milk supply management program;

"(B) monitor the actions of the Secretary and the Commodity Credit Corporation in carrying out this section;

"(C) review amendments to orders that are proposed in regulations; and

"(D) annually determine the estimated production levels that are necessary to balance national dairy supply and demand.

"(3) FUNDING.—An order shall require that a pro rata share of expenses of the National Board, and all expenses of the Local Board administering the order, shall be financed by milk producers in a manner and at a rate specified in the order on all producer milk under the order.

"(f) MINIMUM PRICE.—

"(1) IN GENERAL.—Effective beginning January 1, 1992, subject to paragraph (2), orders issued or amended pursuant to this section shall provide for the payment to all producers and associations of producers delivering milk to all handlers minimum prices for all milk delivered by them at a rate equal to $13.60 per hundredweight of milk containing 3.67 milkfat, as adjusted in accordance with this subsection and section 8c.

"(2) ADJUSTMENTS.—On July 1, 1992, and each July 1 thereafter, the Secretary shall adjust the minimum price for milk covered by an order to reflect—

"(A) in the case of class I fluid milk, the formula established in paragraph (3);

"(B) in the case of class II and III manufactured milk, the average of the cost of production nationwide for the milk (based on the formula established in paragraph (3)); and

"(C) in the case of the price for all milk covered by the order that is paid to all producers and associations of producers, the blended minimum prices for class I, II, and III milk, based on the use of each type of milk covered by the order.

"(3) MILK PRICING FORMULA.—For purposes of carrying out this subsection, the Secretary shall establish a milk pricing formula for each order that establishes a total cost per hundredweight for milk produced, based on—

"(A) cash costs (excluding interest and labor), which shall be based on the average costs incurred by the most efficient 75 percent of 2 percent of randomly chosen milk producers covered by the order;

"(B) labor costs for producers in a region, which shall be based on—

"(i) the average gross hourly earnings for private nonagricultural workers in the region, as calculated by the Bureau of Labor Statistics of the Department of Labor; divided by

"(ii) the average quantity of milk produced (per hundredweight) by the most efficient 75 percent of 2 percent of randomly chosen milk producers covered by the order;

"(C) return on equity based on the average percentage return for nonfarm businesses;

"(D) interest paid on debts incurred by producers, excluding the principal residence of producers;

"(E) depreciation of buildings;

"(F) depreciation of cows;

"(G) depreciation of machinery;

"(H) a management fee, equal to 5 percent of the total of the items referred to in subparagraphs (A) through (G);

"(I) advertising assessments;

"(J) milk hauling costs; and

"(K) costs incurred for administering the order.

"(4) ADJUSTMENT OF CLASS I PRICES.—A Local Board may adjust prices for Class I (fluid) milk provided under an order to ensure adequate supplies of the milk.

"(g) ANNUAL BASE ALLOCATION.—

"(1) ANNUAL PRODUCTION CHANGES.—As soon as practicable before July 1, 1992, and the beginning of each marketing year thereafter, the National Board shall determine the quantity of increased or decreased milk production that is necessary to meet the projected demand for milk and milk products during the marketing year, allowing for the required purchases of milk and milk products by the Commodity Credit Corporation for existing food programs, Federal Government usage, and adequate supplies for food reserves.

"(2) TRANSITION PERIOD.—During the period beginning July 1, 1992, and ending June 30, 1994—

"(A) 1 percent of the total national base shall be allocated for use in appeals and emergency base adjustments; and

"(B) milk producers in regions that have limited production of milk to the base established for the region shall not have their base reduced by more than the quantity allocated under subparagraph (A).

"(3) INDIVIDUAL PRODUCER LIMITATIONS.—

"(A) IN GENERAL.—Subject to subparagraph (B), an order shall establish an individual producer limitation based on the economic and production needs of the region of the producer.

"(B) EXISTING BASE.—An order may not reduce the base of a milk producer (as in effect on June 30, 1992), except that no new or returned base may be allocated to a milk producer if the quantity of milk produced by the producer exceeds the individual producer limitation established for the producer under subparagraph (A).

"(h) PRODUCTION BASES.—

"(1) ESTABLISHMENT.—Each milk producer who is actively engaged in the production of milk on the date of enactment of this section shall receive a production base equal to the higher of—

"(A) the quantity of milk produced by the producer during the preceding marketing year; or

"(B) the average quantity of milk produced by the producer during the preceding 5 marketing years, excluding the year in which the quantity of milk produced was the highest and the year in which the quantity of milk produced was the lowest.

"(2) TRANSFER.—

"(A) CEASING DAIRY OPERATIONS.—If a milk producer ceases dairy operations, the production base of the producer shall revert to the production base pool established for the county, except that—

"(i) this subparagraph shall not apply to transfer of bases described in subsection (i)(1); and

"(ii) at least 10 percent of all production bases that are returned to the county pool under this subparagraph shall be retained by the county committee to be allocated to qualifying producers who are described in paragraphs (2) through (5) of subsection (i).

"(B) CLASS I MONETARY BASES.—Production bases established under this section may not be sold, leased, or otherwise transferred except in regions where class I monetary bases have been established on or before June 30, 1992. Class I bases shall be transferred in accordance with this section.

"(C) TEMPORARY BASE EXCHANGES.—In the case of a region in which the supply of milk is less than the demand for milk, the producers in the region may arrange for temporary base exchanges between producers (for up to 1 year) in order to maintain a stable production base for the region.

"(D) TRANSFERS BETWEEN FAMILY MEMBERS.—Nothing in this Act shall be construed to restrict the transfer of bases between family members.

"(i) ALLOCATION OF NEW OR RETURNED BASE.—New or returned production base of a milk producer in a county shall be allocated, in order of priority, to:

"(1) A family member of the producer.

"(2) A new milk producer purchasing the cows or farms, or both.

"(3) A beginning milk producer in the county. At least 25 percent of all base held in the pool shall be offered to beginning milk producers.

"(4) An existing milk producer in the county who applies for base that would not cause the producer to produce more milk than the individual producer limitation established for the producer under subsection (i)(3).

"(5) An agricultural commodity producer in the county. In the case of a county in which at least 5 percent of the agricultural producers are members of socially disadvantaged groups who are or have expressed interest in becoming new milk producers or beginning milk producers, the Local Board shall transfer to the producers a percentage of the milk marketing base that is at least equal to the percentage of the agricultural producers in the county who are members of the social disadvantaged group.

"(6) If the Local Board established for a county is unable to allocate new or returned base to producers within the county, the base may be allocated by the Local Board—

"(A) to qualifying producers in the State; and

"(B) then to qualifying producers subject to the order.

"(7) If a Local Board is unable to allocate new base to qualifying producers subject to the order, the base shall be distributed equally among producers subject to other orders.

"(8) No new or returned base shall be allocated to nonfarm corporations or nonfarm absentee investors.

"(9) For purposes of this subsection, a milk producer who participated in the milk production termination program established by section 201(d)(3) of the Agricultural Act of 1949 (as added by section 101(b) of the Food Security Act of 1985 (Public Law 99-198; 99 Stat. 1363) may elect to be considered a new milk producer or a beginning milk producer.

"(j) PENALTIES FOR OVERPRODUCTION.—

"(1) IN GENERAL.—If a producer produces milk in excess of the base established for the producer, the producer shall be liable to the Secretary for a penalty that is equal to the product obtained by multiplying—

"(A) the quantity of milk produced by the producer in excess of the base; by

"(B) at the option of the Secretary—

"(i) a rate determined by the Secretary that will reduce the price received by the producer for excess production to the world market price for milk for the marketing year; or

"(ii) a rate equal to 75 percent of the minimum price for class II and III manufactured milk established under subsection (f)(2)(B), if the Secretary determines that the rate would achieve greater savings to the Federal Treasury.

"(2) ADDITIONAL ASSESSMENT.—In addition to the penalty imposed under paragraph (1), a producer described in paragraph (1) shall be liable to the Secretary for an additional assessment equal to the cost of processing, transportation, storage, and other charges incurred with respect to the excess production, as determined by the Secretary.

"(3) USE OF FUNDS.—The Secretary shall use all funds collected under this section for the purchase of milk and milk products for food assistance programs carried out by the Federal Government.

"(k) DETERMINATION OF INVENTORY.—In determining total national milk inventory levels for purposes of carrying out this section, the National Board shall—

"(1) calculate Commodity Credit Corporation purchases of milk and milk products on the basis of—

"(A) net Commodity Credit Corporation purchases of pounds of milk equivalent; less

"(B) Commodity Credit Corporation pounds of milk equivalent either sold to the commercial market or used for Federal Government programs; and

"(2) consider Commodity Credit Corporation purchases used in Federal Government programs as part of the national utilization of milk and milk products.

"(l) FOOD RESERVES AND COMMODITY DISTRIBUTION PROGRAMS.—In determining total national milk inventory levels for purposes of carrying out this section, the National Board shall—

"(1) maintain supplies of emergency reserves of milk and milk products that are adequate to support necessary long-term and emergency food relief programs;

"(2) not consider the reserves as surplus production; and

"(3) establish the reserve at a level of not less than 3,000,000,000 pounds of milk equivalent.

"(m) NATIONAL REFERENDUM.—

"(1) IN GENERAL.—Not later than 30 days after the date of enactment of this section, the Secretary shall conduct a referendum, by secret ballot, of all milk producers engaged in the production of milk for commercial use in the United States to determine whether a majority of the producers support the implementation of the milk supply management system established by this section.

"(2) CONTINUATION.—The milk supply management system shall continue to remain effective unless Congress approves a joint resolution disapproving the system.".

SEC. 3. SOLIDS CONTENTS OF BEVERAGE MILK.

Section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by adding at the end the following new subparagraph:

"(M)(i) Providing that—

"(I) all milk that is in final package form for beverage use shall contain not less than 8.7 percent milk solids not fat;

"(II) all lowfat milk that is in final package form for beverage use shall contain not less than 10 percent milk solids not fat; and

"(III) all skim milk that is in final package form for beverage use shall contain not less than 9 percent milk solids not fat.

"(ii) As used in this paragraph, the term 'milk' means sweet milk of cows.".

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this Act and the amendments made by this Act shall become effective on January 1, 1992.

(b) BASES.—Subsections (g) through (l) of section 8c-1 of the Agricultural Adjustment

Act (as added by section 2 of this Act) shall become effective on July 1, 1992.

(c) REFERENDUM.—Subsection (m) of section 8c-1 of the Agricultural Adjustment Act (as added by section 2 of this Act) shall become effective on the date of enactment of this Act.

(d) SOLIDS CONTENTS OF BEVERAGE MILK.—Section 8(c)(5)(M) of the Agricultural Adjustment Act (as added by section 3 of this Act) shall become effective on the date of enactment of this Act.

By Mr. BIDEN:

S. 1341. A bill to provide penalties for additional forms of credit and debit card fraud; to the Committee on the Judiciary.

CONSUMER PROTECTION AGAINST CREDIT CARD FRAUD ACT

Mr. BIDEN. Mr. President, today I am introducing the Consumer Protection Against Credit Card Fraud Act of 1991. This legislation updates and expands the protections against credit card fraud provided by the Credit Card Fraud Act of 1984.

Mr. President, the losses from credit card fraud are enormous. In 1982, the last year data was available prior to enactment of the Credit Card Fraud Act of 1984, the losses from the counterfeiting and alteration of VISA and Mastercard were $25 million. Despite the successful prosecution of crimes under that statute, credit card fraud losses of those same companies today have ballooned to $200 million annually. According to an estimate of the Federal Trade Commission, telemarketing fraud—much of which involves credit cards—produced losses in 1989 in excess of $1 billion.

In part, these enormous losses result from the appearance of a new generation of scams. The phony solicitation of credit cards over the phone and the laundering of credit card receipts have replaced the counterfeiting and alteration outlawed by the 1984 law. Effective prosecution of these new crimes requires that the earlier law be updated. By clarifying and expanding the 1984 Credit Card Fraud Act so that it covers telemarketing fraud and the laundering of credit card receipts, we can assist prosecutors in shutting down these new scams.

Mr. President, the Consumer Protection Against Credit Card Fraud Act amends section 1029 of the criminal code to cover three offenses not covered by current law. First, it outlaws solicitations for the purchase of a credit card without the authorization of the credit card company. Typically, an offer of a low-rate credit card is made to a consumer with no credit card or a poor credit rating. In exchange for a payment, sometimes as much as several hundred dollars, the defrauded consumer receives only a list of credit card issuers or an application—information available for free elsewhere.

Second, it establishes an offense for the fraudulent taking of payment via credit card for goods or services that are either never delivered or far inferior to those that were promised. Such frauds usually are perpetrated over the phone.

Third, it criminalizes the laundering of credit card receipts. This offense, referred to as a factoring scheme, typically involves the perpetrator of the fraud and a third-party intermediary acting as a broker. In this scam, a merchant with access to the credit card system is persuaded to submit fraudulent credit card sales slips. Policing by the credit card companies is ineffective because identifying the perpetrator of the fraud and denying him access to the system will not prevent submission of the phony receipts.

Mr. President, thousands of consumers are victimized by credit card fraud every year. Frequently, the perpetrators of credit card fraud prey on the elderly and their fears of insufficient savings. Sometimes the victims are individuals already struggling with a poor credit history or no credit history.

The banking industry also is victimized by credit card fraud. Financial institutions issuing credit cards generally reimburse their cardholders for losses caused by credit card fraud. Recently, some individual schemes have led to bank losses in excess of $1 million each.

Notwithstanding the available reimbursement, consumers continue to suffer from credit card fraud. Many consumer victims—either because of embarrassment, or because of a lack of awareness of available remedies—never report their losses to their credit card company, and they are not reimbursed.

Mr. President, the National Consumers League, the Consumer Federation of America, VISA, Mastercard, and their member financial institutions all strongly support this legislation. Simply by updating and clarifying current law, we can assist prosecutors and help victims. Many people are hurt by credit card fraud each year, and the dollar amounts lost to these crimes are enormous. We should act on this legislation quickly.

Mr. President, I ask for unanimous consent so that the full text of the Consumer Protection Against Credit Card Fraud Act of 1991 may be reprinted in the RECORD.

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

S. 1341

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 "Consumer Protection Against Credit Card Fraud Act of 1991".

SEC. 2. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH ACCESS DEVICES.

Section 1029 of title 18, United States Code, is amended—

(1) in subsection (a) by inserting after paragraph (4) the following new paragraphs:

"(5) knowingly and with intent to defraud effects transactions with one or more access devices issued to another person or persons to receive payment or any other thing of value during any one-year period the aggregate value of which is equal to or greater than $1,000;

"(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of—

"(A) offering an access devices; or

"(B) selling information regarding or an application to obtain an access device; or

"(7) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, one or more evidences or records of transactions made by an access device;".

SEC. 3. TECHNICAL AMENDMENTS.

Section 1029 of title 18, United States Code, as amended by section 2, is amended—

(1) in subsection (a) by striking "or" at the end of paragraph (3);

(2) in subsection (c)(1) by striking "(a)(2) or (a)(3)" and inserting "(a) (2), (3), (5), (6), or (7)"; and

(3) in subsection (e) by—

(A) striking "and" at the end of paragraph (5);

(B) adding "and" at the end of paragraph (6); and

(C) adding at the end thereof the following new paragraph:

"(7) the term 'credit card system member' means a financial institution that is a member of a credit card system, including a financial institution that is the sole credit card system member affiliated with a credit card issuer.".

By Mr. BREAUX:

S. 1342. A bill to amend title II of the Social Security Act to repeal the rule providing for termination of disabled adult child's benefits upon marriage; to the Committee on Finance.

EFFECT OF MARITAL STATUS ON ELIGIBILITY FOR SOCIAL SECURITY DISABILITY BENEFITS

• Mr. BREAUX. Mr. President, I rise to introduce legislation to address an inequity in the Social Security Act's coverage of disabled individuals.

A provision in the Social Security Act's disability insurance program—title II of the act—provides benefits to the disabled children of individuals who receive old age or disability insurance benefits. This is known as the disabled adult child benefit. These individuals receive a cash benefit and Medicare coverage. They are especially dependent on the health insurance coverage provided under Medicare—these individuals are severely disabled and have an extremely difficult time finding private health insurance. Even if they can find an insurer, premiums are likely to be very high.

Under current law, individuals who receive the disabled adult child benefit automatically lose their benefits if they get married, regardless of their income. This penalty is archaic and has outlived its usefulness. When it was written into the Social Security Act, society treated the disabled differently. The notion was that, upon

marriage, disabled individuals would leave their dependence relationship with the Federal Government only to enter into a relationship of dependence on a spouse. Today, we have come to realize that disabled persons can be productive members of society in their own right—they can marry and raise families and pursue happiness like everyone else. The automatic loss of benefits—especially of Medicare coverage—is a dramatic disincentive toward this goal.

Mr. President, the legislation that I am now introducing would repeal the provision which requires that disabled adult children lose their benefits when they marry.

Mr. President, one of my constituents, a man by the name of Jimmy Rick, brought this provision to my attention. Mr. Rick is an extraordinary man. He has been paralyzed from the neck down since he was 3 years old and has had a series of incredibly painful and debilitating operations over the course of his 44 years. Every night of his life he must sleep in an iron lung. Despite all of this, he drove his wheelchair 1,100 miles from Amite, LA, to Washington, DC, to bring to the attention of Congress the affect that the marriage provision has had on his life.

Jimmy Rick is the perfect example of why the loss of benefits due to marriage does not make sense. He and his wife, Dona had to wait 7 years before they could get married and adopt children. Mr. Rick was completely dependent on the Medicare coverage he had as a beneficiary. The couple could not afford to marry until Dona found a job with the U.S. Postal Service that carried the kind of health insurance coverage they needed. Since their marriage in May 1990, the Rick have adopted two children; Heidi, age 11 and Milton, age 13. They plan to adopt several more. The Rick's are now a growing and productive family. This archaic provision in the Social Security law only served to dalay this happy event for 7 long years.

Mr. President, I urge my colleagues to take a look at this legislation and consider how outdated the marriage requirement is. I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1342

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF RULE PROVIDING FOR TERMINATION OF DISABLED ADULT CHILD'S BENEFITS UPON MARRIAGE.

(a) IN GENERAL.—Section 202(d) of the Social Security Act (42 U.S.C. 402(d)) is amended—

(1) in paragraph (1)(D), by striking "or marries,";

(2) by striking paragraph (5); and

(3) in paragraph (6) by inserting "(other than by reason of death)" after "terminated", by striking "(provided no event specified in paragraph (1)(D) has occurred)", and by striking "the first month in which an event specified in paragraph (1)(D) occurs" in subparagraph (C) and inserting "the month in which the child's death occurs".

(b) CONFORMING AMENDMENTS.—

(1) Section 202(d) of such Act (as amended by subsection (a)) is further amended by redesignating paragraphs (6), (7), (8) and (9) as paragraphs (5), (6), (7), and (8) respectively.

(2) section 201(s)(2) of such Act (42 U.S.C. 402(s)(2)) is amended by striking "So much of subsections (b)(3), (c)(4), (d)(5), (g)(3), and (h)(4) of this section as precedes the semicolon," and inserting "Subsections (b)(3), (c)(4), (g)(3), and (h)(4)) of this section".

(3) Section 223(e) of such Act (42 U.S.C. 423(e)) is amended by striking "(d)(6)(A)(ii), (d)(6)(B)," and inserting "(d)(5)(A)(ii), (d)(5)(B)".

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 shall apply with respect to marriages occurring on or after May 1, 1991.•

By Mr. MITCHELL (for Mr. DECONCINI for himself, Mr. KOHL, and Mr. BOREN):

S. 1343. A bill to encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behelf of nonprofit organizations and governmental entities; to the Committee on the Judiciary.

VOLUNTEER PROTECTION ACT

• Mr. DECONCINI. Mr. President, I rise today with Senators BOREN and KOHL to introduce the Volunteer Protection Act of 1991. This legislation encourages States to provide protection to volunteers who donate their time for hundreds of nonprofit organizations. It is identical to the bill I introduced last Congress (S. 520). Senators KOHL, BOREN and I are committed to giving security to these greatly needed volunteers while they donate their time and effort for so many worthwhile causes.

Many volunteers believe they may be the subject of a lawsuit as a result of their volunteer activities. A recent poll of national, State and local volunteer organizations showed that over 60 percent of those polled had such fears. Potential volunteers are not getting involved, and nonprofit organizations are dropping valuable programs because of their concern about litigation. In fact, a 1988 Gallup Poll showed that one out of every seven nonprofit agencies had eliminated certain worthwhile programs because of their exposure to litigation. The situation is bad, and will get worse without legislation to provide liability protection to these volunteers. President Bush is pushing for more and more volunteer participation, yet the risk to these volunteers is great.

Ask the mountain rescue volunteer who was sued by the climber he risked his own life to save. The climber sustained spinal injuries in a 90-foot fall, and turned around and sued the volunteer for "reckless and negligent" rescue techniques. The suit was eventually dropped 2 years later, but only after draining the personal financial resources of the volunteer rescue worker.

Ask the little league coach who was sued by the parents of the child he coached. The child was struck in the eye by a fly ball that he misjudged while playing outfield. The parents argued their child was a natural shortstop, and sued the coach for negligently playing the child in an unfamiliar position. The case was settled out of court for $25,000.

The examples go on, but the effect is devastating. A large number of potential volunteers choose not to do so, while insurance costs for those who do continue to rise at alarming rates. The work force of 85 million volunteers who contribute 16.5 billion hours of service is threatened. As the 1988 Gallop Poll reported that over half of the organizations polled indicated a drop in the number of volunteers over the previous 3 years. In addition, 16 percent of volunteer leaders responding reported that they themselves had refused to sit on the board of a nonprofit organization due to concerns about liability.

While all 50 States have passed some form of volunteer protection legislation, the degree of protection is extremely varied. Some States protect all volunteers, while others cover only the organization executives. I believe the States should have the flexibility to enact protection they feel is appropriate, but these valuable volunteers need assurances that their financial stability is not threatened while they put their best efforts into helping others. This bill accomplishes both.

The bill is not mandatory but instead provides an incentive for the States to enact legislation. Those States who choose to enact legislation in compliance with the act are rewarded with a 1-percent increase in social service block grant funds.

Moreover, the bill allows certain exceptions to and conditions on the granting of immunity which the States may include while complying with the act. Specifically, a State may exclude protection from a volunteer who operates a motor vehicle and can also require the organization to provide a secure source of recovery for injured individuals. A State may also make the organization liable for the acts or omissions of its volunteers similar to State laws making an employer liable for the acts or omissions of an employee. Finally, State or local governments may still bring suit to enforce a Federal, State, or local law. A State is free to enact any of the above provisions, depending on its individual needs, while shielding its volunteer work force from potential liability.

If a State passes legislation in compliance with the terms of this bill, the volunteer will be protected from personal financial liability, as long as the

individual was acting in good faith within his/her official duties. This grants the necessary protection, but assures that the volunteer's efforts are in the interest of those supposedly benefited. Let me make it clear that this bill is not intended to prevent the injured party from obtaining redress, because they are still free to pursue their claim against the organization according to State law. Additionally, volunteers that act in a willful or wanton manner are not protected.

Mr. President, the volunteers of our Nation are in integral part of many nonprofit organizations. Their participation in these organizations, many of which are federally funded, is an essential part of our effort to reduce the Federal deficit. Without their valuable contributions, many Federal programs will be forced to fund additional paid positions, or cut back on greatly needed services. The bill will also provide a degree of uniformity and certainty among the several States. Should a State enact legislation in compliance with the act, volunteers in that State will know they are protected, and know the limitations on that protection.

Finally, this bill is officially supported by over 80 nonprofit organizations, in addition to being supported by the volunteer community as a whole.

Mr. President, I ask unanimous consent that the entire text of the bill I am submitting today be included in the RECORD.

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

S. 1343

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 "Volunteer Protection Act of 1991".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) within certain States, the willingness of volunteers to offer their services has been increasingly deterred by a perception that they thereby put personal assets at risk in the event of liability actions against the organization they serve;

(2) as a result of this perception, may nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, local governments, foundations, and other civic programs, have been adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating; and

(4) because Federal funds are expended on useful and cost-effective social service programs which depend heavily on volunteer participation, protection of voluntarism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal encouragement of State reform.

(b) PURPOSE.—It is the purpose of this Act to—

(1) promote the interests of social service program beneficiaries and taxpayers; and

(2) sustain the availability of programs and non-profit organizations and governmental entities which depend on volunteer contributions

by encouraging reasonable reform of State laws to provide protection from personal financial liability to volunteers serving with nonprofit organizations and governmental entities for actions undertaken in good faith on behalf of such organizations.

SEC. 3. NO PREEMPTION OF STATE TORT LAW.

Nothing in this Act shall be construed to preempt the laws of any State governing tort liability actions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

(a) LIABILITY PROTECTION FOR VOLUNTEERS.—Except as provided in subsections (b) and (d), any volunteer of a nonprofit organization or governmental entity shall incur no personal financial liability for any tort claim alleging damage or injury from any act or omission of the volunteer on behalf of the organization or entity if—

(1) such individual was acting in good faith and within the scope of such individual's official functions and duties with the organization or entity; and

(2) such damage or injury was not caused by willful and wanton misconduct by such individual.

(b) CONCERNING RESPONSIBILITY OF VOLUNTEERS WITH RESPECT TO ORGANIZATIONS.—Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) NO EFFECT ON LIABILITY OF ORGANIZATION.—Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to injury caused to any person.

(d) EXCEPTIONS TO VOLUNTEER LIABILITY PROTECTION.—A State may impose one or more of the following conditions on, and exceptions to, the granting of liability protection to any volunteer of an organization or entity required by subsection (a):

(1) The organization or entity must adhere to risk management procedures, including mandatory training of volunteers.

(2) The organization or entity shall be liable for the acts or omissions of its volunteers to the same extent as an employer is liable, under the laws of that State, for the acts or omissions of its employees.

(3) The protection from liability does not apply if the volunteer was operating a motor vehicle or was operating a vessel, aircraft, or other vehicle for which a pilot's license is required.

(4) The protection from liability does not apply in the case of a suit brought by an appropriate officer of a State or local government to enforce a Federal, State, or local law.

(5) The protection from liability shall apply only if the organization or entity provides a financially secure source of recovery for individuals who suffer injury as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

SEC. 5. CERTIFICATION REQUIREMENT AND ADJUSTMENT OF SOCIAL SERVICES BLOCK GRANT ALLOTMENTS.

(a) CERTIFICATION AND BLOCK GRANT ALLOTMENTS.—In the case of any State which certifies, not later than 2 years after the date of the enactment of this Act, to the Secretary of Health and Human Services that it has enacted, adopted, or otherwise has in effect State law which substantially complies with section 4(a), the Secretary shall increase by 1 percent the fiscal year allotment which would otherwise be made to such State to carry out the Social Services Block Grant Program under title XX of the Social Security Act.

(b) CONTINUATION OF INCREASE.—Any increase made under subsection (a) in an allotment to a State shall remain in effect only if the State makes a certification to the Secretary of Health and Human Services, not later than the end of each 1-year period occurring successively after the end of the 2-year period described in subsection (a), that it has in effect State law which substantially complies with section 4(a).

SEC. 6. DEFINITIONS.

For purposes of this Act—

(1) the term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation, or any other thing of value in lieu of compensation, for such services (other than reimbursement for expenses actually incurred or honoraria not to exceed $300 per year for government service), and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer;

(2) the term "nonprofit organization" means any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code;

(3) the term "damage or injury" includes physical, nonphysical, economic, and noneconomic damage; and

(4) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory of possession of the United States, or any political subdivision of any such State, territory, or possession.●

By Mr. AKAKA (for himself, Mr. ADAMS, and Mr. CRANSTON):

S. 1344. A bill to require the Secretary of the Interior to conduct a study of nationally significant places in Japanese-American history; to the Committee on Energy and Natural Resources.

JAPANESE-AMERICAN NATIONAL HISTORIC LANDMARK THEME STUDY ACT

Mr. AKAKA. Mr. President, we cannot change history, but we can learn from it. All too often we seek solace in selectively absolving our national conscience of responsibility for past deeds and institutions which evidence injustice and prejudice. This is understandable since these ugly embarrassments directly contradict the democratic ideals and cherished values upon which our country was founded.

One such unfortunate period in American history was when over 100,000

Japanese-Americans and alien residents were interned during World War II. To ensure that we, and future generations, will never forget this denial of constitutionally protected civil liberties, I am introducing the Japanese-American Landmark Theme Study Act. I am pleased to have the senior Senator from California [Mr. CRANSTON] and the senior Senator from Washington, [Mr. ADAMS] join me in sponsoring this bill.

The legislation I introduce today would require the Secretary of the Interior to conduct a national historic landmark theme study of all key sites that were a part of this sad and shameful chapter in American history when Japanese-Americans were denied civil rights. On the basis of this study, the National Park System Advisory Board would evaluate and rank possible historic landmarks and recommend sites for designation to the Secretary of the Interior. Currently, only one relocation camp, the Manzanar War Relocation Center in California, is a national historic landmark.

In 1942, President Roosevelt signed Executive Order 9066, which began the relocation of over 120,000 Japanese-American citizens and resident aliens living in Hawaii and the west coast. Within months, thousands of Japanese-Americans were forced to abandon their homes and businesses, to resettle in internment and temporary detention camps.

The nine internment camps to be studied, located in Arizona, Arkansas, California, Colorado, Idaho, Utah, and Wyoming became prisons for the evacuated residents who were forbidden from leaving the camps without approval from military authorities. Fifteen other temporary detention camps were spread through Washington, Oregon, California, and Arizona.

Mr. President, solely on the basis of race, these people, regardless of citizenship or loyalty, without proof or justification, were denied their civil rights. In addition to having their personal liberty denied, these Americans were deprived of other basic constitutional guarantees and fundamental human rights. Freedom of speech and assembly was denied. The right to vote in Federal and local elections was denied. Religious freedom was restricted.

My bill also requires that the theme study examine other sites of significance in Japanese-American history during World War II. This would include Camp Shelby, MS, where the famed 442d Infantry Regimental Combat Team was trained, and Camp McCoy, WI, training installation for the 100th Infantry Battalion. Japanese-American volunteers in both units served with distinction and valor and are among the most decorated teams in American history. I can think of no greater example of patriotism and love of country than the service offered by those in defense of a Constitution and Nation that failed them.

Mr. President, in 1988, after 46 years of hindsight and unjust recrimination, America recognized its act of grave injustice against Japanese-Americans and affirmed its commitment to "liberty and justice for all" in the enactment of the Civil Liberties Act of 1988.

Now, by designating these significant sites as national historic landmarks, we commemorate this unfortunate period in our Nation's history. It is imperative that we remember the consequences of allowing hysteria and racial prejudice to override an individual's constitutional rights, and to teach this lesson to our children, if we are to avoid a repetition of our disgraceful mistakes of the past.

By Mr. LEAHY (for himself, Mr. PELL, Mr. STEVENS, and Mr. DECONCINI):

S. 1345. A bill to amend the National Film Preservation Act of 1988 to modify the composition and procedures of the National Film Preservation Board and the Librarian of Congress on preserving national films, and for other purposes; to the Committee on Rules and Administration.

NATIONAL FILM PRESERVATION ACT

Mr. LEAHY. Mr. President, I am today introducing, for myself, Senator PELL, Senator STEVENS, and Senator DECONCINI, legislation to reauthorize and extend the National Film Preservation Act of 1988.

WHY FILM PRESERVATION MATTERS

Motion pictures are central to the American experience. Most of us in this body grew up looking forward to the next Saturday afternoon matinee. Generations around the world have learned about America and America's dreams from watching Hollywood's creations. Movies are the indigenous American art form.

Think for a moment about some of the films selected under the 1988 act of inclusion in the National Film Registry—movies like "Casablanca," "Citizen Kane," "High Noon," "It's a Wonderful Life," and "Sunset Boulevard"—and it becomes instantly clear why the preservation of our film heritage is so important. It is a heritage admired and envied the world over, a heritage that tells us about who we are and who we were. But it is also a perishable heritage that will not endure unless we take steps to save it.

Because of deterioration or loss, more than half the feature films produced in the United States before 1951 have already been lost, including 80 percent of our silent movies. And many films produced after 1951 are deteriorating rapidly.

The good news is that the need to preserve our films has become increasingly clear in recent years to professionals and filmgoers alike. For the studios, presevation has fortunately become a question of economics. They see now as they did not see 10 or 15 years ago the value of their film libraries. Movies that have gathered dust for years can still have value on cable or home video. For moviegoers the pleasure of seeing a sparkling, restored version of "Lawrence of Arabia" or "Spartacus" is reason enough for the work of preservation.

The legislation we introduce today, with active support of the Librarian of Congress, would reauthorize the National Film Preservation Act of 1988, with certain modifications.

THE 1988 ACT

In essence, the 1988 act:

Created a National Film Preservation Board, with representatives from industry and the academic community, under the leadership of the Librarian of Congress;

Empowered the Board to select 25 "culturally, historically, or esthetically significant" films each year for inclusion in a new National Film Registry;

Stipulated that films selected for the Registry were entitled to bear a seal indicating such selection;

Required movies selected for the Registry to bear a label if exhibited in a "materially altered" form; and

Directed the Board to establish guidelines for determining whether a film has been materially altered.

THE NEW REAUTHORIZATION BILL—SUMMARY

Our new legislation has shifted away from labeling to an expanded focus on preservation. There are many ongoing film preservation efforts in this country, carried out by the Library of Congress, the National Archives, the Museum of Modern Art, laboratories such as the Eastman House, Turner Broadcasting, the Hollywood studios and others. But there is little coordination. Under the bill, the primary mission of the Librarian and the Board will be to develop and coordinate a National Film Preservation Program beginning with a year-long study to ascertain the current state of film preservation in America.

The Librarian and the Board will also continue to select 25 classic films for inclusion in the National Film Registry, using their best efforts to ensure that there are high quality versions of these films in existence, or, if not, that the necessary preservation and restoration work is done. The range of films that may be selected has been broadened to include short subjects and documentaries.

The new bill also eliminates the labeling provisions of the 1988 act, so that the Librarian and the Board can concentrate on preservation.

When the 1988 law was enacted—as an amendment to an appropriation bill—the labeling provisions were not given the full consideration they deserve, in the proper legislative committees of Congress. Labeling inevitably raises

the question of whether persons other than copyright holders—such as film directors or writers—should retain any remedial rights in their works. This is a complex, moral rights issue that ought to be fully considered by the House and Senate Judiciary Committees before being enacted into law.

Moreover, as the Librarian of Congress recognizes, the difficult and contentious determinations required in administering a labeling regime—such as what constitutes a "material alteration," when such an alteration has been made and what kind of label should be applied—are not the sort that the Librarian is qualified to make.

Finally, a broad consensus of the film community agrees that the important contribution this bill can make to film preservation should not be put at risk by linkage to the controversial labeling question.

This legislation redirects and broadens the focus of the National Film Preservation Act to the useful and important business of preservation. We look forward to swift action on this bill so that it can be enacted before the 1988 act sunsets at the end of September.

I ask unanimous consent that the bill together with a section-by-section analysis and a statement of Senator DECONCINI be printed in the RECORD.

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

S. 1345

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 "National Film Preservation Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) motion pictures are an indigenous American art form that has been emulated throughout the world;

(2) certain motion pictures represent an enduring part of our Nation's historical and cultural heritage;

(3) because of deterioration or loss, less than one-half of the feature-length films produced in the United States before 1951, including only 20 percent of the silent films, still exist and many of the films produced after 1951 are deteriorating at an alarming rate; and

(4) it is appropriate and necessary for the Federal Government to—

(A) recognize motion pictures as a significant American art form deserving of protection, including preservation and restoration; and

(B) establish a National Film Registry of films that represent an enduring part of our national, historical, and cultural heritage, which Registry should be established and maintained in the Library of Congress; and

(5) to the extent possible, and with the permission of the copyright owners, films selected for inclusion in the National Film Registry should be made widely available to the American public in their Registry versions.

SEC. 3. NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS.

The Librarian of Congress (hereafter in this Act referred to as the "Librarian") shall establish a National Film Registry under the provisions of this Act, for the purposes of recognizing and preserving films that are culturally, historically, or aesthetically significant.

SEC. 4. DUTIES OF THE LIBRARIAN OF CONGRESS.

(a) DUTIES.—The Librarian shall, after consultation with the Board established under section 5—

(1) after completion of the study required under section 12, establish a comprehensive national film preservation program for films, in conjunction with other major film archives, with the objectives of—

(A) coordinating activities to assure that ongoing efforts of archivists and copyright owners, and others in the public and private sector are effective and complementary;

(B) generating public awareness of and support for those activities;

(C) increasing accessibility of films for educational purposes; and

(D) improving nationwide activities in the preservation of works in other media such as videotape;

(2) establish criteria and procedures pursuant to which films may be included in the National Film Registry, except that no film shall be eligible for inclusion in the National Film Registry until 10 years after such film's first publication;

(3) establish procedures whereby the general public may make recommendations to the Board regarding the inclusion of films in such National Film Registry;

(4) establish procedures for the examination by the Library of Congress of copies of films named for inclusion in the National Film Registry to determine eligibility for the use of the seal of the National Film Registry;

(5) determine which films satisfy the criteria developed under paragraph (2) and qualify to be included in the National Film Registry, except that the Librarian shall not select more than 25 films each year for inclusion in such Registry;

(6) publish in the Federal Register the name of each film that is selected for inclusion in the National Film Registry;

(7) provide a seal to indicate that a film is included in the National Film Registry;

(8) to the extent practicable, ensure, subject to the rights of copyright owners, that there is a Registry version of each film selected for the National Film Registry;

(9) publish in the Federal Register the standards for preservation or restoration that shall qualify films for use of the seal; and

(10) submit an annual report to the appropriate committees of the Congress, listing films included in the National Film Registry and describing the activities of the Board.

(b) SEAL.—A seal provided for a film under subsection (a)(7) may be used on any copy of the Registry version of such film as defined in section 11(6). Before such seal may be used, the Library of Congress shall have examined and approved the print from which the copy was made. In the case of copyrighted works, only the copyright owner or his duly authorized licensee may place or authorize the placement of a seal on a copy of a film selected for inclusion in the National Film Registry. In the case of works no longer protected by copyright, the Library may affix a seal. The person authorized by this subsection to place a seal on a copy of a film selected for inclusion in the National Film Registry may accompany such seal with the following language: "This film is included in the National Film Registry, which is maintained by the Library of Congress, and was preserved under the National Film Preservation Act of 1991.".

SEC. 5. NATIONAL FILM PRESERVATION BOARD.

(a) NUMBER AND APPOINTMENT.—(1) The Librarian shall establish in the Library of Congress a National Film Preservation Board to be comprised of 17 members, selected by the Librarian in accordance with the provisions of this section. Each organization listed in subparagraphs (A) through (P) shall submit a list of not less than three qualified candidates to the Librarian. With the exception of the member listed in subparagraph (Q), the Librarian shall appoint 1 member from each such list submitted by the following organizations, and shall designate from that list an alternate who may attend those meetings to which the individual appointed to the Board cannot attend. Such organizations shall include—

(A) the Academy of Motion Picture Arts and Sciences;

(B) the Directors Guild of America;

(C) the Writers Guild of America East and West, appointed in accordance with paragraph (2);

(D) the National Society of Film Critics;

(E) the Society for Cinema Studies;

(F) the American Film Institute;

(G) the Department of Theatre, Film and Television, College of Fine Arts at the University of California, Los Angeles;

(H) the Department of Film and Television at New York University Tisch School of the Arts;

(I) the University Film and Video Association;

(J) the Motion Picture Association of America;

(K) the National Association of Broadcasters;

(L) the Alliance of Motion Picture and Television Producers;

(M) the Screen Actors Guild of America;

(N) the National Association of Theater Owners;

(O) the American Society of Cinematographers;

(P) the United States Members of the International Federation of Film Archives; and

(Q) a member at large.

(2) Each organization under paragraph (1)(C) shall nominate 3 candidates. The Librarian shall appoint a candidate from 1 organization as a member of the Board, and shall select a candidate from the other organization as an alternate.

(3) The member at large listed in paragraph (1)(Q) shall be chosen by the Librarian from names submitted by organizations in the film industry, creative artists, producers, film critics, film preservation organizations, academic institutions with film study programs, and others with knowledge of copyright law and of the importance, use, and dissemination of films. The Librarian shall also select from the names submitted in this paragraph an alternate member at large who may attend those meetings which the member at large cannot attend.

(b) CHAIRPERSON.—The Librarian shall appoint 1 member to serve as Chairperson.

(c) TERM OF OFFICE.—(1) The term of each member of the Board shall be 3 years. There shall be no limit to the number of terms that any individual member may serve.

(2) A vacancy on the Board shall be filled in the manner prescribed by the Librarian,

except that no entity listed in subsection (a) may have more than 1 nominee on the Board at any time.

(d) QUORUM.—Nine members of the Board shall constitute a quorum, but a lesser number may hold hearings.

(e) BASIC PAY.—Members of the Board shall serve without pay. While away from their home or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5701 of title 5, United States Code.

(f) MEETINGS.—The Board shall meet at least once each calendar year. Meetings shall be at the call of the Librarian.

(g) CONFLICT OF INTEREST.—The Librarian shall establish rules and procedures to address any potential conflict of interest between a member of the Board and responsibilities of the Board.

SEC. 6. POWERS OF THE BOARD.

(a) IN GENERAL.—The Board may, for the purpose of carrying out its duties, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Librarian and Board considers appropriate.

(b) NOMINATION OF FILMS.—The Board shall consider, for inclusion in the National Film Registry, nominations submitted by the general public as well as representatives of the film industry, such as the guilds and societies representing actors, directors, screenwriters, cinematographers and other creative artists, producers, film critics, film preservation organizations and representatives for academic institutions with film study programs.

(c) SELECTION OF FILMS.—The Board shall review nominations of films submitted to it for inclusion in the National Film Registry and consult with the Librarian and make recommendations with respect to the selection of films for the Registry and the preservation of these and other films that are culturally, historically, or aesthetically significant. The Board shall recommend and the Librarian shall select not more than 25 films a year for inclusion in the Registry.

SEC. 7. NATIONAL FILM REGISTRY COLLECTION OF THE LIBRARY OF CONGRESS.

(a) COPY OF FILM.—The Librarian shall endeavor to obtain, by gift from the owner, an archival quality copy of a Registry version of each film included in the National Film Registry. Whenever possible the Librarian shall endeavor to obtain the best surviving materials, including preprint materials.

(b) ADDITIONAL MATERIALS.—In addition, the Librarian shall endeavor to obtain, for educational and research purposes, additional materials related to each film, such as background materials, production reports, shooting scripts (including continuity scripts) and other similar materials. Such materials shall become a part of the collection described in subsection (d).

(c) PROPERTY OF THE UNITED STATES.—All copies of films, and other materials, received by the Librarian shall become the property of the United States Government, except that nothing in this Act shall infringe on the copyright owners' rights under title 17, United States Code.

(d) REGISTRY COLLECTION.—All copies of films received by the Librarian shall be maintained in a special collection in the Library of Congress to be known as the "National Film Registry Collection of the Library of Congress". The Librarian shall, by regulation, subject to the limitations of title 17, United States Code—

(1) provide for reasonable access to films in such collection for scholarly and research purposes; and

(2) to the extent practicable, and with the permission of the copyright owners, endeavor to exhibit or encourage the exhibition of such films to the public.

SEC. 8. SEAL OF THE NATIONAL FILM REGISTRY.

(a) USE OF THE SEAL.—No person shall knowingly distribute or exhibit to the public a copy of a film which bears a seal as described under section 4(a)(7) if such film—

(1) is not included in the National Film Registry; or

(2) is included in the National Film Registry, but the print from which such copy was made was not examined and approved for use of the seal by the Library of Congress pursuant to section 4(b).

(b) EFFECTIVE DATE OF THE SEAL.—The use of the seal as described in this section shall be effective for each film after publication by the Librarian in the Federal Register of the name of that film selected for inclusion in the National Film Registry.

SEC. 9. REMEDIES.

(a) JURISDICTION.—The several district courts of the United States shall have jurisdiction, for cause shown, to prevent and restrain violations of section 8 of this Act upon the application of the Librarian to the Attorney General of the United States acting through the several United States Attorneys in their several districts.

(b) RELIEF.—(1) Except as provided in paragraph (2), relief shall be limited to the prospective removal of the seal of the National Film Registry.

(2) In any case in which the Librarian finds a pattern or practice of the willful violation of this Act, the United States District Courts may order civil fines of not more than $10,000 and appropriate injunctive relief.

(c) EXCLUSIVE REMEDIES.—The remedies provided under this section shall be the exclusive remedies under this Act or any other Federal or State law, regarding the use of the seal as described by section 4(a)(7).

SEC. 10. STAFF OF BOARD; EXPERTS AND CONSULTANTS.

(a) STAFF.—The Librarian may appoint and fix the pay of such personnel as the Librarian considers appropriate.

(b) EXPERTS AND CONSULTANTS.—The Librarian may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum rate of basic pay payable for GS-15 of the General Schedule, and in no case may a Board member be paid as an expert or consultant.

SEC. 11. DEFINITIONS.

For purposes of this Act:

(1) The term "Board" means the National Film Preservation Board.

(2) The term "copy" used in reference to a film means a copy fixed on film stock, not on other media such as videotapes or laser disks.

(3) The term "film" means a motion picture as defined in section 101 of title 17, United States Code, except that such term excludes any works not originally fixed on film stock, such as videotapes or laser disks.

(4) The term "Librarian" means the Librarian of Congress.

(5) The term "publication" means a publication as defined in section 101 of title 17, United States Code.

(6) The term "Registry version" means, with respect to a film, the version of the film first published or as complete a version as bona fide preservation and restoration activities by the Library of Congress or another archive acting pursuant to section 4 can compile.

SEC. 12. STUDY BY THE LIBRARIAN OF CONGRESS.

The Librarian, after consultation with the Board, shall conduct a study on the state of film preservation and restoration, including the activities of the Library of Congress and the other major film archives in the United States. The Librarian shall consult with film archivists, educators and historians, copyright owners, film industry representatives, including those involved in the preservation of film, and others involved in activities related to film preservation. No later than 1 year after the date of enactment of this section, the Librarian shall submit to the Congress a report containing the results of the study conducted under this section.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Library of Congress, such sums as are necessary to carry out the provisions of this Act, but in no fiscal year shall such sum exceed $250,000.

SEC. 14. EFFECTIVE DATE.

The provisions of this Act shall be effective on the date of the enactment of this Act through September 30, 1997. The provisions of this Act shall apply to any copy of any film, including films selected for inclusion in the National Film Registry under the National Film Preservation Act of 1988. Films selected for the National Film Registry under the National Film Preservation Act of 1988 shall be deemed to have been selected under this Act.

SEC. 15. REPEAL.

The National Film Preservation Act of 1988 (2 U.S.C. 178 et seq.) is repealed.

SECTION-BY-SECTION ANALYSIS OF NATIONAL FILM PRESERVATION ACT OF 1991

Section 1 of the bill sets forth its title, the "National Film Preservation Act of 1991."

Section 2 sets forth Congress's findings that it is appropriate for the federal government to recognize the importance of film preservation and to establish a National Film Registry of films that represent an enduring art of our national, historical and cultural heritage.

Section 3 directs the Librarian of Congress to establish a National Film Registry.

Section 4(a) sets forth the duties of the Librarian of Congress, which include developing a comprehensive national film preservation program; establishing criteria for the selection of films for the Registry; providing a seal to indicate that a film has been selected for the Registry; and ensuring, to the extent practicable, that a properly preserved and restored version exists of each Registry film.

Section 4(b) sets forth the rules for the use of a seal indicating that a film has been selected for the Registry.

Section 5 directs the Liberarian to establish the National Film Preservation Board, describes the composition of the Board and sets forth provisions relating to the Board's functioning, including quorum requirements, meetings and terms of office.

Section 6 sets forth the powers of the Board, pertaining mostly to its role in advising the Librarian of Congress on the selection of films for inclusion in the National Film Registry.

Section 7 directs the Librarian to endeavor to obtain archive quality copies of the films selected for the National Film Registry, together with related background materials.

Section 8 makes clear who may and who may not use the seal.

Section 9 sets forth remedies available against persons who use the seal in contravention of section 8.

Section 10 authorizes the Librarian to appoint such staff as he deems appropriate and to procure the services of experts and consultants.

Section 11 sets forth definitions.

Section 12 directs the Librarian to conduct a study on the state of film preservation and restoraton activities in the United States, to be completed within one year and submitted to Congress.

Section 13 authorizes the appropriation of up to $250,000 per year to the Library of Congress, the same amount as in the 1988 Act.

Section 14 makes the Act effective from the date of enactment through September 30, 1997, and makes clear that films selected under the National Film Preservation Act of 1988 shall be deemed to have been selected under the 1991 Act.

Section 16 repeals the 1988 Act.

STATEMENT OF SENATOR DECONCINI

Mr. President, I am pleased to cosponsor the National Film Preservation Act of 1991. Like the 1988 law this bill amends, it advances a worthy purpose, and it has been written to avoid problems that surrounded enactment of the earlier Film Preservation Act. I applaud the efforts of my Judiciary Committee colleague, Senator Leahy, to produce a well-crafted bill in consultation with the Librarian of Congress.

American motion pictures are a significant part of our cultural heritage, and we must promote efforts, both by the government and by private interests, to honor them as an art form and to preserve them. That was the impetus behind the 1988 Film Preservation Act: it established the National Film Preservation Board to select 25 films each year to be included in the National Film Registry. The 75 motion pictures selected so far form an enduring part of our national, cultural legacy.

But one of the centerpieces of the present law is a labelling requirement that has been the source of a great deal of controversy and misunderstanding. The law now requires distributors and theater owners to affix a label to selected films if they are "colorized" or otherwise "materially altered." The meaning of these terms was a source of much dispute during the debate on the 1988 Act and continues to cause confusion today.

The 1991 amendments will eliminate the disputes that emerged over the interpretaton of that vague term. Instead of the label, original and complete copies of films (Registry Copies) selected for the Registry may display a seal of the Library of Congress. The bill no longer requires film distributors, theater owners or other private parties to affix a government-mandated label. It will no longer compel the government, through its enforcement of the label requirement, to interfere in an activity that is protected by the First Amendment.

This bill reauthorizes the Board for another six years so it may continue to select American films for the Registry, and refocuses the activities of the Board and the Librarian on more pressing needs: the preservation of American motion pictures. More than half of all American films produced before 1951, including 80 percent of silent films, no longer exist. By authorizing the Librarian and the Board to develop a comprehensive national film preservation program and to coordinate film preservation efforts nationwide, the bill will help ensure that these fragile masterpieces of American culture will be enjoyed by generations to come.

By Mr. SYMMS (for himself, Mr. DOLE, Mr. DASCHLE, Mr. BAUCUS, Mrs. KASSEBAUM, Mr. BURNS, and Mr. SIMPSON):

S. 1346. A bill to amend the Internal Revenue Code of 1986 to provide for a 50 percent of occupancy rule with respect to the valuation of seats on corporate aircraft on a legitimate business flight when those seats would have otherwise gone unoccupied; to the Committee on Finance.

TAX TREATMENT OF TRAVEL ON COMPANY AIRCRAFT

• Mr. SYMMS. Mr. President, I am introducing legislation to clarify an area of the Tax Code that has allowed the Internal Revenue Service to publish an unworkable regulation. This legislation would replace the current 50 percent of capacity rule with the more reasonable 50 percent of occupancy rule with respect to individuals flying on corporate aircraft as hitchhikers, that is, filling seats that would otherwise go empty.

This bill has a history of support in the Finance Committee and in the Senate. Similar language was agreed to by the Finance Committee in 1989 as part of the budget reconciliation legislation for fiscal year 1990, but it was dropped, along with several other meritorious changes, when the Senate decided to adopt a barebones package.

The problem this bill addresses first arose in 1984 as a result of the Congress attempting to deal with another, related problem. Prior to 1984, many companies across the country had a longstanding practice of allowing employees and their families to fly on a space available basis in otherwise unoccupied seats when the company plane was on a legitimate business trip. No income was imputed to these employees or to their family members and, generally, there was no challenge by the IRS. If there was ever a tax dispute, it was usually whether the aircraft as on a valid business flight, not whether a hitchhiker on a business flight ought to report income.

In 1983, the Treasury Department was in the process of enacting a number of regulations tightening up on the definition of tax-exempt fringe benefits. As part of this process, Treasury concluded that these hitchhiker-flyers had to figure out the value of the flight and include it in their taxable income. Treasury also concluded that airline employees who were allowed by their employer or other airlines to fly for free or at reduced rates had to include the value of the savings in their taxable income.

In 1984, Congress codified the tax treatment of many types of fringe benefits in an attempt to reverse Treasury's regulations and to regain control over this area of the Tax Code from the Treasury Department. One of the fringe benefits that was codified as tax free in 1984 was the tax treatment of free or reduced fare rides by airline employees.

As so often happens in the making of tax policy, clarifying one area created uncertainty in other areas. In this case, clarifying the treatment for airline employees created an implication that hitchhikers on corporate aircraft were taxable on the value of their flights.

After the fringe benefit legislation was enacted with no explicit treatment of the hitchhiker problem, the Treasury Department published regulations to establish values for flights by all hitchhikers on company aircraft. The regulations were very controversial, and the Senate explicitly rejected them in a recorded vote in 1985.

Recognizing that its position had been contrary to congressional intent, the Treasury Department tried once again with new temporary and proposed regulations. In letters to Senator DOLE, Senator PACKWOOD, and Congressman ROSTENKOWSKI, then-Assistant Treasury Secretary Pearlman conceded that Congress did not intend, at least in some circumstances, to tax the value of these flights. However, the letter provided the Treasury would establish a new 50 percent of capacity rule. Under this rule, the Treasury would value these flights at zero for tax purposes only if 50 percent of the seats of the aircraft were occupied by employees flying for business reasons even though there was no legislative history to support this position.

The 50 percent of capacity rule was an effort at compromise between the Treasury and the Congress and was also intended to make the job of the IRS easier. It was a bright line test to determine if a flight was being made for business reasons. I think it perfectly fine to try to make the IRS' job easier, but not when it runs contrary to congressional intent.

Moreover, while the test may make life easier for IRS auditors, the test itself is irrational and inconsistent with business practice. Having 50 percent of the available seats occupied by employees does not, in itself, make a flight a business flight. Some or all of those employees might not be flying to further company business. Thus the taxpayer must still establish facts to prove the flight was a business flight.

As a practical matter, we all know that a plane can be on a real business trip with only one passenger. I know in my State a company often will have to send an engineer or other expert to a remote mining site, for example, and no one is ever going to question whether or not the trip is for business reasons. It wouldn't matter if the plane could have held 8 or 10 passengers. If the company needed that one employee

at the site, the flight was a business flight.

Or suppose the chairman of the board was taking the corporate jet to a board meeting, or a shareholder meeting, or a meeting with the company's bankers. If he's the only one on the plane other than the pilot, I don't think anyone would question that this is a business trip. Is it any less of a business trip if other seats on the jet are filled?

If the issue is whether the flight is made to transact business, the 50 percent of capacity rule is not an appropriate way to make the determination. If there is some question as to whether the flight itself accomplishes some business purpose, that is a matter for IRS auditors.

The legislation I am proposing is a very measured response. By replacing the 50 percent of capacity rule with a 50 percent of occupancy rule hitchhikers will be able to ride for free only if for every hitchhiker there is at least one person traveling on business. Because this is a modest response, there is little revenue lost to the Treasury.

I would like to go further and exempt all hitchhikers as long as the aircraft has at least one person traveling on business, but the revenue consequences of such a change lead me to doubt that such a change could be enacted, so I have chosen a more modest approach.

As a matter of good policy, the Treasury Department should change their administrative rule to adopt the 50 percent occupancy rule. I have no reason to believe Treasury will act, so I encourage my colleagues to cosponsor this legislation so the Congress can require the change.●

By Mr. PELL (for himself and Mr. CHAFEE):

S. 1347. A bill to provide emergency assistance to the State of Rhode Island to stabilize the banking system in the State and provide liquidity for the benefit of depositors at State banks and credit unions in receivership; to the Committee on Banking, Housing, and Urban Affairs.

RHODE ISLAND EMERGENCY ASSISTANCE ACT

● Mr. PELL. Mr. President, today my colleague Senator CHAFEE and I are introducing the Rhode Island Emergency Assistance Act of 1991. This bill is the companion measure to a bill introduced in the House of Representatives by House Banking, Finance and Urban Affairs Committee Chairman HENRY GONZALEZ. The bill is cosponsored in the House of Representatives by Rhode Island Congressmen JACK REED and RON MACHTLEY. The bill is also cosponsored by Congressman BARNEY FRANK of Massachusetts and Congressman GERALD KLECZKA of Wisconsin.

Before I describe the details of this bill, I would like to thank Chairman GONZALEZ for his efforts to solve a very serious problem in the State of Rhode Island. Chairman GONZALEZ has many issues before his committee right now, including a major revision of our Nation's banking laws. Despite the busy agenda of his committee, Chairman GONZALEZ has demonstrated true compassion for the terrible suffering that is taking place in Rhode Island.

Mr. President, on January 1 of the this year, Rhode Island Governor Bruce Sundlun was forced to close 45 banks and credit unions insured by the Rhode Island Share and Deposit Insurance Corporation [RISDIC]. Rhode Islanders had placed their money in RISDIC-insured institutions believing that their money was safe and protected from loss. RISDIC created this false impression through misleading television commercials and brochures stating that RISDIC insurance was an adequate safety net for depositor funds.

Many parties share the blame for allowing this deceit to go unchecked and ultimately end in disaster: The management of the effected banks and credit unions, the executive and legislative branches of State government and the appropriate State supervisory agencies.

It is easy to assign blame in this crisis. The problem comes when Rhode Island is faced with picking up the pieces of this financial disaster and making depositors whole once again. Of the original 45 RISDIC-insured banks and credit unions closed by the Governor, a dozen remain closed after 5½ months. These closed institutions represent almost half a billion dollars in frozen depositor assets. Out of a State population of about 1 million people, it is estimated that between 150,000 and 200,000 people have funds that remain frozen in closed banks and credit unions.

Rhode Island has been forced to come to grips with this crisis while suffering through a terrible fiscal upheavel. Rhode Island unemployment has hovered at 7 percent or higher. The State budget deficit is over $200 million and State income taxes have increased 20 percent.

The Rhode Island banking crisis is nothing short of an economic disaster that has hit Rhode Island at a time when it does not have the resources to pick up the pieces. Caught in the middle of this tragedy are the depositors. Many of the depositors of these closed institutions are older people who have worked hard all their lives to put a modest amount of money aside for retirement. These depositors put their money and their trust in neighborhood banks and credit unions that served entire communities. This is especially true of Marquette Credit Union in Woonsocket, RI. Woonsocket is in the northern part of Rhode Island and it seems that most of the residents of this city had funds in Marquette.

The devastation and anguish that has come upon Rhode Island communities like Woonsocket is certainly comparable to the suffering and loss that occurs in the wake of a natural disaster.

When a natural disaster occurs on a level of magnitude that overwhelms State resources, the Federal Government steps in to help. I believe the Rhode Island banking crisis is a disaster that fits this criteria and that it is time for Federal assistance.

The Rhode Island Emergency Assistance Act establishes the moral and legal foundation for Federal assistance to Rhode Island. The bill establishes a two-track solution to the Rhode Island crisis.

The first part of the bill provides Rhode Island with a $150 million loan from the Federal Emergency Management Agency [FEMA] at an interest rate of 6 percent.

The second part of the bill provides a maximum of $350 million in Federal loan guarantees backed by FEMA for the State of Rhode Island to be used in making depositors whole again.

The bill also provides an appropriation of $150 million for FEMA for the purposes of this act and additional unspecified appropriations for FEMA to carry out the loan guarantee portion of the act.

In addition, the Rhode Island Emergency Assistance Act designates the provisions of this bill as "emergency requirements" under the rules set forth in the Budget Act of 1985.

Mr. President, this is not the best of times to ask for help from the Federal Government. However, hard times will not deter me working with my colleagues to convince them that Rhode Island deserves Federal assistance.

I ask that the text of the the Rhode Island Emergency Assistance Act of 1991 be printed in the RECORD immediately following my remarks.

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

S. 1347

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 "Rhode Island Emergency Assistance Act of 1991".

SEC. 2. EMERGENCY ASSISTANCE PROVIDED.

(a) EMERGENCY LOAN.—

(1) IN GENERAL.—Subject to the terms and conditions established in accordance with paragraph (2), the Director of the Federal Emergency Management Agency shall lend $150,000,000 to the State of Rhode Island and Providence Plantations (hereafter in this Act referred to as the "State of Rhode Island") for the purpose of expediting the repayment of depositors at State-chartered banks and credit unions in receivership in such State and facilitating the resolution of such receiverships.

(2) TERMS AND CONDITIONS.—Except as provided in paragraph (3), the terms and conditions for any loan under paragraph (1) shall be established by mutual agreement of the Director of the Federal Emergency Management Agency and the duly authorized rep-

resentative of the State of Rhode Island taking into account the exigent circumstances of the borrower and the need for adequate assurance of repayment for the lender.

(3) INTEREST RATE.—Interest on any loan under paragraph (1) shall be paid by the borrower at an annual rate of 6 percent, compounded daily.

(b) EMERGENCY LOAN GUARANTEE.—

(1) IN GENERAL.—Subject to the terms and conditions established in accordance with paragraph (2), the Director of the Federal Emergency Management Agency shall guarantee the repayment of any amount not to exceed $350,000,000 borrowed by the State of Rhode Island, or the Depositors Economic Protection Corporation established by such States, to expedite the repayment of depositors at State-chartered banks and credit unions in receivership in such State and facilitate the resolution of such receivership.

(2) TERMS AND CONDITIONS.—The terms and conditions for any loan guarantee under paragraph (1) shall be established by mutual agreement of the Director of the Federal Emergency Management Agency and the duly authorized representative of the State of Rhode Island.

(c) APPROPRIATION OF AMOUNTS.—

(1) IN GENERAL.—There are hereby appropriated to the Director of the Federal Emergency Management Agency—

(A) the sum of $150,000,000 for fiscal year 1991 for purposes of subsection (a)(1); and

(B) such sums as may be necessary for any fiscal year to meet the obligation of the United States under subsection (b)(1).

(2) AVAILABILITY.—Amounts appropriated under paragraph (1) for any fiscal year shall remain available until expended.

(d) DESIGNATION OF PROVISIONS AS EMERGENCY REQUIREMENTS.—Each provision of this Act is hereby designated as an emergency requirement for purposes of sections 252(e) and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985, and the President is hereby deemed to have designated each such provision as an emergency requirement for purposes of such section.•

By Mr. MURKOWSKI (for himself, Mr. KERRY, Mr. HATFIELD, Mr. STEVENS, Mr. CRANSTON, Mr. SIMPSON, and Mr. SIMON):

S. 1348. A bill to terminate certain economic sanctions against Vietnam after the Government of Vietnam authorizes access to its territory for the investigation of unresolved POW and MIA cases, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

VIETNAM ACCESS ACT

• Mr. MURKOWSKI. Mr. President, I rise today to introduce the Vietnam Access Act of 1991, for myself and Senator KERRY of Massachusetts, Senators HATFIELD, STEVENS, CRANSTON, SIMPSON, and SIMON. The bill calls for the termination of certain economic sanctions after the Government of Vietnam authorizes necessary access to its territory for the investigation of unresolved POW and MIA cases.

RESOLVING THE POW/MIA QUESTION

Mr. President, the fates of nearly 2,300 brave young Americans remain unknown some 16 years after the United States pulled out of Vietnam. Our Government, under a mission headed by General Vessey, has made final resolution of these cases our utmost priority in dealing with Vietnam. This is as it should be, and I applaud General Vessey and his team.

We believe this effort can be supplemented by the presence of international humanitarian organizations, such as the Red Cross, if they could only have unlimited presence inside Vietnam satisfactory to scour the countryside with the objective of resolving the POW/MIA issue. American humanitarian workers, as well as American business people and tourists have a far greater chance from within Vietnam. The current policy of isolating Vietnam simply denies this additional opportunity. Access cannot work against our concerns, but very well may help to solve them.

Incidentally, Mr. President, I understand that leaders from several veterans groups, including the Veterans of Foreign Wars, the American Legion, and the Vietnam Veterans of America, are leaving on an official mission to visit Vietnam on this very subject at the end of the month.

TRADING IN NON-STRATEGIC GOODS ONLY

In addition, and only after full access has been attained, my bill calls for a lifting of the most restrictive aspects of the United States trade embargo in place against Vietnam since 1975. There will be no trade in high technology or dual-use commodities as a result of this bill. In fact, the legislation directs the Secretary of Commerce to place Vietnam in a new, less-restrictive, commodity export control grouping.

Mr. President, our trade embargo on Vietnam is airtight. It goes so far as to make it illegal for an American travel agency to arrange plane tickets for groups of Vietnam veterans wishing to travel together to Vietnam. Restrictions such as these are not helping put an end to the Vietnam syndrome—they are helping to prolong it.

Our airtight embargo is not denying Vietnam access to Western goods either. Staunch United States allies such as Britain, France, Canada, and Japan poured more than $1.4 billion of investment into Vietnam last year alone. If U.S. foreign policy goals are being achieved at the expense of our economic well-being, so be it. But this is not the case in Vietnam. The sole nation being denied business by our embargo is the United States of America.

NOW IS NOT THE TIME FOR DIPLOMATIC RELATIONS

Mr. President, my legislation absolutely does not call for a normalization of diplomatic relations. There are too many outstanding issues to take that step now. We must continue to work with Vietnam for peace in Cambodia. We must finally resolve the POW/MIA issue, and we must seek further economic and political reforms within Vietnam.

Our policy toward Vietnam for the past 16 years has been based on leverage. My legislation will not reduce our opportunities for leverage. Vietnam is desperately poor and her people are suffering. Since Soviet aid has nearly dried up, Vietnam wants access to multilateral lending institutions, Vietnam wants diplomatic relations with the United States and Vietnam would like most-favored-nation trading status. None of these are granted by my legislation. My legislation merely seeks to resume limited economic relations in a manner that fosters United States interests in Southeast Asia.

ISOLATION IS NOT THE ANSWER

Last week, by a margin of 12 to 1, the Foreign Relations Committee adopted a nonbinding amendment I offered to the Foreign Relations Authorization Act of 1992. That amendment stated it is the sense of the Senate that the goals of United States foreign policy would be advanced by increased access to Vietnam and by a lifting of the trade embargo against Vietnam.

We have two prominent, outstanding problems with the government of Vietnam. The first, and by far the highest priority, is the unresolved fate of nearly 2,300 American servicemen who served in the war in Vietnam. The second is that Vietnam remains Communist, at a time when communism has failed around the world. Communist governments deny their citizens basic human rights and basic freedoms.

But we can begin to address both of these problems by allowing access to humanitarian groups and American businesses and individuals in Vietnam. The isolation of Vietnam has not served our purposes thus far. The free flow of Western ideas, people and goods may. It is certainly time to begin to end this war.•

By Mr. D'AMATO:

S. 1349. A bill to permit the retroactive Medicaid payment of Medicare cost-sharing for indigent Medicare beneficiaries; to the Committee on Finance.

RESTORATION OF BENEFITS FOR QUALIFIED MEDICARE BENEFICIARIES

Mr. D'AMATO. Mr. President, I rise today to introduce legislation to restore lost Medicare benefits to our Nation's indigent and disabled medicare beneficiaries.

On Tuesday, June 18, an article appeared on the front page of the New York Times, exposing the failure of several Federal and State agencies to notify between 2.2 and 2.3 million low-income elderly and disabled citizens of their rights to receive free Medicare coverage under the Qualified Medicare Beneficiary Program [QMB].

These individuals are eligible for assistance, but are not receiving it because the Government is failing to aggressively promote the benefit. Under

the QMB Program, aged or disabled citizens with incomes below 100 percent of the poverty level are entitled to have Medicaid pay their Medicare premiums, deductibles, and copayments. It is unacceptable that more than half of those eligible are not receiving their rightful benefits.

Earier today, I joined the distinguished Republican leader in sending a letter to HHS Secretary Sullivan calling for immediate actions to inform elderly and disabled citizens about the QMB benefits potentially available to them. Specifically we called upon the Secretary to establish a toll-free 800 number offering information about eligibility criteria, and procedures for applying for QMB status. We also proposed that HHS require that a clear, readable statement explaining potential QMB eligibility be included on all "Explanation of Medicare Benefits" forms, which are sent to medicare beneficiaries after they receive health care services.

I am hopeful that HHS will implement these, and other suggestions they have received to improve, prospectively, their outreach activities. Yet, even if they were to mount the most effective public information campaign imaginable, it would be small comfort to those who have already suffered financial hardship due to the Government's previous lackluster promotional effort.

That is why I am introducing this bill today, which rectifies the Government's failure by allowing qualified medicare beneficiaries to recoup their lost benefits. Specifically, my bill would establish a 180-day "amnesty period" to allow individuals to apply for, and receive retroactive payments for any Medical costs they incurred while eligible for, but not enrolled in, the QMB Program.

In New York alone, my bill could help as many as 160,000 individuals who have not yet taken advantage of the benefits to which they are entitled.

Mr. President, we simply cannot allow indigent senior citizens to be penalized for Government's failure to inform them of their rights. My bill, by giving them a one-time chance to recoup the benefits denied them, will ensure that they are not so penalized.

Mr. President, I ask unanimous consent that the text of my bill be printed at the conclusion of my remarks.

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

S. 1349

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RETROACTIVE MEDICAID PAYMENT OF MEDICARE COST-SHARING.

(a) IN GENERAL.—Notwithstanding any other provision of law, any qualified medicare beneficiary described in section 1905(p)(1) of the Social Security Act who files an application within 180 days after the date of the enactment of this Act (in such form and with such documentation as determined by the Secretary of Health and Human Services) for payment of medicare cost-sharing (as defined in section 1905(p)(3) of such Act) shall receive a retroactive payment in addition to any other payment.

(b) RETROACTIVE PAYMENT.—

(1) IN GENERAL.—For purposes of subsection (a), the term "retroactive payment" means payment of special medicare cost-sharing for the period—

(A) beginning on the earliest date the qualified medicare beneficiary would have received payment of medicare cost-sharing if such beneficiary had applied when first eligible, and

(B) ending on the date on which such beneficiary begins receiving such payment either pursuant to an application filed under this section or otherwise.

(2) SPECIAL MEDICARE COST-SHARING DEFINED.—For purposes of paragraph (1), the term "special medicare cost-sharing" means medicare cost-sharing determined without regard to subparagraph (A) of section 1905(p)(3).

By Mr. DOLE (for himself and Mrs. KASSEBAUM):

S.J. Res. 166. Joint resolution designating the week of October 6 through 12, 1991, as "National Customer Service Week"; to the Committee on the Judiciary.

NATIONAL CUSTOMER SERVICE WEEK

Mr. DOLE. Mr. President, my distinguished colleague from Kansas and I rise to introduce legislation designating the week of October 6 through 12, 1991 as "National Customer Service Week". I would take note of the fact that in 1989 and 1990, 17 States and 18 States, respectively, recognized this week, as well as a number of cities, and I believe that it is now time for the making of a national proclamation.

Certainly, very little goes more to the success of a business—be it a small Main Street business or a Fortune 500 company—than its ability to satisfy its customers.

Today's competitive market dictates that it is no longer enough to make a quality product; you also have to be able to service that product and service your customers' needs. Happy customers mean regular customers, and regular customers mean more customers. And that all leads to a healthy, thriving business.

The purpose of this legislation is very simple: It is to direct attention to the important role that the customer and customer service play in the economic growth of companies and in turn, our Nation. The issue could not be of more importance today as we look back at a decade where the competitive environment changed dramatically and where greater challenges lie ahead with the impending unification of the European economic system.

I hope that others will join me and support this legislation which provides important recognition to a critical component of American business and the American economy that we will undoubtedly be hearing a great deal more about in the future.

Mr. President, I ask unanimous consent that the text of the Joint Resolution be printed in the RECORD.

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

S.J. RES. 166

Whereas recognizing the value and importance of the customer drives the quality of customer service;

Whereas the high cost of attracting new customers today further emphasizes the need to keep existing customers through effective service;

Whereas when customer service is recognized as contributing to the profit of a company, the professional status of customer service continues to increase;

Whereas excellent customer service distinguishes successful companies that understand the importance and influence a customer has on success; and

Whereas excellent customer service contributes to the growth and success of every company: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of October 6 through 12, 1991, is designated as "National Customer Service Week", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

ADDITIONAL COSPONSORS

S. 20

At the request of Mr. ROTH, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 20, a bill to provide for the establishment and evaluation of performance standards and goals for expenditures in the Federal budget, and for other purposes.

S. 98

At the request of Mr. PRESSLER, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 98, a bill to amend the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989.

S. 311

At the request of Mr. ROTH, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 311, a bill to make long-term care insurance available to civilian Federal employees, and for other purposes.

S. 313

At the request of Mr. SPECTER, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 313, a bill to carry out obligations of the United States under the U.N. Charter and other international agrements pertaining to the protection of human rights by establishing a civil action for recovery of damages from a person who engages in torture or extra judicial killing.

S. 474

At the request of Mr. DECONCINI, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S.

474, a bill to prohibit sports gambling under State law.

S. 517

At the request of Mr. BOREN, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 517, a bill entitled the "Educational Exchanges Enhancement Act of 1991."

S. 651

At the request of Mr. GARN, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 651, a bill to improve the administration of the Federal Deposit Insurance Corporation, and to make technical amendments to the Federal Deposit Insurance Act, the Federal Home Loan Bank Act, and the National Bank Act.

S. 664

At the request of Mr. THURMOND, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of S. 664, a bill to require that health warnings be included in alcoholic beverage advertisements, and for other purposes.

S. 781

At the request of Mr. SARBANES, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 781, a bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

S. 832

At the request of Mr. GORTON, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 832, a bill to authorize the Secretary of Commerce to develop and expand new national markets for recycled paper and other commodities; and to carry out a program requiring Federal departments to procure and use recycled paper and paper products in carrying out their functions.

S. 878

At the request of Mr. DODD, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 878, a bill to assist in implementing the Plan of Action adopted by the World Summit for Children, and for other purposes.

S. 884

At the request of Mr. PACKWOOD, the names of the Senator from Tennessee [Mr. GORE] and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 884, a bill to require the President to impose economic sanctions against countries that fail to eliminate large-scale driftnet fishing.

S. 895

At the request of Mr. PRESSLER, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 895, a bill to amend the Internal Revenue Code of 1986 to allow a deduction from gross income for home care and adult day and respite care expenses of individual taxpayers with respect to a dependent of the taxpayer who suffer from Alzheimer's disease or related organic brain disorders.

S. 1030

At the request of Mr. GORTON, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 1030, a bill to authorize private sector participation in providing products and services to support Department of Energy defense waste cleanup and modernization missions.

S. 1133

At the request of Mr. KENNEDY, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 1133, a bill to establish a demonstration grant program to provide coordinated and comprehensive education, training, health and social services to at-risk children and youth and their families, and for other purposes.

S. 1301

At the request of Mr. CRAIG, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1301, a bill to establish grant programs and provide other forms of Federal assistance to pregnant women, children in need of adoptive families, and individuals and families adopting children, and for other purposes.

S. 1329

At the request of Mr. HOLLINGS, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 1329, a bill to strengthen Federal strategy for the development and deployment of critical advanced technologies, and for other purposes.

SENATE JOINT RESOLUTION 6

At the request of Mr. JOHNSTON, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from New York [Mr. MOYNIHAN], and the Senator from California [Mr. CRANSTON] were added as cosponsors of Senate Joint Resolution 6, a joint resolution to designate the year 1992 as the "Year of the Wetlands."

SENATE JOINT RESOLUTION 81

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of Senate Joint Resolution 81, a joint resolution to designate the periods commencing on December 1, 1991, and ending on December 7, 1991, and commencing on November 29, 1992, and ending on December 5, 1992, as "National Home Care Week."

SENATE JOINT RESOLUTION 113

At the request of Mr. LAUTENBERG, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of Senate Joint Resolution 113, a joint resolution designating the oak as the national arboreal emblem.

SENATE RESOLUTION 82

At the request of Mr. SMITH, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Washington [Mr. ADAMS] were added as cosponsors of Senate Resolution 82, a resolution to establish a Select Committee on POW/MIA Affairs.

SENATE RESOLUTION 116

At the request of Mr. ROTH, the names of the Senator from Virginia [Mr. WARNER], the Senator from Georgia [Mr. FOWLER], and the Senator from Nevada [Mr. BRYAN] were added as cosponsors of Senate Resolution 116, a resolution to express the sense of the Senate in support of Taiwan's membership in the General Agreement on Tariffs and Trade.

SENATE RESOLUTION 126

At the request of Mr. SMITH, the names of the Senator from Utah [Mr. GARN], the Senator from Wisconsin [Mr. KASTEN], the Senator from Indiana [Mr. LUGAR], the Senator from South Carolina [Mr. THURMOND], and the Senator from Wyoming [Mr. WALLOP] were added as cosponsors of Senate Resolution 126, a resolution encouraging the President to exercise the line-item veto.

AMENDMENTS SUBMITTED

VIOLENT CRIME CONTROL ACT

GRAHAM AMENDMENTS NOS. 365 AND 366

Mr. MITCHELL (for Mr. GRAHAM) proposed two amendments to the bill (S. 1241) to control and reduce violent crime, as follows:

AMENDMENT NO. 365

On page 35, strike from line 12 through line 18 on page 44.

AMENDMENT NO. 366

On page 35, strike from line 12 through line 7 on page 44.

THURMOND AMENDMENT NO. 367

Mr. THURMOND proposed an amendment to the bill S. 1241, supra, as follows:

On page 245, strike "thereafter" and insert "these sections 1 and 2, titles II through IV subtitles A through E of title V, title VI, title VII, title IX, title XI, title XII, title XIX, titles XXIII through XXVII of S. 1241 as introduced shall be void and of no effect. Title XXIII of S. 1241 as introduced is discretionary upon the Attorney General.

Sec. 211. Death penalty litigation procedures.

TITLE III—EXCLUSIONARY RULE

Sec. 301. Admissibility of certain evidence.

TITLE IV—FIREARMS

Subtitle A—Firearms and Related Amendments

Sec. 401. Enhanced penalty for use of semiautomatic firearm during a crime of violence or drug trafficking offense.

Sec. 402. Possession of a firearm or an explosive during the commission of a felony.

Sec. 403. Conforming amendment providing increased penalty for second offense of using an explosive to commit a felony.
Sec. 404. Clarification of definition of conviction.
Sec. 405. Permitting consideration of pretrial detention for certain firearms and explosives offenses.
Sec. 406. Smuggling firearms in aid of drug trafficking.
Sec. 407. Theft of firearms and explosives.
Sec. 408. Conforming amendment providing mandatory revocation of supervised release for possession of a firearm.
Sec. 409. Increased penalty for knowingly false, material statement in connection with the acquisition of a firearm from a licensed dealer.
Sec. 410. Statute of limitations for certain gangster weapon offenses.
Sec. 411. Possession of explosives by felons and others.
Sec. 412. Summary destruction of explosives subject to forfeiture.
Sec. 413. Summary forfeiture of unregistered national firearms act weapons.
Sec. 414. Disposition of forfeited firearms.
Sec. 415. Elimination of outmoded language relating to parole.
Sec. 416. Possession of stolen firearms.
Sec. 417. Using a firearm in the commission of counterfeiting or forgery.
Sec. 418. Mandatory penalty for firearms possession by violent felons and serious drug offenders.
Sec. 419. Reporting of multiple firearms sales.
Sec. 420. Possession of stolen firearms and explosives.
Sec. 421. Receipt of firearms by nonresidents.
Sec. 422. Firearms and explosives conspiracy.
Sec. 423. Theft of firearms or explosives from licensee.
Sec. 424. Disposing of explosives to prohibited persons.

TITLE V—OBSTRUCTION OF JUSTICE

Sec. 501. Protection of court officers and jurors.
Sec. 502. Prohibition of retaliatory killings of witnesses, victims, and informants.
Sec. 503. Protection of State or local law enforcement officers providing assistance to Federal law enforcement officers.

TITLE VI—GANGS AND JUVENILE OFFENDERS

Sec. 601. Amendments concerning records of crimes committed by juveniles.
Sec. 602. Adult prosecution of serious juvenile offenders.
Sec. 603. Serious drug offenses by juveniles as Armed Career Criminal Act Predicates.
Sec. 604. Increased penalty for travel act crimes involving violence.
Sec. 605. Increased penalty for conspiracy to commit murder for hire.

TITLE VII—TERRORISM

Subtitle A—Aviation Terrorism

Sec. 701. Implementation of the 1988 protocol for the suppression of unlawful acts of violence at airports serving international civil aviation.
Sec. 702. Amendment to Federal Aviation Act.

Subtitle B—Maritime Terrorism

Sec. 711. Short title for subtitle B.
Sec. 712. Findings.
Sec. 713. Statement of purpose.
Sec. 714. Offenses of violence against maritime navigation or fixed platforms.
Sec. 715. Clerical amendments.
Sec. 716. Effective dates.
Sec. 717. Territorial sea extending to twelve miles included in special maritime and territorial jurisdiction.
Sec. 718. Assimilated crimes in extended territorial sea.
Sec. 719. Jurisdiction over crimes against United States nationals on certain foreign ships.

Subtitle C—Terrorism Offenses and Sanctions

Sec. 731. Torture.
Sec. 732. Use of weapons of mass destruction.
Sec. 733. Homicides and attempted homicides involving firearms in Federal facilities.
Sec. 734. Providing material support to terrorists.
Sec. 735. Addition of terrorist offenses to the RICO statute.
Sec. 736. Forfeiture for terrorist and other violent acts.
Sec. 737. Enhanced penalties for certain offenses.
Sec. 738. Sentencing guidelines increase for terrorist crimes.

Subtitle E—Antiterrorism Enforcement Provisions

Sec. 741. Aliens cooperating in terrorist or other investigations.
Sec. 742. Amendment to the alien enemy act.
Sec. 743. Counterintelligence access to telephone records.
Sec. 744. Counterintelligence access to credit records.
Sec. 745. Authorization for interceptions of communications.
Sec. 746. Participation of foreign and state government personnel in interceptions of communications.
Sec. 747. Disclosure of intercepted communications to foreign law enforcement agencies.
Sec. 748. Extension of the statute of limitations for certain terrorism offenses.

TITLE VIII—SEXUAL VIOLENCE AND CHILD ABUSE

Sec. 801. Admissibility of evidence of similar crimes in sexual assault and child molestation cases.
Sec. 802. Drug distribution to pregnant women.
Sec. 803. Definition of sexual act for victims below 16.
Sec. 804. Increased penalties for recidivist sex offenders.
Sec. 805. Restitution for victims of sex offenses.
Sec. 806. HIV testing and penalty enhancement in sexual abuse cases.
Sec. 807. Payment of cost of HIV testing for victim.

TITLE IX—DRUG TESTING

Sec. 901. Drug testing of Federal offenders on post-conviction release.
Sec. 902. Drug testing in State Criminal Justice Systems as a condition of receipt of justice drug grants.

TITLE X—EQUAL JUSTICE ACT

Sec. 1001. Short title.
Sec. 1002. Prohibition of racially discriminatory policies concerning capital punishment or other penalties.
Sec. 1003. General safeguards against racial prejudice or bias in the tribunal.
Sec. 1004. Federal capital cases.
Sec. 1005. Funding objective.
Sec. 1006. Extension of protection of civil rights statutes.

TITLE XI—VICTIMS' RIGHTS

Sec. 1101. Restitution amendments.
Sec. 1102. Victim's right of allocution in sentencing.

TITLE I—DEATH PENALTY

SEC. 101. SHORT TITLE.

This title may be cited as the "Capital Punishment Procedures Act of 1991".

SEC. 102. DEATH PENALTY PROCEDURES.

TITLE 18 OF THE UNITED STATES CODE IS AMENDED.—

(a) by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH PENALTY PROCEDURES

"Sec.
"3591. Sentence of death.
"3592. Factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
"3597. Use of State facilities.
"3598. Appointment of counsel.
"3599. Collateral Attack on Judgment Imposing Sentence of Death.

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(a) an offense described in section 794 or section 2381 of this title;

"(b) an offense described in section 1751(c) of this title if the offense, as determined beyond a reasonable doubt at a hearing under section 3593, constitutes an attempt to murder the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President;

"(c) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section;

"(d) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or member of the family or household of such a person;

"(e) an offense constituting a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, acting with a state of mind described in subsection (f), engages in such a violation, and the death of another person results in the course of the violation or from the use of the controlled substance involved in the violation; or

"(f) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at a hearing under section 3593, caused the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or caused the death of a person through the intentional infliction of serious bodily injury;

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified: *Provided*, That no person may be sentenced to death who was less than eighteen years of age at the time of the offense.

"§ 3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) DURESS.—The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant's paticipation in the offense, which was committed by another, was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's background, character or record or any other circumstance of the offense that the defendant may proffer as a mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(a), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) PREVIOUS ESPIONAGE OR TREASON CONVICTION.—The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of life imprisonment or death was authorized by statute.

"(2) RISK OF SUBSTANTIAL DANGER TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk to the national security.

"(3) RISK OF DEATH TO ANOTHER.—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3519 (b) or (f), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) CONDUCT OCCURRED DURING COMMISSION OF SPECIFIED CRIMES.—The conduct resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 1203 (hostage taking), section 1751 (violence against the President or Presidential staff), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2381 (treason) of this title, section 1826 of title 28 (persons in custody as recalcitrant witnesses or hospitalized following insanity acquittal), or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n) (aircraft piracy)).

"(2) INVOLVEMENT OF FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—The defendant—

"(A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used or possessed a firearm as defined in section 921 of this title; or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than one year, involving the use of attempted or threatened use of a firearm, as defined in section 921 of this title, against another person.

"(3) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(4) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(5) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense or in escaping or attempting to escape apprehension, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) HEINOUS, CRUEL OR DEPRAVED MANNER OF COMMISSION.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(7) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(8) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(9) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(10) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(11) TYPE OF VICTIM.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if there was no Vice President, the officer next in order of succession to the office of the President of the United States, or any person acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if that official was in the United States on official business; or

"(D) a Federal public servant who was outside of the United States or who was a Federal judge, a Federal law enforcement officer, an employee (including a volunteer or contract employee) of a Federal prison, or an official of the Federal Bureau of Prisons—

"(i) while such public servant was engaged in the performance of his official duties;

"(ii) because of the performance of such public servant's official duties; or

"(iii) because of such public servant's status as a public servant.

For purposes of this paragraph, the terms 'President-elect' and 'Vice President-elect' mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2; a 'Federal law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense; 'Federal prison' means a Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and 'Federal judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge. The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(d) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section 3591 (c)-(e), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist—

"(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of

imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm, as defined in section 921 of this title, to threaten, intimidate, assault, or injure a person.

"(5) DISTRIBUTION TO PERSONS UNDER TWENTY-ONE.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant. The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"§ 3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the Government, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, shall sign and file with the court, and serve on the defendant, a notice that the Government in the event of conviction will seek the sentence of death. The notice shall set forth the aggravating factor or factors enumerated in section 3592, and any other aggravating factor not specifically enumerated in section 3592, that the Government, if the defendant is convicted, will seek to prove as the basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court may permit the attorney for the Government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—When the attorney for the Government has filed a notice as required under subsection (a) and the defendant is found guilty of an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under the section is necessary; or

"(3) before the court alone, upon motion of the defendant and with the approval of the attorney for the Government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to—

"(1) any matter relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

"(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

The information presented may include the trial transcript and exhibits. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the Government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of an aggravating factor is on the Government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591 (a), an aggravating factor required to be considered under section 3592(b) is found to exist;

"(2) an offense described in section 3591 (b) or (f), an aggravating factor required to be considered under section 3592(c) is found to exist; or

"(3) an offense described in section 3591(c)–(e), an aggravating factor required to be considered under section 3592(d) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist under subsection (d) outweigh any mitigating factor or factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not be influenced by prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon the recommendation under section 3593(e) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by

law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without the possibility of release.

"§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor;

"(B) the evidence and information support the special findings of the existence of an aggravating factor or factors; and

"(C) the proceedings did not involve any other prejudicial error requiring reversal of the sentence that was properly preserved for and raised on appeal;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593 or for imposition of another authorized sentence as appropriate.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"§ 3596. Implementation of a sentence of death

"(a) IN GENERAL.—A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

"(b) SPECIAL BARS TO EXECUTION.—A sentence of death shall not be carried out upon a person who lacks the mental capacity to understand the death penalty and why it was imposed on that person, or upon a woman while she is pregnant.

"(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—No employee of any State department of corrections, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"§ 3597. Use of State facilities

"A United States Marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"§ 3598. Appointment of counsel

"(a) REPRESENTATION OF INDIGENT DEFENDANTS.—Notwithstanding any other provision of law, this section shall govern the appointment of counsel for any defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, for an offense against the United States, where the defendant is or becomes financially unable to obtain adequate representation. Such a defendant shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in section 3599(b) of this title has occurred.

"(b) REPRESENTATION BEFORE FINALITY OF JUDGMENT.—A defendant within the scope of this section shall have counsel appointed for trial representation as provided in section 3005 of this title. At least one counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel.

"(c) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the district court that imposed the sentence. Within ten days of receipt of such notice, the district court shall proceed to make a determination whether the defendant is eligible under this section for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order: (1) appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel; (2) finding, after a hearing if necessary, that the defendant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or (3) denying the appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation. Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(d) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under this section, at least one counsel appointed for trial representation must have been admitted to the bar for at least five years and have at least three years of experience in the trial of felony cases in the federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to the bar for at least five years and have at least three years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

"(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—Except as otherwise provided in this section, the provisions of section 3006A of this title shall apply to appointments under this section.

"(f) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"§ 3599. Collateral attack on judgment imposing sentence of death

"(a) TIME FOR MAKING SECTION 2255 MOTION.—In a case in which sentence of death has been imposed, and the judgment has become final as described in section 3598(c) of this title, a motion in the case under section 2255 of title 28, United States Code, must be filed within ninety days of the issuance of the order relating to appointment of counsel under section 3598(c) of this title. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding sixty days. A motion described in this section shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) STAY OF EXECUTION.—The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence, and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such motion by a district court; or

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the motion under that section is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of his decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

"(c) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in

subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim was (A) the result of governmental action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed."; and

(b) in the chapter analysis of part II, by adding the following new item after the item relating to chapter 227:

"228. Death penalty procedures ..... 3591.".

SEC. 103. CONFORMING AMENDMENT RELATING TO DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.

Section 34 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 104. CONFORMING AMENDMENT RELATING TO ESPIONAGE.

Section 794(a) of title 18 of the United States Code is amended by changing the period at the end of the section to a comma and by adding immediately thereafter the words "except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 of this title that the offense directly concerned nuclear weaponry, military spacecraft and satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; sources or methods of intelligence or counterintelligence operations; or any other major weapons system or major element of defense strategy.".

SEC. 105. CONFORMING AMENDMENT RELATING TO TRANSPORTING EXPLOSIVES.

Section 844(d) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 106. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF FEDERAL PROPERTY BY EXPLOSIVES.

Section 844(f) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 107. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF INTERSTATE PROPERTY BY EXPLOSIVES.

Section 844(i) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

SEC. 108. CONFORMING AMENDMENT RELATING TO MURDER.

The second paragraph of section 1111(b) of title 18 of the United States Code is amended to read as follows:

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

SEC. 109. CONFORMING AMENDMENT RELATING TO KILLING OFFICIAL GUESTS OR INTERNATIONALLY PROTECTED PERSONS.

Section 1116(a) of title 18 of the United States Code is amended by striking the words "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and".

SEC. 110. MURDER BY FEDERAL PRISONER.

Chapter 51 of title 18 of the United States Code is amended—

(a) by adding at the end thereof the following:

"§ 1118. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal prison under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of release.

"(b) For purposes of this section—

"(1) 'Federal prison' means any Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government;

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death."; and

(b) by amending the section analysis to add:

"1118. Murder by a Federal prisoner.".

SEC. 111. CONFORMING AMENDMENT RELATING TO KIDNAPPING.

Section 1201 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 112. CONFORMING AMENDMENT RELATING TO HOSTAGE TAKING.

Section 1203 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 113. CONFORMING AMENDMENT RELATING TO MAILABILITY OF INJURIOUS ARTICLES.

The last paragraph of section 1716 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the paragraph.

SEC. 114. CONFORMING AMENDMENT RELATING TO PRESIDENTIAL ASSASSINATION.

Subsection (c) of section 1751 of title 18 of the United States Code is amended to read as follows:

"(c) Whoever attempts to murder or kidnap any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to murder the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President.".

SEC. 115. CONFORMING AMENDMENT RELATING TO MURDER FOR HIRE.

Subsection (a) of section 1958 of title 18 of the United States Code is amended by deleting the words "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting in lieu thereof "and if death results, shall be punished by death or life imprisonment, or shall be fined in accordance with this title, or both".

SEC. 116. CONFORMING AMENDMENT RELATING TO VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Paragraph (1) of subsection (a) of section 1959 of title 18 of the United States Code is amended to read as follows: "for murder, by death or life imprisonment, or a fine in accordance with this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine in accordance with this title, or both";

SEC. 117. CONFORMING AMENDMENT RELATING TO WRECKING TRAINS.

The second to the last paragraph of section 1992 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

SEC. 118. CONFORMING AMENDMENT RELATING TO BANK ROBBERY.

Section 2113(e) of title 18 of the United States Code is amended by striking the words "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof "or if death results shall be punished by death or life imprisonment".

SEC. 119. CONFORMING AMENDMENT RELATING TO TERRORIST ACTS.

Section 2332(a)(1) of title 18 of the United States Code is amended to read as follows:

"(1)(A) if the killing is murder as defined in section 1111(a) of this title, be fined under this title, punished by death or imprisonment for any term of years or for life, or both;".

SEC. 120. CONFORMING AMENDMENT RELATING TO AIRCRAFT HIJACKING.

Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1473), is amended by striking subsection (c).

SEC. 121. CONFORMING AMENDMENT TO CONTROLLED SUBSTANCES ACT.

Section 408 of the Controlled Substances Act is amended by striking subsections (g)–(r).

SEC. 122. CONFORMING AMENDMENT RELATING TO GENOCIDE.

Section 1091(b)(1) of title 18 of the United States Code is amended by striking "a fine of not more than $1,000,000 and imprisonment for life;" and inserting in lieu thereof "by death or imprisonment for life, or a fine of not more than $1,000,000, or both;".

SEC. 123. INAPPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

The provisions of chapter 228 of title 18 of the United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

TITLE II—HABEAS CORPUS REFORM

Subtitle A—General Habeas Corpus Reform

SEC. 201. SHORT TITLE FOR SUBTITLE A.

This subtitle may be cited as the "Habeas Corpus Reform Act of 1991".

SEC. 202. PERIOD OF LIMITATION.

Section 2244 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of the following times:

"(1) the time at which State remedies are exhausted;

"(2) the time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action;

"(3) the time at which the Federal right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.".

SEC. 203. APPEAL.

Section 2253 of title 28, United States Code, is amended to read as follows:

"§ 2253. Appeal

"In a habeas corpus proceeding or a proceeding under section 2255 of this title before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

"There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, or from the final order in a proceeding under section 2255 of this title, unless a circuit justice or judge issues a certificate of probable cause."

SEC. 204. AMENDMENT TO RULES OF APPELLATE PROCEDURE.

Federal Rule of Appellate Procedure 22 is amended to read as follows:

"RULE 22

"HABEAS CORPUS AND SECTION 2255 PROCEEDINGS

"(a) APPLICATION FOR AN ORIGINAL WRIT OF HABEAS CORPUS.—An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

"(b) NECESSITY OF CERTIFICATE OF PROBABLE CAUSE FOR APPEAL.—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and in a motion proceeding pursuant to section 2255 of title 28, United States Code, an appeal by the applicant or movant may not proceed unless a circuit judge issues a certificate of probable cause. If a request for a certificate of probable cause is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or the Government or its representative, a certificate or probable cause is not required.".

SEC. 205. SECTION 2254 AMENDMENTS.

Section 2254 of title 28, United State Code, is amended by redesignating subsections "(e)" and "(f)" as subsections "(f)" and "(g)", respectively, and is further amended—

(1) by amending subsection (b) to read as follows:

"(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.";

(2) by redesignating subsection "(d)" as subsection "(e)", and amending it to read as follows:

"(e) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a full and fair determination of a factual issue made in the case by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting this presumption by clear and convincing evidence.";

(3) by adding a new subsection (d) reading as follows:

"(d) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that has been fully and fairly adjudicated in State proceedings."; and

(4) by adding a new subsection (h) reading as follows:

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

SEC. 206. SECTION 2255 AMENDMENTS.

Section 2255 of title 28, United States Code, is amended by deleting the second paragraph and the penultimate paragraph thereof, and by adding at the end thereof the following new paragraphs:

"A two-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of the following times:

"(1) the time at which the judgment of conviction becomes final;

"(2) the time at which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, where the movant was prevented from making a motion by such governmental action;

"(3) the time at which the right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.

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

Subtitle B—Death Penalty Litigation Procedures

SEC. 210. SHORT TITLE FOR SUBTITLE B.

This subtitle may be cited as the "Death Penalty Litigation Procedures Act of 1991".

SEC. 211. DEATH PENALTY LITIGATION PROCEDURES.

Title 28, United States Code, is amended by inserting the following new chapter immediately following chapter 153:

"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

"Sec.

"2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

"2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

"2258. Filing of habeas corpus petition; time requirements; tolling rules.

"2259. Evidentiary hearings; scope of Federal review; district court adjudication.

"2260. Certificate of probable cause inapplicable.

"2261. Application to state unitary review procedures.

"2262. Limitation periods for determining petitions.

"2263. Rule of construction.

"§ 2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

"(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

"(b) This chapter is applicable if a State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(c) Any mechanism for the appointment, compensation and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record: (1) appointing one or more counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer; (2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or (3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

"(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have pre-

viously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(e) The ineffectiveness or incompetence of counsel during State or Federal collateral postconviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254 of this chapter. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal postconviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

"§ 2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

"(a) Upon the entry in the appropriate State court of record of an order under section 2256(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application must recite that the State has invoked the postconviction review procedures of this chapter and that the scheduled execution is subject to stay.

"(b) A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus petition under section 2254 within the time required in section 2258, or fails to make a timely application for court of appeals review following the denial of such a petition by a district court; or

"(2) upon completion of district court and court of appeals review under section 2254 the petition for relief is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a court of competent jurisdiction, in the presence of counsel and after having been advised of the consequences of his decision, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254.

"(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution or grant relief in a capital case unless:

"(1) the basis for the stay and request for relief is a claim not previously presented in the State or Federal courts;

"(2) the failure to raise the claim is (A) the result of State action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal postconviction review; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

"§ 2258. Filing of habeas corpus petition; time requirements; tolling rules

"Any petition for habeas corpus relief under section 2254 must be filed in the appropriate district court within one hundred and eighty days from the filing in the appropriate State court of record of an order under section 2256(c). The time requirements established by this section shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

"(2) during any period in which a State prisoner under capital sentence has a properly filed request for postconviction review pending before a State court of competent jurisdiction; if all State filing rules are met in a timely manner, this period shall run continuously from the date that the State prisoner initially files for postconviction review until final disposition of the case by the highest court of the State, but the time requirements established by this section are not tolled during the pendency of a petition for certiorari before the Supreme Court except as provided in paragraph (1); and

"(3) during an additional period not to exceed sixty days, if (A) a motion for an extension of time is filed in the Federal district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254; and (B) a showing of good cause is made for the failure to file the habeas corpus petition within the time period established by this section.

"§ 2259. Evidentiary hearings; scope of Federal review; district court adjudication

"(a) Whenever a State prisoner under a capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall:

"(1) determine the sufficiency of the record for habeas corpus review based on the claims actually presented and litigated in the State courts except when the prisoner can show that the failure to raise or develop a claim in the State courts is (A) the result of State action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State postconviction review; and

"(2) conduct any requested evidentiary hearing necessary to complete the record for habeas corpus review.

"(b) Upon the development of a complete evidentiary record, the district court shall rule on the claims that are properly before it, but the court shall not grant relief from a judgment of conviction or sentence on the basis of any claim that was fully and fairly adjudicated in State proceedings.

"§ 2260. Certificate of probable cause inapplicable

"The requirement of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to the provisions of this chapter except when a second or successive petition is filed.

"§ 2261. Application to state unitary review procedure

"(a) For purposes of this section, a "unitary review" procedure means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. The provisions of this chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(b) A unitary review procedure, to qualify under this section, must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2256(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(c) The provision of sections 2257, 2258, 2259, 2260, and 2262 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State 'post-conviction review' and 'direct review' in those sections shall be understood as referring to unitary review under the State procedure. The references in sections 2257(a) and 2258 to 'an order under section 2256(c)' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, then the start of the one hundred and eighty day limitation period under section 2258 shall be deferred until a transcript is made available to the prisoner or his counsel.

"§ 2262. Limitation periods for determining petitions

"(a) The adjudication of any petition under section 2254 of title 28, United States Code, that is subject to this chapter, and the adjudication of any motion under section 2255 of title 28, United States Code, by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters. The adjudication of such a petition or motion shall be subject to the following time limitations:

"(1) The district court shall determine such a petition or motion within one hundred and eighty days of the filing of the petition or motion.

"(2) The court of appeals shall determine an appeal relating to such a petition or motion within one hundred and eighty days of the filing of the record in the court of appeals. If the court of appeals grants en banc consideration, the en banc court shall determine the appeal within one hundred and eighty days of the decision to grant such consideration.

"(b) The time limitations under subsection (a) shall apply to an initial petition or motion, and to any second or successive petition or motion. The same limitations shall also apply to the re-determination of a petition or motion or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings, and in such a case the limitation period shall run from the date of the remand.

"(c) The time limitations under this secton shall not be construed to entitle a petitioner

or movant to a stay of execution, to which the petitioner or movant would otherwise not be entitled, for the purpose of litigating any petition, motion, or appeal.

"(d) the failure of a court to meet or comply with the time limitations under this section shall not be a ground for granting relief from a judgment of conviction or sentence. The State or Government may enforce the time limitations under this section by applying to the court of appeals or the Supreme Court for a writ of mandamus.

"§ 2263. Rule of construction

"The provisions of this chapter shall be construed to promote the expeditious conduct and conclusion of State and Federal court review in capital cases.".

TITLE III—EXCLUSIONARY RULE

SEC. 301. ADMISSIBILITY OF CERTAIN EVIDENCE.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"§ 3509. Admissibility of evidence obtained by search or seizure

"(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—

"(1) FEDERAL PROCEEDINGS.—Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

"(2) STATE PROCEEDINGS.—The law of the United States does not require the exclusion of evidence in a proceeding in any court under circumstances in which the evidence would be admissible in a proceeding in a court of the United States pursuant to paragraph (1) of this subsection.

"(b) EVIDENCE NOT EXCLUDABLE BY STATUTE OR RULE.—Evidence shall not be excluded in a proceeding in a court of the United States on the ground that it was obtained in violation of a statute, an administrative rule or regulation, or a rule of procedure unless exclusion is expressly authorized by statute or by a rule prescribed by the Supreme Court pursuant to statutory authority.

"(c) RULE OF CONSTRUCTION.—This section shall not be construed to require or authorize the exclusion of evidence in any proceeding.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"3509. Admissibility of evidence obtained by search or seizure.".

TITLE IV—FIREARMS

Subtitle A—Firearms and Related Amendments

SEC. 401. ENHANCED PENALTY FOR USE OF SEMI-AUTOMATIC FIREARM DURING A CRIME OF VIOLENCE OR DRUG TRAFFICKING OFFENSE.

(a) Section 924(c) of title 18, United States Code, is amended by inserting ", or semi-automatic firearm," after "short barreled shotgun".

(b) Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(26) the term 'semiautomatic firearm' means any repeating firearm which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.".

SEC. 402. POSSESSION OF A FIREARM OR AN EXPLOSIVE DURING THE COMMISSION OF A FELONY.

(a) Section 924(c) of title 18, United States Code, is amended by striking "uses or carries a firearm" and inserting in lieu thereof "uses, carries, or otherwise possesses a firearm", and by striking "used or carried" and inserting in lieu thereof "used, carried, or possessed".

(b) Section 844(h) of title 18, United States Code, is amended by striking "carries an explosive during" and inserting in lieu thereof "uses, carries, or otherwise possesses an explosive during", and by striking "used or carried" and inserting in lieu thereof "used, carried or possessed".

SEC. 403. CONFORMING AMENDMENT PROVIDING INCREASED PENALTY FOR SECOND OFFENSE OF USING AN EXPLOSIVE TO COMMIT A FELONY.

Section 844(h) of title 18, United States Code, is amended by striking out "ten years" and inserting in lieu thereof "twenty years".

SEC. 404. CLARIFICATION OF DEFINITION OF CONVICTION.

Section 921(a)(20) of title 18, United States Code, is amended by adding at the end the following:

"Notwithstanding the previous sentence, if the conviction was for a violent felony involving the threatened or actual use of a firearm or explosive or was for a serious drug offense, as defined in section 924(e) of this title, the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, expunction or restoration of civil rights.".

SEC. 405. PERMITTING CONSIDERATION OF PRETRIAL DETENTION FOR CERTAIN FIREARMS AND EXPLOSIVES OFFENSES.

Section 3142(f)(1) of title 18, United States Code, is amended by—

(1) striking "or" before subparagraph (D);

(2) redesignating subparagraph (D) as subparagraph (E); and

(3) inserting a new subparagraph (D) as follows:

"(D) an offense under 18 U.S.C. 844(a) that is a violation of 18 U.S.C. 842(d), (h), or (i), or an offense under 18 U.S.C. 924(a) that is a violation of 18 U.S.C. 922(d), (g), (h), (i), (j) or (o), or an offense under section 844(d), or 924(b), (g), (h), or (i) (as added by this Act) of this title; or".

SEC. 406. SMUGGLING FIREARMS IN AID OF DRUG TRAFFICKING.

Section 924 of title 18, United States Code, is amended by adding at the end thereof the following:

"(i) Whoever, with the intent to engage in or to promote conduct which—

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3);

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned for not more than ten years, fined under this title, or both.".

SEC. 407. THEFT OF FIREARMS AND EXPLOSIVES.

(a) Section 924 of title 18, United States Code, is amended by adding at the end the following:

"(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not less than two or more than ten years, and may be fined under this title.".

(b) Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(k) Whoever steals any explosive materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not less than two or more than ten years, and may be fined under this title.".

SEC. 408. CONFORMING AMENDMENT PROVIDING MANDATORY REVOCATION OF SUPERVISED RELEASE FOR POSSESSION OF A FIREARM.

Section 3583 of title 18, United States Code is amended by adding at the end thereof the following new subsection:

"(h) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the court has provided, as a condition of supervised release, that the defendant refrain from possessing a firearm, and if the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of supervised release, the court shall, after a hearing pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation, revoke the term of supervised release and, subject to the limitations of paragraph (e)(3) of this section, require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision.".

SEC. 409. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.

Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (a)(1)(B), by striking out "(a)(6),"; and

(2) in subsection (a)(2), by inserting "(a)(6)," after "subsections".

SEC. 410. STATUTE OF LIMITATIONS FOR CERTAIN GANGSTER WEAPON OFFENSES.

Section 6531 of the Internal Revenue Code of 1986 (26 U.S.C. 6531, relating to periods of limitation of criminal prosecutions) is amended by striking "except that the period of limitation shall be six years" and inserting in lieu thereof "except that the period of limitation shall be five years for offenses described in section 5861 (relating to firearms) and the period of limitation shall be six years".

SEC. 411. POSSESSION OF EXPLOSIVES BY FELONS AND OTHERS.

Section 842(i) of title 18, United States Code, is amended by inserting "or possess" after "to receive".

SEC. 412. SUMMARY DESTRUCTION OF EXPLOSIVES SUBJECT TO FORFEITURE.

Section 844(c) of title 18, United States Code, is amended by redesignating subsection (c) as subsection (c)(1) and by adding paragraphs (2) and (3) as follows:

"(2) Notwithstanding the provisions of paragraph (1), in the case of the seizure of any explosive materials for any offense for

which the materials would be subject to forfeiture where it is impracticable or unsafe to remove the materials to a place of storage, or where it is unsafe to store them, the seizing officer is authorized to destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least one credible witness. The seizing officer shall make a report of the seizure and take samples as the Secretary may by regulation prescribe.

"(3) Within sixty days after any destruction made pursuant to paragraph (2), the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that—

"(A) the property has not been used or involved in a violation of law; or

"(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.".

SEC. 413. SUMMARY FORFEITURE OF UNREGISTERED NATIONAL FIREARMS ACT WEAPONS.

Section 5872 of title 26, United States Code, is amended by redesignating subsection (a) as subsection (a)(1) and by adding paragraphs (2) and (3) to read as follows:

"(2) UNREGISTERED NATIONAL FIREARMS ACT WEAPONS.—Notwithstanding the provisions of paragraph (1), the provisions of sections 7323 and 7325 shall not apply to any firearm which is not registered in the National Firearms Registration and Transfer Record pursuant to section 5841. No property rights shall exist in any such unregistered firearm and it shall be summarily forfeited to the United States.

"(3) RIGHTS OF INNOCENT OWNERS.—Within one year after the summary forfeiture made pursuant to paragraph (2) the owner of, including any person having an interest in, the property seized may make application to the Secretary for reimbursement of the value of such property. If the claimant establishes to the satisfaction of the Secretary that—

"(A) such property has not been involved or used in a violation of law; or

"(B) any unlawful involvement or use of such property had been without the claimant's consent, knowledge, or willful blindness,

the Secretary shall make an allowance to such claimant not exceeding the value of the property so forfeited.".

SEC. 414. DISPOSITION OF FORFEITED FIREARMS.

Subsection 5872(b) of title 26, United States Code, is amended to read as follows:

"(b) DISPOSAL.—In the case of the forfeiture of any firearm, where there is no remission or mitigation of forfeiture thereof—

"(1) the Secretary may retain the firearm for official use of the Department of the Treasury or, if not so retained, offer to transfer the weapon without charge to any other executive department or independent establishment of the Government for official use by it and, if the offer is accepted, so transfer the firearm;

"(2) if the firearm is not disposed of pursuant to paragraph (1), is a firearm other than a machinegun or a firearm forfeited for a violation of this chapter, is a firearm that in the opinion of the Secretary is not so defective that its disposition pursuant to this paragraph would create an unreasonable risk of a malfunction likely to result in death or bodily injury, and is a firearm which (in the judgment of the Secretary, taking into consideration evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less) derives a substantial part of its monetary value from the fact that it is novel, rare, or because of its association with some historical figure, period, or event the Secretary may sell such firearm, after public notice, at public sale to a dealer licensed under the provisions of chapter 44 of title 18, United States Code;

"(3) if the firearm has not been disposed of pursuant to paragraph (1) or (2), the Secretary shall transfer the firearm to the Administrator of General Services, General Services Administration, who shall destroy or provide for the destruction of such firearms; and

"(4) no decision or action of the Secretary pursuant to this subsection shall be subject to judicial review.".

SEC. 415. ELIMINATION OF OUTMODED LANGUAGE RELATING TO PAROLE.

(a) Section 924(e)(1) of title 18, United States Code, is amended by striking ", and such person shall not be eligible for parole with respect to the sentence imposed under this subsection".

(b) Section 924(c)(1) of title 18, United States Code, is amended by striking "No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.".

SEC. 416. POSSESSION OF STOLEN FIREARMS.

Section 922(j) of title 18, United States Code, is amended by inserting "possess," before "receive,".

SEC. 417. USING A FIREARM IN THE COMMISSION OF COUNTERFEITING OR FORGERY.

Section 924(c)(1) of title 18, United States Code, is amended by inserting "or during and in relation to any felony punishable under chapter 25 (relating to counterfeiting and forgery) of this title" after "for which he may be prosecuted in a court of the United States,".

SEC. 418. MANDATORY PENALTY FOR FIREARMS POSSESSION BY VIOLENT FELONS AND SERIOUS DRUG OFFENDERS.

Section 924(a)(2) of title 18, United States Code, is amended by inserting a comma before "or both" and by inserting before the period at the end thereof the following: ", and if the violation is a violation of subsection (g)(1) of section 922 by a person who has a previous conviction for a violent felony or a serious drug offense as defined in subsection (e)(2) of this section, a sentence imposed under this paragraph shall include a term of imprisonment of not less than five years.".

SEC. 419. REPORTING OF MULTIPLE FIREARMS SALES.

Subsection 923(g)(1)(D)(3) of title 18, United States Code, is amended—

(1) by deleting the phrase "five consecutive business days" and inserting in lieu thereof "thirty consecutive days"; and

(2) by adding a new sentence at the end thereof as follows: "Each licensee shall forward a copy of the report to the chief law enforcement officer of the place of residence of the unlicensed person not later than the close of business on the date that the multiple sale or disposition occurs.".

SEC. 420. POSSESSION OF STOLEN FIREARMS AND EXPLOSIVES.

(a) FIREARMS.—Section 922(j) of title 18, United States Code, is amended by inserting "possess," before "conceal";

(b) EXPLOSIVES.—Section 842(h) of title 18, United States Code, is amended by inserting "possess," before "conceal".

SEC. 421. RECEIPT OF FIREARMS BY NONRESIDENT.

Section 922(a) of title 18, United States Code, is amended—

(1) in paragraph (7) by striking "and" at the end thereof;

(2) in paragraph (8) by striking the period at the end thereof and inserting "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms.".

SEC. 422. FIREARMS AND EXPLOSIVES CONSPIRACY.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(j) Whoever conspires to commit any offense defined in this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(l) Whoever conspires to commit any offense defined in this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 423. THEFT OF FIREARMS OR EXPLOSIVES FROM LICENSEE.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(k) Whoever steals any firearm from a licensed importer, licensed manufacturer, licensed dealer or licensed collector shall be fined in accordance with this title, imprisoned not more than ten years, or both.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(m) Whoever steals any explosive material from a licensed importer, licensed manufacturer or licensed dealer, or from any permittee shall be fined in accordance with this title, imprisoned not more than ten years, or both.".

SEC. 424. DISPOSING OF EXPLOSIVES TO PROHIBITED PERSONS.

Section 842(d) of title 18, United States Code, is amended by striking "licensee" and inserting in lieu thereof "person".

TITLE V—OBSTRUCTION OF JUSTICE

SEC. 501. PROTECTION OF COURT OFFICERS AND JURORS.

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

(1) by designating the current text as subsection (a);

(2) by striking the words "fined not more than $5,000 or imprisoned not more than five years, or both." and inserting in lieu thereof "punished as provided in subsection (b).";

(3) by adding at the end thereof a new subsection (b) as follows:

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

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

"(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than twenty years; and

"(3) in any other case, imprisonment for not more than ten years."; and

"(4) in subsection (a), as designated by this section, by striking "commissioner" each place it appears and inserting in lieu thereof "magistrate judge".

SEC. 502. PROHIBITION OF RETALIATORY KILLINGS OF WITNESSES, VICTIMS AND INFORMANTS.

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

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting a new subsection (a) as follows:

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

"(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

"(B) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer; shall be punished as provided in paragraph (2).

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

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

"(B) in the case of an attempt, imprisonment for not more than twenty years.".

SEC. 503. PROTECTION OF STATE OR LOCAL LAW ENFORCEMENT OFFICERS PROVIDING ASSISTANCE TO FEDERAL LAW ENFORCEMENT OFFICERS.

Section 1114 of title 18, United States Code, is amended by inserting ", or any State or local law enforcement officer while assisting, or on account of his or her assistance of, any Federal officer or employee covered by this section in the performance of duties," before "shall be punished".

TITLE VI—GANGS AND JUVENILE OFFENDERS

SEC. 601. AMENDMENTS CONCERNING RECORDS OF CRIMES COMMITTED BY JUVENILES.

(a) Section 5038 of title 18, United States Code, is amended by striking subsections (d) and (f), redesignating subsection (e) as subsection (d), and adding at the end thereof new subsections (e) and (f) as follows:

"(e) Whenever a juvenile has been found guilty of committing an act which if committed by an adult would be an offense described in clause (3) of the first paragraph of section 5032 of this title, the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation, Identification Division. The court shall also transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult, shall be made available in the manner applicable to adult defendants.

"(f) In addition to any other authorization under this section for the reporting, retention, disclosure or availability of records or information, if the law of the State in which a Federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure or availability is permitted under this section whenever the same circumstances exist.".

(b) Section 3607 of title 18, United States Code, is repealed, and the corresponding reference in the section analysis for chapter 229 of title 18 is deleted.

(c) Section 401(b)(4) of the Controlled Substances Act (21 U.S.C. 841(b)(4)) is amended by striking the words "and section 3607 of title 18".

SEC. 602. ADULT PROSECUTION OF SERIOUS JUVENILE OFFENDERS.

Section 5032 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)),," and inserting in lieu thereof "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1003, 1005, 1009, 1010(b)(i), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), or (3), or 963),"; and

(B) by striking "922(p)" and inserting in lieu thereof "924(b), (g), or (h)";

(2) in the fourth undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959)" and inserting in lieu thereof "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844 or 846), section 1002(a), 1005, 1009, 1010(b)(1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959, 960(b)(1), (2), or (3), or 963), or section 924(b), (g), or (h) of this title,"; and

(B) by striking "subsection (b)(1)(A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3))" and inserting in lieu thereof "or an offense (or conspiracy or attempt to commit an offense) described in section 401(b)(1)(A), (B), or (C), (d), or (e), or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), (B), or (C), (d), or (e), 844 or 846) or section 1002(a), 1003, 1009, 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), or (3), or 963)"; and

(3) in the fifth undesignated paragraph by adding at the end the following: "In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such factor, if found to exist, shall weigh heavily in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.".

SEC. 603. SERIOUS DRUG OFFENSES BY JUVENILES AS ARMED CAREER CRIMINAL ACT PREDICATES.

Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking "or" at the end of clause (i);

(2) by striking "and" at the end of clause (ii) and inserting in lieu thereof "or"; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be a serious drug offense described in this paragraph; and".

SEC. 604. INCREASED PENALTY FOR TRAVEL ACT CRIMES INVOLVING VIOLENCE.

Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both" and inserting in lieu thereof "and thereafter performs or attempts to perform (A) any of the acts specified in subparagraphs (1) and (3) shall be fined under this title or imprisoned for not more than five years, or both, or (B) any of the acts specified in subparagraph (2) shall be fined under this title or imprisoned for not more than twenty years, or both, and if death results shall be imprisoned for any term of years or for life".

SEC. 605. INCREASED PENALTY FOR CONSPIRACY TO COMMIT MURDER FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by inserting "or who conspires to do so" before "shall be fined" the first place it appears.

TITLE VII—TERRORISM

Subtitle A—Aviation Terrorism

SEC. 701. IMPLEMENTATION OF THE 1988 PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION.

(a) OFFENSE.—Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Violence at international airports

"(a) Whoever unlawfully and intentionally, using any device, substance or weapon,—

"(1) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

"(2) destroys or seriously damages the facilities of an airport serving international civil aviation or a civil aircraft not in service located thereon or disrupts the services of the airport;

if such an act endangers or is likely to endanger safety at that airport, or attempts to do such an act, shall be fined under this title or imprisoned not more than twenty years, or both; and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) There is jurisdiction over the prohibited activity in subsection (a) if (1) the prohibited activity takes place in the United States or (2) the prohibited activity takes place outside of the United States and the offender is later found in the United States.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following:

"36. Violence at international airports.".

(c) EFFECTIVE DATE.—This section shall take effect on the later of—

(1) the date of the enactment of this subtitle; or

(2) the date the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, has come into force and the United States has become a party to the Protocol.

SEC. 702. AMENDMENT TO FEDERAL AVIATION ACT.

Section 902(n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(n)) is amended by—

(1) striking out paragraph (3); and

(2) renumbering paragraph (4) as paragraph (3).

Subtitle B—Maritime Terrorism

SEC. 711. SHORT TITLE FOR SUBTITLE B.

This subtitle may be cited as the "Act for the Prevention and Punishment of Violence Against Maritime Navigation and Fixed Platforms".

SEC. 712. FINDINGS.

The Congress finds that—

(1) the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation requires each contracting State to establish its jurisdiction over certain offenses affecting the safety of maritime navigation;

(2) the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, which accompanies the aforementioned Convention, requires that each contracting State to the Protocol establish its jurisdiction over certain offenses affecting the safety of fixed platforms;

(3) such offenses place innocent lives and property in jeopardy, endanger national security, affect domestic tranquility, gravely affect interstate and foreign commerce, and are offenses against the law of nations;

(4) on December 27, 1988, the President of the United States issued Proclamation 5928 proclaiming that the territorial sea of the United States henceforth extended to 12 nautical miles from the baselines of the United States determined in accordance with international law; and

(5) on November 5, 1989, the Senate gave its advice and consent to ratification of the Convention and its Protocol.

SEC. 713. STATEMENT OF PURPOSE.

The purpose of this Act is to—

(1) implement fully the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf;

(2) clarify Federal criminal jurisdiction over the territorial sea of the United States; and

(3) establish Federal criminal jurisdiction over certain acts committed by or against a national of the United States while upon a foreign vessel during a voyage having a scheduled departure from or arrival in the United States.

SEC. 714. OFFENSES OF VIOLENCE AGAINST MARITIME NAVIGATION OR FIXED PLATFORMS.

Chapter 111 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 2280. Violence against maritime navigation

"(a) Whoever unlawfully and intentionally—

"(1) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;

"(2) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;

"(3) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;

"(4) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;

"(5) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship;

"(6) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship;

"(7) injures or kills any person in connection with the commission or the attempted commission of any of the offenses set forth in paragraphs (1) to (6); or

"(8) attempts to do any act prohibited under paragraphs (1)–(7);

shall be fined under this title or imprisoned not more than twenty years, or both; and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) Whoever threatens to do any act prohibited under paragraphs (2), (3) or (5) of subsection (a), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safe navigation of the ship in question, shall be fined under this title or imprisoned not more than five years, or both.

"(c) There is jurisdiction over the prohibited activity in subsections (a) and (b)—

"(1) in the case of a covered ship, if—

"(A) such activity is committed—

"(i) against or on board a ship flying the flag of the United States at the time the prohibited activity is committed;

"(ii) in the United States; or

"(iii) by a national of the United States or by a stateless person whose habitual residence is in the United States;

"(B) during the commission of such activity, a national of the United States is seized, threatened, injured or killed; or

"(C) the offender is later found in the United States after such activity is committed;

"(2) in the case of a ship navigating or scheduled to navigate solely within the territorial sea or internal waters of a country other than the United States, if the offender is later found in the United States after such activity is committed; and

"(3) in the case of any vessel, if such activity is committed in an attempt to compel the United States to do or abstain from doing any act.

"(d) The master of a covered ship flying the flag of the United States who has reasonable grounds to believe that he has on board his ship any person who has committed an offense under Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation may deliver such person to the authorities of a State Party to that Convention. Before delivering such person to the authorities of another country, the master shall notify in an appropriate manner the Attorney General of the United States of the alleged offense and await instructions from the Attorney General as to what action he should take. When delivering the person to a country which is a State Party to the Convention, the master shall, whenever practicable, and if possible before entering the territorial sea of such country, notify the authorities of such country of his intention to deliver such person and the reason therefor. If the master delivers such person, he shall furnish the authorities of such country with the evidence in the master's possession that pertains to the alleged offense.

"(e) As used in this section, the term—

"(1) 'ship' means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles or any other floating craft: *Provided*, That the term does not include a warship, a ship owned or operated by a government when being used as a naval auxiliary or for customs or police purposes, or a ship which has been withdrawn from navigation or laid up;

"(2) 'covered ship' means a ship that is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country;

"(3) 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(4) 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law; and

"(5) 'United States', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas Islands and all territories and possessions of the United States.

"§ 2281. Violence against maritime fixed platforms

"(a) Whoever unlawfully and intentionally—

"(1) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation;

"(2) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety;

"(3) destroys a fixed platform or causes damage to it which is likely to endanger its safety;

"(4) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety;

"(5) injures or kills any person in connection with the commission or the attempted commission of any of the offenses set forth in paragraphs (1) to (4); or

"(6) attempts to do anything prohibited under paragraphs (1)–(5);

shall be fined under this title or imprisoned not more than twenty years, or both; and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) Whoever threatens to do anything prohibited under paragraphs (2) or (3) of subsection (a), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safety of the fixed platform, shall be fined under this title or imprisoned not more than five years, or both.

"(c) There is jurisdiction over the prohibited activity in subsections (a) and (b) if—

"(1) such activity is committed against or on board a fixed platform—

"(A) that is located on the continental shelf of the United States;

"(B) that is located on the continental shelf of another country, by a national of the United States or by a stateless person whose habitual residence is in the United States; or

"(C) in an attempt to compel the United States to do or abstain from doing any act;

"(2) during the commission of such activity against or on board a fixed platform located on a continental shelf, a national of the United States is seized, threatened, injured or killed; or

"(3) such activity is committed against or on board a fixed platform located outside the United States and beyond the continental shelf of the United States and the offender is later found in the United States.

"(d) As used in this section, the term—

"(1) 'continental shelf' means the sea-bed and subsoil of the submarine areas that extend beyond a country's territorial sea to the limits provided by customary international law as reflected in Article 76 of the 1982 Convention on the Law of the Sea;

"(2) 'fixed platform' means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes;

"(3) 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(4) 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law; and

"(5) 'United States', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas Islands and all territories and possessions of the United States.".

SEC. 715. CLERICAL AMENDMENTS.

The analysis for chapter 111 of title 18, United States Code, is amended by adding at the end thereof the following:

"2280. Violence against maritime navigation.
"2281. Violence against maritime fixed platforms.".

SEC. 716. EFFECTIVE DATES.

Section 714 of this Act shall take effect on the later of—

(1) the date of the enactment of this Act; or

(2)(A) in the case of section 2280 of title 18, United States Code, the date the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation has come into force and the United States has become a party to that Convention; and

(B) in the case of section 2281 of title 18, United States Code, the date the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf has come into force and the United States has become a party to that Protocol.

SEC. 717. TERRITORIAL SEA EXTENDING TO TWELVE MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.

The Congress hereby declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, is part of the United States, subject to its sovereignty, and, for purposes of Federal criminal jurisdiction, is within the special maritime and territorial jurisdiction of the United States wherever that term is used in title 18, United States Code.

SEC. 718. ASSIMILATED CRIMES IN EXTENDED TERRITORIAL SEA.

Section 13 of title 18, United States Code (relating to the adoption of State laws for areas within Federal jurisdiction), is amended by inserting after "title" in subsection (a) the phrase "or on, above, or below any portion of the territorial sea of the United States not within the territory of any State, Territory, Possession, or District", and by inserting the following new subsection (c) at the end thereof:

"(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Territory, Possession, or District, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed for purposes of subsection (a) to lie within the area of that State, Territory, Possession, or District it would lie within if the boundaries of such State, Territory, Possession, or District were extended seaward to the outer limit of the territorial sea of the United States.".

SEC. 719. JURISDICTION OVER CRIMES AGAINST UNITED STATES NATIONALS ON CERTAIN FOREIGN SHIPS.

Section 7 of title 18, United States Code (relating to the special maritime and territorial jurisdiction of the United States), is amended by inserting at the end thereof the following new paragraph:

"(8) Any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.".

Subtitle C—Terrorism Offenses and Sanctions

SEC. 731. TORTURE.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 113A the following new chapter:

"CHAPTER 113B—TORTURE

"Sec.
2340. Definitions.
2340A. Torture.
2340B. Exclusive remedies.

"§ 2340. Definitions

"As used in this chapter—

"(1) 'torture' means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.

"(2) 'severe mental pain or suffering' means the prolonged mental harm caused by or resulting from: (a) the intentional infliction or threatened infliction of severe physical pain or suffering; (b) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (c) the threat of imminent death; or (d) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

"(3) 'United States' includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1301(38)).

"§ 2340A. Torture

"(a) Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than twenty years, or both; and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) There is jurisdiction over the prohibited activity in subsection (a) if: (1) the alleged offender is a national of the United States; or (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or the alleged offender.

"§ 2340B. Exclusive remedies

"Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.".

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113B the following new item:

"113B. Torture ..... 2340.".

SEC. 732. WEAPONS OF MASS DESTRUCTION.

(a) FINDINGS.—The Congress finds that the use and threatened use of weapons of mass destruction, as defined in the statute enacted by subsection (b) of this section, gravely harm the national security and foreign relations interests of the United States, seriously affect interstate and foreign commerce, and disturb the domestic tranquility of the United States.

(b) OFFENSE.—Chapter 113A of title 18, United States Code, is amended by adding the following new section:

"§ 2339. Use of weapons of mass destruction

"(a) Whoever uses, or attempts or conspires to use, a weapon of mass destruction—

"(1) against a national of the United States while such national is outside of the United States;

"(2) against any person within the United States; or

"(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States;

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

"(b) For purposes of this section—

"(1) 'national of the United States' has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(2) 'weapon of mass destruction' means—

"(a) any destructive device as defined in section 921 of this title;

"(b) poison gas;

"(c) any weapon involving a disease organism; or

"(d) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.".

(c) CLERICAL AMENDMENT.—The analysis for chapter 113A of title 18, United States Code, is amended by adding the following:

"2339. Use of weapons of mass destruction.".

SEC. 733. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FEDERAL FACILITIES.

Section 930 of title 18, United States Code, is amended by—

(a) redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g) respectively;

(b) in subsection (a), deleting "(c)" and inserting in lieu thereof "(d)"; and

(c) inserting after subsection (b) the following:

"(c) Whoever kills or attempts to kill any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall—

"(1) in the case of a killing constituting murder as defined in section 1111(a) of this title, be punished by death or imprisoned for any term of years or for life; and

"(2) in the case of any other killing or an attempted killing, be subject to the penalties provided for engaging in such conduct within the special maritime and territorial jurisdiction of the United States under sections 1112 and 1113 of this title.".

SEC. 734. PROVIDING MATERIAL SUPPORT TO TERRORISTS

(a) OFFENSE.—Chapter 113A of title 18, United States Code, is amended by adding the following new section:

"§ 2339A. Providing material support to terrorists

"Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used to facilitate a violation of section 32, 36, 351, 844 (f) or (i), 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, or 2339 of this title, or section 902(i) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(i)), or to facilitate the concealment or an escape from the commission of any of the foregoing, shall be fined under this title, imprisoned not more than ten years, or both. For purposes of this section, material support or resources shall include, but not be limited to, currency or other financial securities, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 113A of title 18, United States Code, is amended by adding the following:

"2339A. Providing material support to terrorists.".

SEC. 735. ADDITION OF TERRORIST OFFENSES TO THE RICO STATUTE.

(a) Section 1961(1)(B) of title 18 of the United States Code is amended by:

(1) inserting after "Section" the following: "32 (relating to the destruction of aircraft), section 36 (relating to violence at international airports), section";

(2) inserting after "section 224 (relating to sports bribery);" the following: "section 351 (relating to Congressional or Cabinet officer assassination),";

(3) inserting after "section 664 (relating to embezzlement from pension and welfare funds)," the following: "section 844 (f) or (i) (relating to destruction by explosives of government property or property affecting interstate or foreign commerce),";

(4) inserting after "section 1084 (relating to the transmission of gambling information)," the following: "section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1203 (relating to hostage taking),";

(5) inserting after "section 1344 (relating to financial institution fraud)," the following: "section 1361 (relating to willful injury of government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),";

(6) inserting after "section 1513 (relating to retaliating against a witness, victim, or an informant)," the following: "section 1751 (relating to Presidential assassination),";

(7) inserting after "section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire)," the following: "section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),"; and

(8) inserting after "2320 (relating to trafficking in certain motor vehicles or motor vehicle parts)," the following: "section 2332 (relating to terrorist acts abroad against United States nationals), section 2339 (relating to use of weapons of mass destruction),".

(b) Section 1961(1) of title 18 of the United States Code, is amended by striking "or" before "(E)", and inserting at the end thereof the following: "or (F) section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472 (i) or (n));".

(c) Section 1961(5) of title 18 of the United States Code is amended by adding at the end thereof the following sentence: "The term shall not be construed to require the presence of any pecuniary purpose when the acts of racketeering involve only crimes of violence."

SEC. 736. FORFEITURE FOR TERRORISTS AND OTHER VIOLENT ACTS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding after section 982 the following new sections:

"§ 983. Civil forfeiture of property used to commit violent acts

"(a) The following property shall be subject to civil forfeiture by the United States:

"(1) any property used or intended for use to commit or facilitate the commission of a violent act; and

"(2) any property constituting or derived from the gross profits or other proceeds obtained from a violent act.

No interest of an owner in property shall be forfeited under paragraphs (1) or (2) by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent or willful blindness of that owner.

"(b) All provisions of the customs law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

"(c) As used in this section the term 'violent act' means—

"(1) any felony offense under the following chapters of this title: chapter 2 (relating to aircraft and motor vehicles); chapter 5 (relating to arson); chapter 7 (relating to assault); chapter 12 (relating to civil disorders); chapter 18 (relating to congressional, cabinet, and supreme court assassination, kidnaping, and assault); chapter 35 (relating to escape and rescue); chapter 40 (relating to importation, manufacture, distribution and storage of explosive materials; chapter 41 (relating to extortion and threats); chapter 44 (relating to firearms); chapter 51 (relating to homicide); chapter 55 (relating to kidnaping); chapter 65 (relating to malicious mischief); chapter 81 (relating to piracy and privateering); chapter 84 (relating to Presidential and Presidential staff assassination, kidnaping, and assault); chapter 95 (relating to racketeering); chapter 97 (relating to railroads); chapter 102 (relating to riots); chapter 103 (relating to robbery and burglary); chapter 105 (relating to sabotage); chapter 111 (relating to shipping); chapter 113A (relating to terrorism); or chapter 113B (relating to torture);

"(2) any felony offense under the following sections of this title: section 831 (relating to prohibited transactions involving nuclear materials); section 956 (relating to conspiracy to injure property of foreign government); or section 1153 (relating to offenses committed within Indian country);

"(3) any felony offense under: section 2284 of title 42 of the United States Code (relating to the sabotage of nuclear facilities); sections 901 (i), (j), (k), (l), (m), or (n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472 (i), (j), (k), (l), (m) or (n)); section 11(c)(2) of the Natural Gas Pipeline Safety Act (49 U.S.C. App. 1679(c)(2)); or section 208(c)(2) of the Hazardous Liquid Pipeline Safety Act (49 U.S.C. App. 2007(c)(2));

"(4) any other United States offense punishable by imprisonment for more than one year involving murder, robbery, kidnaping, extortion, or malicious destruction of property; or

"(5) a conspiracy or attempt to commit any of the foregoing offenses.

"(d) The filing of an indictment of information alleging a violation of an offense constituting a violent act which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

"§ 984. Criminal forfeiture of property used to commit violent acts

"(a) Any person convicted of a violent act as defined in section 983(c) of this title shall forfeit to the United States, irrespective of any provision of State law, such person's interest in—

"(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violent act; and

"(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violent act.

"(b) The provisions of subsections (b), (c), and (e)–(p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (b), (c), and (e)–(p)) shall apply to—

"(1) property subject to forfeiture under subsection (a);

"(2) any seizure or disposition of such property; and

"(3) any judicial proceeding in relation to such property.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 46 of title 18, United States Code, is amended by adding at the end thereof, as amended, the following:

"983. Civil forfeiture of property used to commit violent acts.
"984. Criminal forfeiture of property used to commit violent acts.".

SEC. 737. ENHANCED PENALTIES FOR CERTAIN OFFENSES.

(a) Section 1705(b) of title 50, United States Code, is amended by replacing "$50,000" with "$1,000,000".

(b) Section 1705(a) of title 50, United States Code, is amended by replacing "$10,000" with "$1,000,000".

(c) Section 1541 of title 18, United States Code, is amended by replacing "$500" with "$250,000" and by replacing "one year" with "five years".

(d) Sections 1542, 1543, 1544 and 1546 of title 18, United States Code, are each amended by replacing "$2,000" with "$250,000" and by replacing "five years" with "ten years".

(e) Section 1545 of title 18, United States Code, is amended by replacing "$2,000" with "$250,000" and by replacing "three years" with "ten years".

SEC. 738. SENTENCING GUIDELINES INCREASE FOR TERRORIST CRIMES.

The United States Sentencing Commission is directed to amend its sentencing guidelines to provide an increase of not less than three levels in the base offense level for any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime.

Subtitle E—Antiterrorism Enforcement Provisions

SEC. 741. ALIENS COOPERATING IN TERRORIST OR OTHER INVESTIGATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, whenever the Attorney General, or his designee, determines that the entry of a particular alien into the United States for permanent residence or other status, or where an alien is already present in the United States, the award of permanent residence or other status, is in the interest of national security, essential to the furtherance of the national intelligence mission, important to the United States public safety, or necessary to protect the life of an individual who has provided cooperation to Federal law enforcement, such alien and his immediate family shall be given entry into the United States and/or awarded permanent residence or other status. Where the decision to grant such entry or award of permanent residence or other status is based on furtherance of the national intelligence mission, the Attorney General shall consult with the Director of the Central Intelligence Agency concerning the decision.

(b) LIMIT ON NUMBER OF ALIENS.—The number of aliens and members of their immediate families entering the United States under the authority of this section shall in no case exceed two hundred persons in any one fiscal year. The decision to grant or deny permanent resident or other status under this section is at the discretion of the Attorney General and shall not be subject to judicial review.

SEC. 742. AMENDMENT TO THE ALIEN ENEMY ACT.

Section 21 of title 50, United States Code, is amended by inserting "(a)" before "Whenever," and by adding the following new subsection:

"(b) Whenever the President invokes the authority contained in subsection (a) as to aliens of a hostile nation or government and further determines that the United States may also be subject to actual, attempted, or threatened predatory incursions by aliens of other nations, whether or not acting in concert with the hostile nation, the President is authorized, by his proclamation thereof, to include within the terms of subsection (a) and sections 22, 23, and 24, any and all other aliens within the United States, or any subcategories or subclasses of such aliens, by nationality or otherwise, as the President may so designate.".

SEC. 743. COUNTERINTELLIGENCE ACCESS TO TELEPHONE RECORDS.

Section 2709 of title 18 of the United States Code is amended by—

(1) striking out subsections (b) and (c); and

(2) inserting the following new subsections (b) and (c):

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may:

"(1) request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity about whom information is sought is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

"(2) request subscriber information regarding a person or entity if the Director (or the Director's designee certifies in writing to the wire or electronic communications service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) that information available to the FBI indicates there is reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PENALTY FOR DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information under this section. A knowing violation of this section is punishable as a class A misdemeanor.".

SEC. 744. COUNTERINTELLIGENCE ACCESS TO CREDIT RECORDS.

Section 1681(f) of title 15, United States Code, is amended by inserting "(1)" before the existing paragraph thereof, and by adding the following provisions:

"(2) Notwithstanding the provisions of section 1681(b) of this title, a consumer reporting agency shall furnish a consumer report to the Federal Bureau of Investigation (FBI) when presented with a request for a consumer report made pursuant to this subsection by the FBI provided that the Director of the FBI, or his designee, certifies in writing to the consumer reporting agency that such records are sought for counterintelligence purposes and that there exists specific and articulable facts giving reason to believe the person to whom the requested consumer report relates is an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(3) Notwithstanding the provisions of section 1681(b) of this title, a consumer reporting agency shall furnish identifying information respecting any consumer limited to name, address, former addresses, places of employment or former places of employment, to a representative of the FBI when presented with a written request signed by the Director of the FBI, or his designee, stating that the information is sought in connection with an authorized foreign counterintelligence investigation.

"(4) No consumer reporting agency, officer, employee, or agent of such institution, shall disclose to any person that the FBI has sought or obtained a consumer report, or identifying information respecting any consumer. A knowing violation of this section is punishable as a class A misdemeanor.".

SEC. 745. AUTHORIZATION FOR INTERCEPTIONS OF COMMUNICATIONS.

(a) Section 2516(1)(k) of title 18, United States Code, is amended by adding before the ";" the following: ", or of section 1701 and the following of title 50, United States Code (relating to the International Emergency Economic Powers Act); section 2410 appendix of title 50, United States Code (relating to the Export Administration Act); or section 5 appendix of title 50, United States Code (relating to the Trading with the Enemy Act)".

(b) Section 2516(1) of title 18, United States Code, is further amended by redesignating subparagraph (o) as subparagraph (p) and adding a new subparagraph (o) as follows:

"(o) any violation of section 956 or section 960 of title 18, United States Code (relating to certain actions against foreign nations);".

(c) Section 2516(1)(c) of title 18, United States Code, is amended by inserting before "or section 1992 (relating to wrecking trains)" the following: "section 2332 (relating to terrorist acts abroad), section 2339 (relating to weapons of mass destruction), section 36 (relating to violence at airports),".

SEC. 746. PARTICIPATION OF FOREIGN AND STATE GOVERNMENT PERSONNEL IN INTERCEPTIONS OF COMMUNICATIONS.

Section 2518(5) of title 18, United States Code, is amended by inserting "(including personnel of a foreign government or of a State or subdivision of a State)" after "Government personnel".

SEC. 747. DISCLOSURE OF INTERCEPTED COMMUNICATIONS TO FOREIGN LAW ENFORCEMENT AGENCIES.

Section 2510(7) of title 18, United States Code, is amended by inserting before the semicolon "and additionally, for purposes of section 2517 (1)–(2), any person authorized to perform investigative, law enforcement, or prosecutorial functions by a foreign government".

SEC. 748. EXTENSION OF THE STATUTE OF LIMITATIONS FOR CERTAIN TERRORISM OFFENSES.

(a) Chapter 213 of title 18, United States Code, is amended by inserting a new section 2386 as follows:

"§ 3286. Extension of statute of limitations for certain terrorism offenses

"Notwithstanding the provisions of section 3282, no person shall be prosecuted, tried, or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (as-

saults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2340A (torture) of this title or section 902 (i), (j), (k), (l), or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1572 (i), (j), (k), (l), or (n)), unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.".

(b) The table of sections for chapter 213 is amended by inserting below the item for:

"3285. Criminal contempt."

the following:

"3286. Extension of statute of limitations for certain terrorism offenses.".

TITLE VIII—SEXUAL VIOLENCE AND CHILD ABUSE

SEC. 801. ADMISSIBILITY OF EVIDENCE OF SIMILAR CRIMES IN SEXUAL ASSAULT AND CHILD MOLESTATION CASES.

The Federal Rules of Evidence are amended by adding after rule 412 the following new rules:

"Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

"(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

"(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

"(d) For purposes of this rule and rule 415, 'offense of sexual assault' means a crime under Federal law or the law of a State that involved—

"(1) any conduct proscribed by chapter 109A of title 18, United States Code;

"(2) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

"(3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

"(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

"(5) an attempt or conspiracy to engage in conduct described in paragraphs (1)–(4).

"Rule 414. Evidence of Similar Crimes in Child Molestation Cases

"(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

"(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

"(d) For purposes of this rule and rule 415, "child" means a person below the age of fourteen, and "offense of child molestation" means a crime under Federal law or the law of a State that involved—

"(1) any conduct proscribed by chapter 109A of title 18, United States Code, that was committed in relation to a child;

"(2) any conduct proscribed by chapter 110 of title 18, United States Code;

"(3) contact between any part of the defendant's body or an object and the genitals or anus of a child;

"(4) contact between the genitals or anus of the defendant and any part of the body of a child;

"(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or

"(6) an attempt or conspiracy to engage in conduct described in paragraphs (1)–(5).

"Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

"(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in rule 413 and rule 414 of these rules.

"(b) A party who intends to offer evidence under this rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.".

SEC. 802. DRUG DISTRIBUTION TO PREGNANT WOMEN.

Section 418 of the Controlled Substances Act is amended by inserting ", or to a woman while she is pregnant," after "to a person under twenty-one years of age" in subsection (a) and subsection (b).

SEC. 803. DEFINITION OF SEXUAL ACT FOR VICTIMS BELOW 16.

Paragraph (2) of section 2245 of title 18, United States Code, is amended—

(1) in subparagraph (B) by striking "or" after the semicolon;

(2) in subparagraph (C) by striking "; and" and inserting in lieu thereof "; or"; and

(3) by inserting a new subparagraph (D) as follows:

"(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;".

SEC. 804. INCREASED PENALTIES FOR RECIDIVIST SEX OFFENDERS.

(a) Section 2245 of title 18, United States Code, is redesignated section 2246.

(b) Chapter 109A of title 18, United States Code, is amended by inserting the following new section after section 2244:

"§ 2245. Penalties for subsequent offenses

"Any person who violates a provision of this chapter after a prior conviction under a provision of this chapter or the law of a State (as defined in section 513 of this title) for conduct proscribed by this chapter has become final is punishable by a term of imprisonment up to twice that otherwise authorized.".

(c) The table of sections for chapter 109A of title 18, United States Code, is amended by—

(1) striking "2245" and inserting in lieu thereof "2246"; and

(2) inserting the following after the item relating to section 2244:

"2245. Penalties for subsequent offenses.".

SEC. 805. RESTITUTION FOR VICTIMS OF SEX OFFENSES.

Section 3663(b)(2) of title 18, United States Code, is amended by inserting "or an offense under chapter 109A or chapter 110 of this title" after "an offense resulting in bodily injury to a victim".

SEC. 806. HIV TESTING AND PENALTY ENHANCEMENT IN SEXUAL ABUSE CASES.

(a) Chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new section:

"§ 2247. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty

"(a) TESTING AT TIME OF PRE-TRIAL RELEASE DETERMINATION.—In a case in which a person is charged with an offense under this chapter, a judicial officer issuing an order pursuant to section 3142(a) of this title shall include in the order a requirement that a test for the human immunodeficiency virus be performed upon the person, and that follow-up tests for the virus be performed six months and twelve months following the date of the initial test, unless the judicial officer determines that the conduct of the person created no risk of transmission of the virus to the victim, and so states in the order. The order shall direct that the initial test be performed within twenty-four hours, or as soon thereafter as feasible. The person shall not be released from custody until the test is performed.

"(b) TESTING AT LATER TIME.—If a person charged with an offense under this chapter was not tested for the human immunodeficiency virus pursuant to subsection (a), the court may at a later time direct that such a test be performed upon the person, and that follow-up tests be performed six months and twelve months following the date of the initial test, if it appears to the court that the conduct of the person may have risked transmission of the virus to the victim. A testing requirement under this subsection may be imposed at any time while the charge is pending, or following conviction at any time prior to the person's completion of service of the sentence.

"(c) TERMINATION OF TESTING REQUIREMENT.—A requirement of follow-up testing imposed under this section shall be canceled if any test is positive for the virus or the person obtains an acquittal on, or dismissal of, all charges under this chapter.

"(d) DISCLOSURE OF TEST RESULTS.—The results of any test for the human immunodeficiency virus performed pursuant to an order under this section shall be provided to the judicial officer or court. The judicial officer or court shall ensure that the results are disclosed to the victim (or to the victim's parent or legal guardian, as appropriate), the attorney for the Government, and the person tested.

"(e) EFFECT ON PENALTY.—The United States Sentencing Commission shall amend existing guidelines for sentences for offenses under this chapter to enhance the sentence if the offender knew or had reason to know that he was infected with the human immunodeficiency virus, except where the offender did not engage or attempt to engage in conduct creating a risk of transmission of the virus to the victim.".

(b) CLERICAL AMENDMENT.—The section analysis for chapter 109A of title 18, United States Code, is amended by inserting at the end thereof the following new item:

"2247. Testing for human immunodeficiency virus; disclosure of test results to victim; effect on penalty.".

SEC. 807. PAYMENT OF COST OF HIV TESTING FOR VICTIM.

Section 503(c)(7) of the Victims' Rights and Restitution Act of 1990 is amended by inserting before the period at the end thereof the following: ", and the cost of up to two tests of the victim for the human immunodeficiency virus during the twelve months following the assault".

TITLE IX—DRUG TESTING

SEC. 901. DRUG TESTING OF FEDERAL OFFENSES ON POST-CONVICTION RELEASE.

(a) DRUG TESTING PROGRAM.—(1) Chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3608. Drug testing of defendants on postconviction release

"The Director of the Administrative Office of the United States Courts shall, as soon as is practicable after the effective date of this section, establish a program of drug testing of criminal defendants on post-conviction release. In each district where it is feasible to do so, the chief probation officer shall arrange for the drug testing of defendants on post-conviction release pursuant to a conviction for a felony or other offense described in section 3563(a)(4) of this title.".

(2) The section analysis for chapter 229 of title 18, United States Code, is amended by adding at the end thereof the following:

"3608. Drug testing of defendants on postconviction release.".

(b) DRUG TESTING CONDITION.—

(1) Section 3563(a) of title 18, United States Code, is amended—

(A) in paragraph (2), by striking out "and";

(B) in paragraph (3), by striking out the period and inserting in lieu thereof "; and"; and

(C) by adding a new paragraph (4), as follows:

"(4) for a felony, an offense involving a firearm as defined in section 921 of this title, a drug or narcotic offense as defined in section 404(c) of the Controlled Substances Act (21 U.S.C. 844(c)), or a crime of violence as defined in section 16 of this title, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated upon request of the Director of the Administrative Office of the United States Courts, or the Director's designee. No action may be taken against a defendant on the basis of a drug test administered pursuant to this paragraph or sections 3583(d) or 4209(a) of this title, unless the drug test confirmation is a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Court after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy, except that a defendant who tests positive may be detained pending confirmation of the test result as provided in this paragraph.".

(2) Section 3583(d) of title 18, United States Code, is amended by inserting after the first sentence the following: "For a defendant convicted of a felony or other offense described in section 3563(a)(4) of this title, the court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the court) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title.".

(3) Section 4209(a) of title 18, United States Code, is amended by inserting after the first sentence the following: "If the parolee has been convicted of a felony or other offense described in section 3563(a)(4) of this title, the Commission shall also impose as a condition of parole that the parolee refrain from any unlawful use of a controlled substance and submit to periodic drug tests (as determined by the Commission) for use of a controlled substance. This latter condition may be suspended or ameliorated as provided in section 3563(a)(4) of this title.".

(c) REVOCATION OF RELEASE.—(1) Section 3565(a) of title 18, United States Code, is amended by inserting in the final sentence after "3563(a)(3)," the following: "or unlawfully uses a controlled substance or refuses to cooperate in drug testing, thereby violating the condition imposed by section 3563(a)(4),".

(2) Section 3583(g) of title 18, United States Code, is amended by inserting after "substance" the following: "or unlawfully uses a controlled substance or refuses to cooperate in drug testing imposed as a condition of supervised release,".

(3) Section 4214(f) of title 18, United States Code, is amended by inserting after "substance" the following: ", or who unlawfully uses a controlled substance or refuses to cooperate in drug testing imposed as a condition of parole,".

SEC. 902. DRUG TESTING IN STATE CRIMINAL JUSTICE SYSTEMS AS A CONDITION OF RECEIPT OF JUSTICE DRUG GRANTS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end of part E (42 U.S.C. 3750–3766b) the following:

"DRUG TESTING PROGRAMS

"SEC. 523. (a) PROGRAM REQUIRED.—It is a condition of eligibility for funding under this part that a State formulate and implement a drug testing program for targeted classes of persons subject to charges, confinement, or supervision in the criminal justice systems of the State. Such a program must meet criteria specified in regulations promulgated by the Attorney General under subsection (b) of this section. Notwithstanding the above, no State shall be required to expend an amount for drug testing pursuant to this section in excess of 10 per centum of the minimum amount which that State is eligible to receive under this part.

"(b) REGULATIONS.—The Attorney General shall promulgate regulations to implement this section, which shall incorporate scientific and technical standards determined by the Secretary of Health and Human Services to ensure reliability and accuracy of drug test results. The regulations shall include such other guidelines for drug testing programs in State criminal justice systems as the Attorney General determines are appropriate, and shall include provisions by which a State may apply to the Attorney General for a waiver of the requirements imposed by this section, on grounds that compliance would impose excessive financial or other burdens on such State or would otherwise be impractical or contrary to State policy.

"(c) EFFECTIVE DATE.—This section shall take effect with respect to any State at a time specified by the Attorney General, but no earlier than the promulgation of the regulations required under subsection (b).".

TITLE X—EQUAL JUSTICE ACT

SEC. 1001. SHORT TITLE.

This title may be cited as the "Equal Justice Act".

SEC. 1002. PROHIBITION OF RACIALLY DISCRIMINATORY POLICIES CONCERNING CAPITAL PUNISHMENT OR OTHER PENALTIES.

(a) The penalty of death and all other penalties shall be administered by the United States and by every State without regard to the race or color of the defendant or victim. Neither the United States nor any State shall prescribe any racial quota or statistical test for the imposition or execution of the death penalty or any other penalty.

(b) For purposes of this title—

(1) the action of the United States or of a State includes the action of any legislative, judicial, executive, administrative, or other agency or instrumentality of the United States or a State, or of any political subdivision of the United States or a State;

(2) "State" has the meaning given in section 541 of title 18, United States Code; and

(3) "racial quota or statistical test" includes any law, rule, presumption, goal, standard for establishing a prima facie case, or mandatory or permissive inference that—

(A) requires or authorizes the imposition or execution of the death penalty or another penalty so as to achieve a specified racial proportion relating to offenders, convicts, defendants, arrestees, or victims; or

(B) requires or authorizes the invalidation of, or bars the execution of, sentences of death or other penalties based on the failure of a jurisdiction to achieve a specified racial proportion relating to offenders, convicts, defendants, arrestees, or victims in the imposition or execution of such sentences or penalties.

SEC. 1003. GENERAL SAFEGUARDS AGAINST RACIAL PREJUDICE OR BIAS IN THE TRIBUNAL.

In a criminal trial in a court of the United States, or of any State—

(1) on motion of the defense attorney or prosecutor, the risk of racial prejudice or bias shall be examined on voir dire if there is a substantial likelihood in the circumstances of the case that such prejudice or bias will affect the jury either against or in favor of the defendant;

(2) on motion of the defense attorney or prosecutor, a change of venue shall be granted if an impartial jury cannot be obtained in the original venue because of racial prejudice or bias; and

(3) neither the prosecutor nor the defense attorney shall make any appeal to racial prejudice or bias in statements before the jury.

SEC. 1004. FEDERAL CAPITAL CASES.

(a) JURY INSTRUCTIONS AND CERTIFICATION.—In a prosecution for an offense against the United States in which a sen-

tence of death is sought, and in which the capital sentencing determination is to be made by a jury, the judge shall instruct the jury that it is not to be influenced by prejudice or bias relating to the race or color of the defendant or victim in considering whether a sentence of death is justified, and that the jury is not to recommend the imposition of a sentence of death unless it has concluded that it would recommend the same sentence for such a crime regardless of the race or color of the defendant or victim. Upon the return of a recommendation of a sentence of death, the jury shall also return a certificate, signed by each juror, that the juror's individual decision was not affected by prejudice or bias relating to the race or color of the defendant or victim, and that the individual juror would have made the same recommendation regardless of the race or color of the defendant or victim.

(b) RACIALLY MOTIVATED KILLINGS.—In a prosecution for an offense against the United States for which a sentence of death is authorized, the fact that the killing of the victim was motivated by racial prejudice or bias shall be deemed an aggravating factor whose existence permits consideration of the death penalty, in addition to any other aggravating factors that may be specified by law as permitting consideration of the death penalty.

(c) KILLINGS IN VIOLATION OF CIVIL RIGHTS STATUTES.—Sections 241, 242, and 245(b) of title 18, United States Code, are each amended by deleting "shall be subject to imprisonment for any term of years or for life" and inserting in lieu thereof "shall be punished by death or imprisonment for any term of years or for life".

SEC. 1005. FUNDING OBJECTIVE.

Section 501 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) is amended by striking "and" following the semicolon in paragraph (20), striking the period at the end of paragraph (21) and inserting in lieu thereof "; and", and adding at the end thereof the following new paragraph:

"(22) providing, in all appropriate cases, particularly collateral and other postconviction proceedings, adequate resources and expertise to ensure that the death penalty is expeditiously carried out.".

SEC. 1006. EXTENSION OF PROTECTION OF CIVIL RIGHTS STATUTES.

(a) Section 241 of title 18, United States Code, is amended by deleting "inhabitant of" and inserting in lieu thereof "person in".

(b) Section 242 of title 18, United States Code, is amended by deleting "inhabitant of" and inserting in lieu thereof "person in", and by deleting "such inhabitant" and inserting in lieu thereof "such person".

TITLE XI—VICTIMS' RIGHTS

SEC. 1101. RESTITUTION AMENDMENTS.

(a) EXPANSION OF RESTITUTION.—Section 3663(b) of title 18, United States Code, is amended by striking "and" following the semicolon in paragraph (3), redesignating paragraph (4) as paragraph (5), and adding after paragraph (3) the following:

"(4) in any case, reimburse the victim for necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and".

(b) SUSPENSION OF FEDERAL BENEFITS.—Subsections (g) and (h) of section 3663 of title 18, United States Code, are redesignated as subsections (h) and (i), respectively, and a new subsection (g) is inserted as follows:

"(g)(1) If the defendant is delinquent in making restitution in accordance with any schedule of payments established under subsection (f)(1) of this section, or any requirement of immediate payment under subsection (f)(3) of this section, the court may, after a hearing, suspend the defendant's eligibility for all Federal benefits until such time as the defendant demonstrates to the court good-faith efforts to return to such schedule.

"(2) For purposes of this subsection—

"(A) the term 'Federal benefits'—

"(i) means any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

"(ii) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

"(B) the term 'veterans benefit' means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.".

SEC. 1102. VICTIM'S RIGHT OF ALLOCATION IN SENTENCING.

Rule 32 of the Federal Rules of Criminal Procedure is amended by—

(1) striking "and" following the semicolon in subdivision (a)(1)(B);

(2) striking the period at the end of subdivision (a)(1)(C) and inserting in lieu thereof "; and";

(3) inserting after subdivision (a)(1)(C) the following: "(D) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim withes to make a statement and to present any information in relation to the sentence.";

(4) in the second to last sentence of subdivision (a)(1), striking "equivalent opportunity" and inserting in lieu thereof "opportunity equivalent to that of the defendant's counsel";

(5) in the last sentence of subdivision (a)(1) inserting "the victim," before ", or the attorney for the Government."; and

(6) adding at the end the following:

"(f) DEFINITIONS.—For purposes of this rule—

(1) "victims" means any individual against whom an offense for which a sentence is to be imposed has been committed, but the right of allocution under subdivision (a)(1)(D) may be exercised instead by—

"(A) a parent or legal guardian in case the victim is below the age of eighteen years or incompetent; or

"(B) one or more family members or relatives designated by the court in case the victim is deceased or incapacitated;

if such person or persons are present at the sentencing hearing, regardless or whether the victim is present; and

"(2) 'crime or violence or sexual abuse' means a crime that involved the use or attempted or threatened use of physical force against the person or property of another, or a crime under chapter 109A of title 18, United States Code.".

TITLE XII

FEDERAL CRIMINAL JUSTICE RESTORATION ACCOUNT AUTHORIZATION

There are authorized to be appropriated the following sums: (1) for the fiscal year ending September 30, 1992, $511,130,000 above the amounts provided in the House of Representatives passed version of H.R. 2608 on June 13, 1991 for the criminal justice approprition accounts of the Department of Justice; and (2) sums as may be necessary for subsequent fiscal years.

TITLE XIII

* * *

TITLE XIV

SECTION 1. SHORT TITLE.

This Act may be cited as the "Crime victims' Restitution Act of 1991".

SEC. 2. AMENDMEDNT OF RESTITUTION PROVISIONS.

(a) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a) by—

(A) striking "(a) The court" and inserting "(a)(1) The court";

(B) striking "may order" and inserting "shall order"; and

(C) adding at the end thereof the following new paragraph:

"(2) In addition to ordering restitution of the victim of the offense of which a defendant is convicted, a court may order restitution of any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

"(A) the criminal episode during which the offense occurred; or

"(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.";

(2) in subsection (b)(1)(A) by striking "impractical" and inserting "impracticable";

(3) in subsection (b)(2) by inserting "emotional or" after "resulting in";

(4) in subsection (c) by strking "If the Court decides to order restitution under this section, the" and inserting "The";

(5) by striking subsections (d), (e), (f), (g), and (h); and

(6) by adding at the end thereof the following new subsections:

"(d)(1) The court shall order restitution to a victim in the full amount of the victim's losses as determined by the court and without consideration of—

"(A) the economic circumstances of the offender; or

"(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the offender;

"(B) projected earnings and other income of the offender; and

"(C) any financial obligations of the offender, including obligations to dependents.

"(3) A restoration order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender.

"(4) An in-kind payment described in paragraph (3) may be in the form of—

"(A) return of property;

"(B) replacement of property; or

"(C) services rendered to the victim or to a person or organization other than the victim.

"(e) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of res-

titution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

"(f) When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution of each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

"(g)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

"(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensation to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

"(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(h) A restitution order shall provide that—

"(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to the clerk of the court for accounting and payment by the clerk in accordance with this subsection;

"(2) the clerk of the court shall—

"(A) log all transfers in a manner that tracks the offender's obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court determines that continued recordkeeping under this subparagraph would not be useful;

"(B) notify the court and the interested parties when an offender is 90 days in arrears in meeting those obligations; and

"(C) disburse money received from an offender so that each of the following obligations is paid in full in the following sequence:

"(i) a penalty assessment under section 3013 of title 18, United States Code;

"(ii) restitution of all victims; and

"(iii) all other fines, penalties, costs, and other payments required under the sentence; and

"(3) the offender shall advise the clerk of the court of any change in the offender's address during the term of the restitution order.

"(i) A restitution order shall constitute a lien against all property of the offender and may be recorded in any Federal or State office for the recording of liens against real or personal property.

"(j) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the restitution order.

"(k) An order of restitution may be enforced—

"(1) by the United States—

"(A) in the manner provided for the collection and payment of fines in subchapter (B) of chapter 229 of this title; or

"(B) in the same manner as a judgment in a civil action; and

"(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

"(l) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.".

(b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664 of title 18, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d);

(3) by amending subsection (a), as redesignated by paragraph (2), to read as follows:

"(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report as the court directs.";

"(e) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of act and recommendations as to disposition, subject to a de novo determination of the issue by the court.".

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON INNOVATION, TECHNOLOGY AND PRODUCTIVITY

Mr. FORD. Mr. President, I ask unanimous consent that the Small Business Subcommittee on Innovation, Technology and Productivity be authorized to meet during the session of the Senate on Thursday, June 20, 1991, at 9:15 a.m. The subcommittee will hold a hearing on United States-Japan auto parts trade.

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

COMMITTEE ON FINANCE

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on June 20, 1991, at 10 a.m. to hold a hearing on the President's recommendation that China continue to receive most-favored-nation trade status.

The PRESIDING OFFICER Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on June 20, 1991, at 2 p.m. on the nomination of Dennis Yao to be a member of the Federal Trade Commission.

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

SUBCOMMITTEE ON COMMUNICATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Communications, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on June 20, 1991, at 9:30 a.m. on broadcasters public interest obligations.

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

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, June 20, 1991, at 2 p.m., to hold a hearing on the nomination of Jane R. Roth, to be U.S. circuit judge for the Third Circuit, Sterling Johnson, Jr., to be U.S. district judge for the Eastern District of New York, Harvey E. Schlesinger, to be U.S. district judge for the Middle District of Florida and Ralph W. Nimmons, to be U.S. district judge for the Middle District of Florida.

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

SUBCOMMITTEE ON TECHNOLOGY

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Technology and the Law of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Thursday, June 20, 1991, at 10 a.m., to hold a markup on S. 652, a bill to protect the privacy of telephone users by amendment section 3121 of title 18, United States Code.

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

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS, AND FORESTS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, National Parks, and Forests of the full Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 2 p.m., June 20, 1991, to receive testimony on the following bills: S. 477, S. 628, S. 772, S. 855, S. 867, and S. 1117.

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

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, June 20, beginning at 2 p.m., to conduct a hearing on implementation of section 404 of the Clean Water Act.

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

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, June 20, beginning at 9:30 a.m., to conduct a hearing on implementation of section 404 of the Clean Water Act.

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, June 20, 1991, at 1:30 p.m., to hold a hearing on Enforcement and Administration of the Foreign Agents Registration Act [FARA].

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

SUBCOMMITTEE ON LABOR

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Labor of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Thursday, June 20, 1991 at 10 a.m., for a hearing on "Retirees at Risk: The Executive Life Bankruptcy."

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

SUBCOMMITTEE ON AGING

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Aging of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Thursday, June 20, 1991, at 9:30 a.m., for a hearing on "Why Are We Losing the War Against Breast Cancer."

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

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry Subcommittee on Agricultural Research and General Legislation be allowed to meet during the session of the Senate on Thursday, June 20, 1991, at 9 a.m. to hold a hearing on the agriculturally derived renewable fuels—current status and prospects for the future.

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

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Thursday, June 20, 1991, at 9 a.m., to receive a briefing from special operations forces on the conduct of special operations during Operation Desert Shield/Desert Storm.

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

SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services be authorized to meet on Thursday, June 20, 1991, at 2 p.m., to receive testimony on the strategic defense initiative in review of S. 1066, the Department of Defense authorization bill for fiscal years 1992–93.

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

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. FORD. Mr. President, I ask unanimous consent that the Senate Committee on Agriculture, Nutrition, and Forestry, be allowed to meet during the session of the Senate on Thursday, June 20, 1991, after the first vote of the afternoon, in the President's Room, in order to report out Ann Veneman as Deputy Secretary of Agriculture.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 20, at 2 p.m., to hold a hearing on three ambassadorial nominations.

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

ADDITIONAL STATEMENTS

NEWARK, NJ—ONE OF AMERICA'S MOST LIVABLE CITIES

• Mr. LAUTENBERG. Mr. President, I rise with great pride to congratulate the city of Newark, NJ, on being named one of America's most livable cities by the U.S. Conference of Mayors.

Newark is a success story that every American can be proud of. Emerging from trying times in the 1970's and 1980's that saw much of Newark victimized by poverty and crime, today Newark is in the midst of what the Conference of Mayors called a true renaissance. The future is one of hope for growth, prosperity, and success. Where business once fled Newark, today it is returning and building futures there, giving the city a sense of resurgent pride and promise.

Mayor Sharpe James has provided the leadership to help make Newark an example of smart planning and vision. The city has been selected as an All-American City by the National Civic League and Newark's recycling program is a model of efficiency that has won praise from the U.S. Environmental Protection Agency. Also, as a transportation hub encompassing air, rail, and sea facilities, Newark is one of the gateways to America and is working to make its transportation more accessible and efficient. Newark is one American city facing the 21st century with every reason for optimism.

I would like to have printed in the RECORD an article from the June 18, 1991 New York Times titled "A Livable City? Newark. Yes, Newark." which makes clear just why Newark is so deserving of the honor of being named one of America's most livable cities.

The article follows:

[From the New York Times, June 18, 1991]

A LIVABLE CITY? NEWARK. YES, NEWARK.

(By James Barron)

This sounds like monologue material for Johnny or Dave or Arsenio: Newark, once a symbol of old-fashioned industrial might and later of urban unrest and disintegration, won an award yesterday in a competition to choose America's most livable cities.

Newark. Livable. Really.

The United States Conference of Mayors announced this at its annual meeting in San Diego, commending Newark for a "true renaissance." It noted that Newark was getting its first new theater in 50 years and had its first new shopping center in 20, along with hundreds of town houses for low- and moderate-income residents.

This is not the only prize to come Newark's way lately. Just last week, Newark was designated an All-American City by the National Civic League, and Newark has won a shelf of trophies for a recycling program that uses tires in making pavement for roads. The method Newark uses has attracted worldwide attention. A delegation from the Soviet Union spent a week in Newark studying it.

STILL SERIOUS PROBLEMS

All this for a city that used to be laughed off in the same breath as Detroit, which like Newark was scarred by riots in the 1960's, or Cleveland, where the Mayor once set his hair on fire at a ribbon-cutting ceremony.

"There's an old saying—when you face a mass of problems, if they don't kill you, you'll be better off," Mayor Sharpe James of Newark said last week. "We faced the riots, where most people's image even today is one of Newark burning and National Guard troops marching up and down the street."

Newark still has the serious problems of any big city: crime and the perception of crime, drugs, and AIDS. Unemployment stood at 12.6 percent in February, the most recent month for which the Bureau of Labor Statistics has compiled figures. That was up from 10.2 percent in the same month of 1990, and well above the national rate.

In talking about Newark's recent success in getting construction projects going, Mayor James uses the old real-estate cliché—"location, location, location." Newark, though, is profiting from more than being in the right place at an opportune

time; the Mayor might just as well say transportation, transportation, transportation.

Newark has the nation's fastest-growing airport and its largest port for container ships, along with a train station that serves an an anchor for many of the new buildings downtown. And Newark may well become one of the new cities in the nation whose airport is reachable by rail: the Port Authority of New York and New Jersey is spending $350,000 to study linking a planned people-mover system at the airport to the Northeast Corridor rail lines.

'BEAUTIFUL DOWNTOWN NEWARK'

"Newark is so much more accessible," said Pamela Goldstein, an aide to Mayor James. "I don't want to take a potshot at New York or anything, but it's much easier to get goods in and out of Newark."

Michael Zimmer, the associate dean of the Seton Hall University Law Center, remembers arriving in Newark in 1978 and deciding that "it was a pretty dispirited place."

"Then," he said, "it was pure irony when someone said 'beautiful downtown Newark.' If you fly around Newark now in a helicopter, you would see the coming together of a viable urban environment." Mr. Zimmer suggests a helicopter because he finds the traffic increasingly snarled in the downtown area where the law school's new home is scheduled to open this year.

The streets may get more clogged as new buildings open. Blue Cross and Blue Shield of New Jersey plan to move 2,400 employees from a campus-like complex in suburban Florham Park to a Newark office tower. New Jersey Transit is expected to occupy an adjacent building. And the $200 million New Jersey Performing Arts Center is planned for the block behind Seton Hall's new law school.

PUBLIC AND PRIVATE INVESTMENT

Some urban experts say awards like the ones Newark has been winning lately may go to cities that pay as much attention to municipal marketing as to municipal development. But most agree that Newark has made progress.

"The secret to Newark is many years of public investment are now yielding a harvest," said Mitchell Moss of the Urban Research Center and New York University. Tax abatements and other government incentives are credited with making some new projects economically attractive. And a small number of downtown corporations—among them Prudential Insurance, Public Service Electric and Gas, First Fidelity Bank and New Jersey Bell—have put a large amount of money into building new buildings.

"Mayor James has been doing well, but it's like trying to push a boulder up a hill," said Norman J. Glickman, director of the Center for Urban Policy Research at Rutgers University in New Brunswick. "He's gotten halfway up the hill, but whether he'll get to the top remains to be seen."

Other planners are more skeptical of a Newark renaissance.

"It flies in the face of secular reality," said George Sternlieb, who founded the center Mr. Glickman now runs. "The secular reality is a city that still is essentially dependent upon welfare and on the flow of funds from the county, the state and the Feds." Newark used to have 20 percent of the job base of the entire state, he said, but now has no more than 5 or 6 percent.

JUST A BEGINNING

Mr. James said he was not sweeping the city's problems under the rug. "We're talking about a window of opportunity," he said last week after winning the All-America City prize. "We have an award that says, 'Hey, Newark, we recognize where you were, we recognize your progress.' And that's what we accept this as—not as an ending but a beginning to do more."

One thing that some residents say Newark must do to clinch the city's transformation is to reach beyond downtown, with its new elevated walkways connecting the buildings near Pennsylvania Station.

"People who come into Newark never set foot on Newark soil," said Mary Smith, the treasurer of New Community, a nonprofit group that built the new shopping center. "We need more things in the neighborhoods to benefit the neighborhoods."

PURPOSEFUL ACTIONS

And the livability award? In San Diego yesterday, Kay Scrimger of the Conference of Mayors said that Newark was chosen from among 117 cities "not for intrinsic livability but for purposeful actions in developing programs that promote livability." In other words, she said, the award goes to a mayor who has done something to make his city livable, not necessarily to one whose city already is.

Newark clearly hopes it will get publicity from its recent awards—and it probably won't get too much of the kind it does not need. Steve O'Donnell, the head writer on "Late Night With David Letterman," said that in nearly 10 years he could not remember putting a Newark joke on the air.

"We'll make a Cleveland Indians joke sometimes," said Mr. O'Connell, who grew up in Cleveland, "but not Newark, maybe since we're playing to a nationwide audience. Newark may be more of a tristate-area joke than a nationwide joke."•

PLASTICS FROM POTATO WASTE

• Mr. SIMON. Mr. President, what do farmers in Idaho and the Argonne National Laboratory in Illinois have in common?

The Argonne National Laboratory has much in common with every State in the Union because of its preeminent role in the world of research.

But one of the things they are developing is degradable plastics from potato waste.

An article that originally appeared in the magazine. Logos, a quarterly research publication by the Argonne National Laboratory, outlines what is happening in the world of research.

I saw the article reprinted in the publication the World & I.

I ask to insert the article in the RECORD at this point.

The article follows:

PLASTICS FROM POTATO WASTE

(By Robert Coleman)

The disparate worlds of potatoes and plastics may hold a solution to each other's problems.

Waste from potato processing adds up to more than 10 billion pounds annually in the United States alone. The total is growing, overloading present methods of disposal.

The nondegradable plastic waste fouling the environment—a more visible problem—is stimulating a rising demand for degradable plastics. Furthermore, the heightened awareness that plastics are made from a nonrenewable resource, petroleum, provides impetus for finding a way to make plastics from renewable sources.

While research into biodegradable plastics is proceeding on many fronts, one of the most promising approaches may be the one now being mastered at Argonne National Laboratory, in Argonne, Illinois. In concept, the idea is simple: convert potato starch into a biodegradable plastic that can be made photodegradable, with the rate of degradation being determined during the production process.

A potentially valuable resource, food processing waste has become an economic burden and a serious environmental problem. Although some potato waste is sold as cattle feed or converted to ethanol as an alternative to gasoline, billions of pounds of it are spread on land dedicated to that use alone. Each year, cheese producers generate several billion pounds of cheese whey wastes, a potentially valuable source of energy-rich molecules. Other food processing industries generate large quantities of energy-rich wastes as well.

Since June 1988, researchers at Argonne have been developing a process for turning starchy food waste into plastics that are fully biodegradable and can readily be made photodegradable. Nearing mastery of the complete process, Argonne's researchers are developing technology that (1) converts food processing waste into lactic acid, and (2) uses polylactic acid (chains of lactic acid molecules) to make environmentally safe, degradable plastics. The research and development required to produce degradeable plastics from high-carbohydrate food waste is multidisciplinary, drawing on expertise in enzymology, molecular biology, microbiology, fermentation, product recovery, process design, and polymer chemistry.

Biodegradable polylactic acid plastics have been in use for some years. However, they are expensive and are used only to make high-value items such as surgical sutures, prosthetic devices, and surgically implanted drug delivery systems for hormones and insulin. In these applications, high-purity polylactic acid plastic is the material of choice because it degrades so completely into natural molecules that are readily absorbed into the body.

STARCH TO GLUCOSE TO LACTIC ACID

The new proprietary technology developed at Argonne rapidly converts the starch in potato waste into glucose. The process involves one less step than previously required. This time savings makes the Argonne method less expensive and adds to its feasibility.

The lab receives fresh potato waste samples from Universal Frozen Foods in Twin Falls, Idaho. The samples are labeled and stored frozen. The solid potato waste contains 14–16 percent fermentable starch. The waste samples, representative of processing waste generated by large french fry facilities in Oregon and Idaho, are then homogenized in a blender.

A two-enzyme process breaks down the starch into glucose. First, a highly temperature-stable alpha amylase (a starch-splitting enzyme) decomposes the long starch molecule into smaller pieces. It is broken down further by another enzyme, glucoamylase, which attacks small fragments of starch and produces glucose in a process called saccharification. More than 90 percent of the starch is converted into glucose in this bench-scale process, which requires only 4–8 hours. The previous standard process requires almost 100 hours.

Next, the glucose is fermented to lactic acid. A strain of lactic acid bacteria is added

to the glucose in a bioreactor processing vat. More than 95 percent of the glucose is fermented to lactic acid during batch fermentation for 48 hours.

An important aspect of the current research involves screening lactic acid bacteria to enhance performance. Research at Argonne has identified and developed strains of lactic acid bacteria that might improve the process efficiency.

LACTIC ACID INTO PLASTIC

The lactic acid is recovered and purified to make plastic. After fermentation, the bacteria are separated from the lactic acid, which is recovered by an electrically charged separation process. Lactic acid can be further purified through carbon filters. Processes for additional purification are being investigated.

Lactic acid powder is used to develop plastic with photodegradable and biodegradable characteristics. The plastic's decay rate is manipulated during its preparation, either by varying the isomers (compounds with the same numbers of atoms but with different atomic structures) of lactic acid, or by adding other compounds. A 50-50 mixture of the two lactic acid isomers provides the quickest breakdown, while plastics made entirely of one of the isomers break down the slowest.

Argonne has developed the first photodegradable polylactate plastic film, to our knowledge. It contains about 95 percent lactic acid and 5 percent of an environmentally safe product, and it deteriorates from exposure to ultraviolet light from sunlight.

POTENTIAL MARKETS

Potential markets for the plastics are as mulch films and compost bags, products that required many million pounds of plastic in 1990 to meet U.S. demand alone. Agricultural mulch film is a plastic sheet that keeps water in the soil and controls weeds. At present, farmers have to spend up to $100 an acre to recover the nondegradable film.

Another promising alternative is as the carrier medium for time-released pesticides and fertilizers. Argonne is investigating programmable fertilizer and pesticide delivery systems for sustained release, using plastic that degrades during the course of a growing season.

Approximately one billion pounds of pesticides are used every year in the United States; unfortunately, a high proportion is wasted, and the runoff often contaminates aquifers. A time-released pesticide dissolving from a degradable plastic matrix, much like a time-released cold capsule, could improve the efficiency of pesticide use—achieving less waste at lower cost—while minimizing groundwater pollution. A collaborative study between Argonne and the Tennessee Valley Authority National Fertilizer and Environment Research Center, begun in fall 1989, is examining the efficiency of polylactates for sustained release of urea-based fertilizers.

Other potential markets for degradable polylactic acid plastic and coatings include the following:

Marine plastic applications including lobster pots, netting, and packaging for items consumed on board ships.

Degradable liners for paper cups.

Protective coatings for root systems of young seedlings used for reforestation.

Future research involves optimizing and scaling up the continuous process for converting glucose into lactic acid. Specific bacterial strains are being developed for more efficient fermentation. To study the feasibility of the process, a demonstration plant will have to be built next to a potato processing facility to convert the waste on a commercial scale.

A recently developed, novel procedure for synthesizing polylactic acid plastic promises to reduce the cost of plastic production. Follow-up research is needed to establish the actual cost of plastic production and develop the procedures to provide the desired degradation rate. On this solid foundation, the intended applications of polylactic acid plastic will be developed more fully, in alliance with potential major users of the plastic.

Converting food waste high in starch or simple sugar into plastic products has great potential. Argonne is investigating potato and cheese whey wastes because they are quite high in carbohydrates and are available in large volumes. Corn, sorghum, and wheat are other conversion candidates.•

THE EISENHOWER LEGACY

• Mr. CRAIG. Mr. President, I am happy to rise today to commend the work of Mr. Ralph Becker. This prolific American has distinguished himself on a number of fronts. He was one of the driving forces behind the development of the Kennedy Center. He was instrumental in making sure history recorded the role played by President Eisenhower in the culture and arts of this country. And, certainly not least, he has given us a delightful and comprehensive record of the evolution of the Kennedy Center in his book, "Miracle on the Potomac."

Many Americans admired Eisenhower for his prowess as a commander and for his steadfast guidance of this country as its President. Comparatively few know of his commitment to propagating the arts in the District of Columbia and across the country.

The story of the Eisenhower administration and its involvement in the National Cultural Center—the Kennedy Center—is an exciting and historic one. I would like to ask, Mr. President, that Mr. Becker's remarks from his address, "The Cultural Legacy of Eisenhower," which he gave in October of last year at "The Eisenhower Centennial Celebration, a Retrospective View," be printed in the RECORD.

To my colleagues who might wish to know of Eisenhower's unique contributions to the cultural history of America, I recommend both Mr. Becker's remarks and his book.

The remarks follow:

THE EISENHOWER LEGACY

(Remarks of Ralph E. Becker)

Friends of Eisenhower, I am very proud to join my esteemed colleagues gathered here: Richard Coe, critic emeritus of the Washington Post, was a strong advocate for a national cultural center despite major opposition from his colleagues and the editor of his newspaper, a long-time friend, he is the perfect individual to moderate this panel of experts. No one is more qualified than author Dr. Elise Kirk to discuss Eisenhower's musical and entertainment programs at the White House:

Unfortunately, Abbott Washburn has to be in Washington as Chairman of the celebration at the Eisenhower Theater of the Kennedy Center. However, he sent as a substitute his distinguished cousin, Dr. Malcolm McLean of Minnesota. Dr. McLean is past president of Northland College of Minnesota, a political and cultural officer of USIA who served in Brazil, Vietnam and the Dominican Republic. He was Director of Arts of St. Paul, Minnesota and will speak about USIA, Voice of America and the People-to-People Program. Raymond Freeman, deputy director of the National Park Service for many years, is intimately acquainted with Mission 66 and the renaissance of the National Park Service, including restoration of Ford's Theatre and Independence Hall. The International Cultural Exchange Program initiated by Ike—notably the US/USSR cultural exchange agreement he negotiated with Nikita Khrushchev—will be covered adeptly by Guy E. Coriden, Jr., for many years a member of the United States Department of State.

No accurate portrait of President Eisenhower, whose eight years in office brought peace and prosperity, would be complete without his cultural achievements being fully recognized. His devotion to the betterment of the cultural fabric of our lives has been hidden, whatever the reason, under a bushel basket for thirty years. It is now time to illuminate this dimension of our 34th President.

William Bragg Ewald, his biographer and an official of his administrations, is also a panelist of this symposium. Paraphrasing Carl Sandburg, Ewald described him best when he said: "Ike was steel and velvet . . . as hard as rock and soft as drifting fog, one who held in his heart and mind the paradox of terrible storm and peace unspeakable and perfect." It is undoubtedly from these overlooked qualities—the '"velvet" and the "heart" in him—that Eisenhower's commitment to the arts derived.

It was in 1800 that President John Adams issued a mandate for the new capital city of Washington, D.C. He mandated that it should become "the capital of a great nation, advancing with unexampled rapidity in arts, in commerce, in wealth and population—a seat of government and of culture."

Turning the dream of an early President into reality took the initiative of a modern one and nearly 200 years. It was Eisenhower who answered the call. His commitment became public record in 1955 in his second State of the Union message, when he said ". . . the Federal government should do more to give official recognition to the importance of the arts and other cultural activities. I shall recommend the establishment of a Federal Advisory Council on the Arts . . . to advise the Federal government on ways to encourage artistic endeavor and appreciation." He made good on his promise and on July 1, 1955 in Newport, Rhode Island, he signed Public Law 128 creating the D.C. Auditorium Commission. The act established a 12-member bipartisan commission to formulate "plans for the design, location, financing and construction in the District of Columbia for a civic auditorium . . . and a music, fine arts and mass communication center." The commission endured continued onslaughts and opposition over the site chosen in Foggy Bottom for almost two years but on August 8, 1957 the House Appropriations Committee refused the request for a $25,000 operation budget and its effort died for lack of funding by Congress.

Perseverance, however, paid off and like a phoenix rising from its own ashes, the cultural center regenerated itself in the form of

bills introduced in the House and Senate by Congressman Frank Thompson and Senator William Fulbright in January of 1958. These bills were successors to pioneer bills introduced in the House in 1953, Eisenhower's inaugural year, by Congressman Carroll Kearns, Republican of Pennsylvania and Congressman Charles D. Howell, Democrat of New Jersey.

Unprecedented and historic, the story behind the funding and construction of the Center is exciting. The origins of the Center during the Eisenhower years were not smooth sailing. We were beset with problems from the outset. We had to deal with a constant lack of funds, opposition from Capitol Hill and vitriolic criticisms from native Washingtonians.

The site originally chosen for the National Cultural Center was the spot on the Mall now occupied by the National Air & Space Museum. Selection of this site inspired a controversy that lasted seven long years and was resolved only by intervention of the Eisenhower White House. As a result of actions taken by Sherman Adams, Ike's Chief of Staff, and Secretary of Interior Fred Seaton, the Center was able to obtain from the Corps of Engineers the magnificent site in Foggy Bottom where it stands today. This led directly to passage of the National Cultural Center Act—Public Law 85-874-which Ike signed on September 2, 1958. It also cleared the way for construction of both the Air & Space Museum and the Theodore Roosevelt Bridge, which provided a much-needed Potomac River crossing.

During the heat of battle, debates and hearings were held and Congressman Bob Jones of Scottsboro, Alabama, Chairman of the Public Buildings Committee and a great quarterback for the Center, requested a letter from President Eisenhower supporting the Center. I phoned Chief of Staff Sherman Adams who immediately had Bryce Harlow write the letter for the President's signature. At the time we had troops in Lebanon and Eisenhower taking the time to dispatch such a letter sent a powerful message to Congress concerning its importance. The letter was sent to Chairman Buckley in August and truly became the turning point in the entire struggle to locate the Center in Foggy Bottom, in the closing days of the Session. I quote from it now:

"Dear Mr. Chairman: I am writing you with reference to legislation pending before your committee which would authorize the national cultural center here in Washington on a site mandated by the Federal government with funds raised by voluntary contributions. There has long been a need for more adequate facilities in the Capital for the presentation of the performing arts. An auditorium and other facilities such as are provided for in pending legislation, established and supported by contributions from the public, would be a center of which the entire Nation could be proud. I hope that the Congress will complete action on this legislation during this session."

The stalemate was a long and arduous one but those in favor of the site persevered and at long last on September 2, 1958 Ike signed the legislation authorizing a national cultural center—Public Law 85-874—the National Cultural Center Act. His message at the time was clear, succinct, and prophetic:

"The cultural center belongs to the entire country. The challenge of its development offers to each of us a noble opportunity to add to the aesthetic and spiritual fabric of America."

As President, he championed the concept of a national cultural center, strongly endorsing the legislation creating it.

These three milestones are yet another dimension of his cultural commitment for the City and the Nation, which recast Washington's bleak cultural history. Just one of these projects alone constitutes a monumental feat, the three together point out the awesome scope of his legacy. An added major benefit was that his foresight paved the way for Federal participation in the arts—the establishment of the National Endowment for the Arts and Humanities—which occurred during the Johnson administration. Look at Federal and state participation in the arts today, running into billions of dollars.

In 1959 I was appointed by President Eisenhower as a founding trustee and general counsel of the National Cultural Center. My recent book, "Miracle on the Potomac: The Kennedy Center from the Beginning," chronicles the monumental task of creating a cultural center worthy of the Nation. I wrote it as a tribute to President Eisenhower. Although the Center is named for President John F. Kennedy, to be reminded of Eisenhower's seminal contribution in no way diminishes the appropriateness of the Center as a living memorial to President Kennedy. His love for the arts and the importance he gave them in the achievement of national goals are as much a part of the Center as its architecture. But to neglect the role that Eisenhower played in the Center's chancy beginnings not only omits a significant item of cultural history but also serves to perpeturate an image of the man that does disservice to his memory.

During his lifetime and since his death, most historians have focused with good reason on Eisenhower's accomplishments as soldier and statesman. But there was more to Ike, even the public Ike, than his effectiveness as a leader in difficult times. For him, the arts were part of a much larger quest for better understanding among the peoples of the world. He encouraged Americans of all races, creeds and occupations to visit and communicate with their counterparts in many different lands. His interest in cultural performances at the White House included many first, particularly Broadway musicals as well as opera, ballet and symphony presentations.

Eisenhower, the professional military man, had observed firsthand the impact of propaganda during World War II, and from this experience he had learned something about psychological warfare. What Ike saw of men and women in wartime only served to reinforce his basic faith in the good will and good sense of ordinary people. "People want peace so badly," he once observed, "that someday governments are going to have to get out of the way and let them have it."

From this sentiment derived the international cultural exchange and People-to-People programs. He did not stop there, he was the first President to initiate restoration of Ford's Theatre as a historic site and a viable theatrical venue.

However, I believe the National Cultural Center, renamed the John F. Kennedy Center for the Performing Arts in 1964, must be numbered among Eisenhower's finest achievements. It is for the reasons I have mentioned that I wanted to write Miracle on the Potomac—to bring the genesis of this great institution to the public. It is the story behind the struggle to bring the Center to life, the story behind the struggle to bring Eisenhower's dream to life.

Despite the dire predictions of its early critics, today the Center flourishes. Former Librarian of Congress Daniel Boorstin put it succinctly when he said, "It is the greatest institution built in the last century."

The Center's programming and activities are unparalleled in the world. It is not just a showcase for the rich, it is a gift to the entire nation, as its founders envisioned it. Reduced ticket prices, senior citizen and handicapped programs, education, recreation, every possible facet of the performing arts-all are served by the existence of the Center. Its umbrella is wide and its diversity unique, so much can be found within the workings of the Center that the whole country benefits and should know it. This is President Dwight D. Eisenhower's legacy to the United States.

Even after he left office, the National Cultural Center was still a priority with him. He espoused the early philosophy of President Adams and added his own to it in an essay called "The Creative Purpose" for the book "Creative America," published in 1962 for the benefit of funding the Center. It is worthy quoting here:

"The founding fathers' dream of a new society in a new world included beauty widely enjoyed as well as wealth widely shared. They dreamed of a nation adept at the arts of humanism as well as the works of industry. They strove for cultural growth as well as for economic increase. Artists fully aware of and dedicated to their responsibility strengthen our national spirit. Their new place in American life should, I think, inspire new and finer accomplishments—in all the arts. It is my hope that they, in turn, will inspire us with new pride in the concepts of mind and heart that have made our country great."

During "An American Pageant on the Arts", a national fundraiser telecast on November 29, 1962, he reaffirmed his dedication via satellite from Augusta, Georgia to "an American center of culture in Washington to which all artists of the United States could repair . . . and where people would come to see what America was capable of . . . in the arts and all that is spiritually aesthetic to the senses of man."

President Kennedy wanted his predecessor's approval of each stage in the creation of the Center and in September of 1962, officials of the Center journeyed to the Eisenhower Farm right here in Gettysburg to unveil the new model for the Center. He and Mamie wholeheartedly approved it. The National Cultural Center, which he had championed for so long, was actually young to be a reality. It was a proud and jubilant day for the former President.

As he said in his 1960 treatise "Goals for Americans", "In the eyes of posterity the success of the United States will be judged by the creative activities of its citizens in the arts, architecture, literature, music and the sciences." His contributions to our cultural history, all too often overlooked, were significant and lasting.

It was an honor and a privilege to watch the dream become a reality, an honor and privilege to know such a great man with such far-reaching goals and such staunch commitment to culture and to a Nation.•

AMERICAN HERO: KEITH CROFFOOT

• Mr. SIMON. Mr. President, the other day, I had the chance to meet Keith Croffoot and his mother.

Keith is 10 years old and has AIDS. He is a hemophiliac.

I could go into some detail of his story, but Keith tells his story best.

This is a statement he made here in Washington about 2 weeks ago.

I urge my colleagues and staff people who have fears to read this story, and I ask to insert it in the RECORD at this point.

The article follows:

I HAVE AIDS

(By Keith A. Croffoot)

Hi! My name is Keith. I will be 10 years old in June. I have AIDS. I was born with Hemophilia. Hemophilia is a bleeding disorder where the blood doesn't clot properly. When ever I have a bleed, I have to get blood transfusions to stop the bleeding. When I was 10 months old, I got a lot of blood transfusions to help my tongue stop bleeding. That is also when I was exposed to the virus that causes AIDS.

I have been asked to come here today to tell you what it is like to have AIDS. I think that by me sharing my story it will help you better understand not only how I feel but how a lot of other people feel when they are sick and not everyone knows about their illness.

I was only 5 years old when the doctors told my Mom that I had full blown AIDS. They didn't tell me right away because I was too young to understand what that meant. Ever since I was a baby, I was always sick with one thing or another, so I really didn't feel any different.

I went through kindergarten along with all of my other friends. I felt and acted just like them. I just didn't think that I was different than my other friends. The only difference was I had to go into the hospital every now and then because I got sick. That didn't even bother me because I was used to the hospitals because of my Hemophilia problems. The feeling like being like everyone else started to change a few weeks before I finished kindergarten. That was when more than just my Mom and the doctors knew I had AIDS. When the school found out that I had AIDS, my whole life changed.

I remember the day that my Mom took me to school and the principal wanted to talk to her. That was when he told her that he knew I had AIDS. She took me right back out of school. The principal told her she had to. She just told me that I was going to get a few extra days off. Before I went back to school she told me the truth. She told me that I had AIDS. To me, it only gave the reasons as to why I was sick, a name. She told me that people didn't know much about AIDS and that they would say and do mean things to me. I didn't understand why because I was the same person before they knew I had AIDS as I was after they found out.

Right after I went back to school, the kids quit playing with me and were saying mean things like; "OOH, he is the kid with AIDS!" There were a lot worse things also. My feelings were hurt. I felt like I did something wrong. Everyone seemed to be mad at me just because I was sick. I felt like no one even cared about me except for my Mom. This was only the beginning.

My Mom and I moved long before the school found out about me having AIDS. The new school said that I couldn't go to their school. My Mom said that it was because they didn't know enough about AIDS and that they were afraid. So were the other parents. My Mom also said that it wasn't right for the school to keep me out so she fought them in court so I could go. I wanted to go to school. I wanted to be with other kids. While she was fighting in court, a lot of other bad things happened to me. I got kicked off of my T-Ball team and kicked out of a bowling alley. My Mom and I also got kicked out of a laundromat. The one thing that hurt us the most is that we were told by our minister that we didn't even belong in church either. Four months later we won in court and I got to go back to school.

Going back to school wasn't easy. I was scared because I didn't know if the kids would like me or be afraid of me. I didn't know if the parents were going to let their kids play with me or even eat lunch with me. I just had to take it one day at a time.

I remember my Mom taking me to the zoo one day. I had asked her for a penny for the wishing well. I made my wish and tossed the penny in. I then asked my Mom for all of the pennies she had. I tossed all of the pennies in one at a time and made the same wish. My Mom asked me what I was wishing for so many times. I told her "Mom, I only have one wish in the whole world. I wished that I didn't have AIDS." I told her it wasn't because it hurt too much being sick, but that it hurt too much for all of the people treating my Mom and me so bad all of the time.

Since I have gone back to school, things have changed a lot. My Mom and I decided that it was best that we teach people about AIDS instead of just letting them be afraid. We started talking to the news reporters and the T.V. stations. I wanted people to see for themselves that I was just like any other kid and that I was okay. I wanted people to know that they didn't have to be afraid of me. I wanted people to care not fear.

Not everyone can stand up in front of people and say they have AIDS. I wish I didn't have to, but it is the only way to get people to take notice about a disease as serious as AIDS and the people who have it. People with AIDS are just like anyone else except that they are sick. It really doesn't matter how you got AIDS, it is just that we need for you to care. People with AIDS need to be liked, loved and accepted just like everyone else. I want people to learn this more than anything. You can't get AIDS just from being around someone who has AIDS. You can't get AIDS just from being my friend or just from being a friend of someone who has AIDS.

I have a lot of friends now. They are not afraid. They like me just because I am me. If they have any questions, I will answer them. If they want to learn, I will teach them. I am lucky that I don't get sick that much. When I do get sick, it isn't too bad. I know that my mom worries and so does my family and friends. They don't worry because they are afraid; they worry because they care.●

TENTH ANNIVERSARY OF THE OREGON CONSORTIUM

● Mr. HATFIELD. Mr. President, I rise today in recognition of the Oregon Consortium's 10th year in employment and training in rural Oregon. Having personally witnessed the touching testimony of many of the alumni of their job training programs, I can attest to the benefits they have delivered to Oregonians throughout the State.

The Oregon Consortium is a federally funded, Service Delivery Area for the Job Training Partnership Act Program. Their 27 offices provide a full range of employment and training services to dis-located workers, welfare recipients, disadvantaged youth and adults, displaced homemakers, older workers, school dropouts, and many others who face serious barriers to employment. They have very strong links to economic development and education efforts in Oregon's communities, working closely with local employers to create a qualified, motivated work force. Their broad network of partnerships includes more than 200 staff, 200 active private and public sector volunteers, and thousands of employers and clients.

The Oregon Consortium Board of Directors and the Oregon Private Industry Council are an extraordinarily committed group of local elected officials and business people representing rural Oregon, all volunteering their time to ensure that rural Oregon builds a first rate work force, enriching the lives of thousands of families in our communities.

In recognition of the board members, council members, volunteers, staff, friends, and partners, I would like to salute the achievements and successes of those who have served the Oregon Consortium since 1981. Mr. President, I would also request that a copy of Gov. Barbara Roberts' proclamation of the Oregon Consortium's 10th year anniversary be printed in the RECORD following my remarks.

The proclamation follows:

PROCLAMATION

Whereas: The Oregon Consortium and The Oregon Private Industry Council, Inc. have administered quality employment and training programs since their inception in 1981; and

Whereas: The programs have touched the lives of at-risk-youth, school dropouts, welfare recipients, unskilled adults, displaced homemakers, dislocated workers and others throughout Oregon's 27 rural counties; and

Whereas: Partners in many other organizations (federal, state and local governments, business, labor, education, community-based organizations and service providers) have played a role in this successful program; and

Whereas: The employment and training system has made valuable contributions to the vitality of Oregon communities, and will continue to be critical to Oregon's workforce development; and

Whereas: The Governor is proud to recognize officially the achievements of The Oregon Consortium, The Oregon Private Industry Council, Inc., their volunteer members, partners and staff for dedicating their time and expertise to assure a trained workforce for Oregon.

Now, therefore, I, Barbara Roberts, Governor of the State of Oregon, hereby proclaim June 23 through June 28th as "The Oregon Consortium's 10th Year Anniversary" and encourage all citizens to join in this observance.●

COMMENDING CREW OF STS-40 SHUTTLE MISSION

● Mr. SHELBY. Mr. President, as the space shuttle *Columbia* landed only last Friday at Edwards Air Force Base, CA, I would like to take this opportunity to applaud the seven-member crew of the STS-40 shuttle mission for a sensa-

tional job. This 41st shuttle mission has been declared as the best spacelab mission ever in terms of its success. Its mission—life sciences—provides us with valuable insights into how the human body adapts to microgravity and readapts to the Earth's gravity during reentry. This information is essential for future NASA programs and for the myriad of benefactors here on Earth. The synergism of technology provided by space research pervades almost every facet of society. These quantum leaps of knowledge have changed forever the fields of medicine, education, industry and natural science.

We must continue to push to the edge of the envelope with future shuttle missions and the natural follow-on, the space station. Space Station freedom represents the zenith of America's investment in high technology—an investment that must not be abandoned by this Congress.

Mr. President, I ask that my colleagues in the Senate join me in making a firm and early commitment to the space station. The recent funding battle in the House of Representatives has shaken the very foundation of the space station and the National Aeronautics and Space Administration as a whole. The very same Congress that mandated a reconfiguration of space station freedom in order to bring its budget into line now threatens to cancel the program altogether. The people of NASA, along with our international partners, have designed a smaller, more affordable design for space station Freedom. They have done what we have asked, and we must now fulfill our commitment to the space station and the future generations that will benefit from its legacy.

As Americans, we must ask ourselves what our role is to be in the future. Will we lead or will we follow? It is not enough for the United States to adapt to changing technologies; we must blaze the trail for others. Space station Freedom will afford us the opportunity to revitalize the American spirit and to recapture preeminence as the explorer of new frontiers. Leadership cannot be declared—it must be earned.

Once routine, reliable and affordable access to space is established through space station Freedom, the United States will inherit an incalculable return on its investment. New technologies will open new markets. An investment in space exploration and space station Freedom will maintain and improve America's share of the global market and enhance our competitiveness and balance of trade. We cannot deny ourselves or future generations of Americans the legacy of space exploration. I invite my colleagues in the Senate to join me in an unwavering commitment to space station Freedom.•

SPEECH BY PRIME MINISTER NAWAZ SHARIF OF PAKISTAN

• Mr. SIMON. Mr. President, in a recent speech Prime Minister Nawaz Sharif of Pakistan to the National Defense College called for a meeting to ban nuclear weapons in South Asia.

He suggests that the United States, the Soviet Union, and China be participants, along with India and Pakistan in such a meeting.

I believe that is worth exploring.

The development of nuclear weapons by India and Pakistan is, ultimately, not in the best interest of either India or Pakistan. My guess is that the difficulty in getting two of the nations to agree not to proceed with nuclear weapons, is that India will argue that China has nuclear weapons, and India cannot ignore the Chinese situation.

I am doubtful that China would agree to get rid of nuclear weapons, but it is worth exploring. A discussion of some system of restraint that all the nations of that area could follow would be helpful.

I believe that the United States should follow through on the suggestion of Prime Minister Sharif.

Slightly encouraging in his remarks were these words:

Pakistan cannot be oblivious of the requirements of its security. Nevertheless, we will continue our efforts for establishing good neighborly relations with India. A beginning was made at Male during the SAARC Summit last November. My recent visit to New Delhi to attend the funeral of Mr. Rajiv Gandhi enabled me to establish personal contacts with leaders of India's main political parties. I was encouraged by the positive reponse to our desire to improve bilateral relations. We hope that once the new government has assumed power in New Delhi after the elections, it will be possible for us to move forward towards the establishment of tension free relations and the settlement of the Kashmir dispute in accordance with the relevant UN resolutions. This would be in the spirit of Male and that of the Simla Agreement, and would enable the two countries to devote their scarce resources to the improvement in the quality of life of their peoples.

Relations between Pakistan and India can improve.

Elimination of nuclear weapons from both countries would help.

If Pakistan can develop a more reliable democracy, frankly, that will help also.

In the statement there is the suggestion that Pakistan's nuclear efforts are all for peaceful purposes. All nations say that, as they develop more and more weapons. Unfortunately, India has developed nuclear weapons. Pakistan, somewhat understandably, has developed nuclear weapons in response to India.

But the growing proliferation of nuclear weapons in that region is, ultimately, in no one's best interest.

I hope we will follow through on the suggestion made by Prime Minister Nawaz Sharif, and I ask to insert his statement into the RECORD at this point.

The statement follows:

ADDRESS TO THE NATIONAL DEFENCE COLLEGE BY NAWAZ SHARIF, PRIME MINISTER, ISLAMIC REPUBLIC OF PAKISTAN

Mr. Commandant, members of the directing staff, participants of the National Defence Course, distinguished guests: It gives me great pleasure to be present here today at the presentation of the National Strategy Paper by the participants of the National Defence Course.

I am impressed by the high quality of the presentation, which reflects the hard work put in by the participants and the excellent guidance provided by the Directing Staff of the National Defence College. I would like to congratulate them and, particularly, the Commandant on the lucid and comprehensive manner in which major national issues relating to politics, economy, foreign policy and defence have been covered. I am sure that the training and experience acquired by the participants of the Course at the National Defence College will stand them in good stead in their future careers.

I am glad to see that the participants of the Course also include senior officers from several friendly countries. I hope their stay in Pakistan has been confortable and rewarding. As they return to their homes, I would like them to take back assurances of our sincere desire for strengthening friendly relations with these countries.

A deep understanding of national and international affairs, which have a bearing on our security, is an imperative for all senior officers. The courses run by the National Defence College enable their participants to acquire this understanding and contribute to their professional excellence. The College, as the premier military training institution in Pakistan, is, thus, playing an extremely valuable role in preparing the officers for the assumption of senior command and staff positions in the three Services.

In discussing national security, it is important to recognize that internal strength is of primary significance. My government, therefore, attaches the highest priority to a strong defence in order to deter any threat to our national security. The strength of our own armed forces provides us the strongest guarantee for the maintenance of a peaceful environment for the country. My government would, therefore, continue to do all that is possible to ensure that our armed forces are well-equipped and prepared to safeguard Pakistan's security and territorial integrity.

History teaches us that the vital importance of the armed forces notwithstanding, successful defence of any country is dependent on the over-all strength of that country. Factors such as the moral and spiritual foundations of the society, political stability, social cohesion and harmony, economic strength and technological advancement provide the underpinning and constitute the back-bone of its defence capability. Our survival and progress as a nation will, therefore, depend, in the ultimate analysis, upon our success in acquiring internal strength. Only then would we be able to ward off external threats to our security.

Our foremost objective is to establish a progressive, dynamic and just socio-economic order in the country. Only by doing so, would we be able to accelerate economic development, hasten the pace of technological advancement and raise the standard of living of the people. Only thus would the

nation acquire strength and enter the 21st century with confidence and dignity.

This is not an easy task. We face numerous problems and difficulties, both internally and externally. But I am confident that by maintaining unity, faith and discipline in our ranks, and by fully harnessing our resources, we can realize our goals.

We have already taken a number of steps with this aim in view. We are encouraging the private sector to engage in productive activity. We have liberalized the economy and done away with rules and regulations, which had stifled private initiative in the past. We have introduced reforms for the elimination of foreign exchange restrictions and for creating a liberal environment for foreign private investment in the country. We are also disinvesting State Corporations, which were a heavy burden on the national exchequer.

We have resolved the vexed issues of apportionment of river waters and the distribution of financial resources between the federal and provincial governments. We have steered through the Parliament a progressive, democratic and welfare-oriented Shariah bill.

We are taking strong measures to curb crime and lawlessness, eradicate the Klasnnikov culture and put an end to drug trafficking, which are eating into the vitals of our society. These steps would strengthen social harmony and stability. They would also promote economic activity by encouraging domestic and foreign investment in the country.

These reforms and measures will impart vitality and dynamism to the economy and polity enabling us to achieve self-sustained growth and self-reliance. Self-reliance certainly does not mean isolation. No nation can afford to isolate itself from the rest of the international community in the increasingly inter-dependent world of today. A policy of self-reliance means primarily to depend on our own resources for improving the lot of our people. But it does not exclude mutually beneficial economic cooperation with friendly countries without compromising our national sovereignty or self-respect.

The pursuit of rapid economic development and social progress pre-supposes an environment of peace and security. Thus, my government is guided by the twin objectives of progress at home and peace abroad. Pakistan will, therefore, continue to follow the policy of developing friendly relations with all countries on the basis of the principles of sovereign equality, non-interference in internal affairs and peaceful settlement of disputes.

We are gratified to note that the UN has assumed a more effective role in the settlement of regional disputes and conflicts. It would be our endeavour to strengthen this trend which, we believe, is in the best interest of international peace and progress. We also hope that the five Permanent Members of the Security Council would play their due role in ensuring respect for the purposes and principles of the UN Charter.

We have taken an initiative for expediting the political settlement of the Afghanistan issue. We have entered into consultations with the UN Secretary General and the countries concerned. We have welcomed the 5-point initiative for the settlement of the Afghanistan issue, announced by the UN Secretary General last month. The key to such a settlement remains in the transfer of power from the Najibullah regime to a broad-based government in Kabul established in accordance with the wishes of the people of Afghanistan. Only such a broad-based government can restore peace in the country and enable the Afghan refugees to return voluntarily to their homeland. The settlement of the Afghanistan issue would remove a major obstacle in the improvement of our relations with the Soviet Union, in which we are deeply interested.

The Islamic World, with which Pakistan has special links, has suffered grievously because of the Iraqi occupation of Kuwait which led to the Gulf War. We took a principled position on the issue in accordance with the relevant Security Council resolutions. We were gravely concerned because Iraq's action violated recognized norms of inter-state conduct. It also posed a serious threat to the security of Saudi Arabia, a fraternal country, which has always stood by Pakistan's side.

We made efforts to find a peaceful and honourable solution of the problem. For this purpose, I undertook visits to 12 Islamic countries and sent Special Envoys to 13 others. Unfortunately, my efforts and those of the international community did not succeed. The armed conflict has caused massive material destruction and heavy loss of human life, particularly in Kuwait and Iraq.

Following the liberation of Kuwait and restoration of peace in the area, I visited Kuwait and assured the Amir and his government that Pakistan was ready to continue the tradition of cooperation with Kuwait and other regional states and would support their efforts to strengthen peace and stability in the region. It will be our endeavour to develop further bilateral ties with these countries in political, economic, technical and other fields. Pakistan stands for moderation, stability and cooperation among the Islamic countries of the Gulf region.

Pakistan will continue to strengthen its close and brotherly relations with Iran and Turkey. We take deep satisfaction in the recent decisions of the three countries to revitalize Economic Cooperation Organization and to hold a Summit Conference of these three fraternal states before the end of 1991 to advance this cooperation.

Friendship with China has been a cornerstone of Pakistan's foreign policy and a source of strength to regional peace and stability. We will continue our efforts to develop close and friendly relations and mutually beneficial cooperation with China.

Pakistan values its friendship with Japan, which has emerged as an economic superpower. It is Pakistan's largest trading partner. The two countries also maintain close cooperation in various fields. My government will pay special attention to the strengthening of friendly ties with Japan.

We are impressed by the fast economic growth achieved by several countries of the Asia-Pacific Region. Their experience offers us important lessons. It would be our effort to promote friendly ties and mutually beneficial cooperation with these countries. We shall also intensify our efforts to promote closer cooperation with African nations in political, economic, commercial and technical fields.

Europe is undergoing a process of rapid transformation and integration. Pakistan attaches importance to its relations with the region and wishes to develop them further. It is our hope that the European Single Market, which will come into existence in 1992, will provide easier access to imports from the developing countries.

The developing countries currently face serious problems of low level of developmental assistance, heavy burden of debt servicing, negative resource flows, an unfavourable international trade regime, adverse terms of trade and an unjust international financial and monetary system. We will continue our efforts to promote North-South dialogue with a view to overcoming these problems.

Pakistan, as a developing country, has close identity of views with other Third World countries on important international political and economic issues. We wish to develop further Third World solidarity through the promotion of South-South Cooperation.

India's military build up, development of medium-range missiles and the military potential of its unsafeguarded nuclear programme pose a serious threat to Pakistan's security. The threat is accentuated by India's refusal to resolve the Kashmir dispute peacefully and its attempt to suppress the indigenous uprising in Occupied Kashmir through massive and brutal use of force. India has concentrated over 400,000 military and para-military forces in Occupied Kashmir for this purpose. The heavy deployment of its forces along Pakistan-India border also serves to heighten tension. This cannot, however, prevent us from offering moral and political support to the struggle of the Kashmiri people for the exercise of their right to self-determination, as recognized by the relevant UN Security Council Resolutions.

In the face of this serious situation, Pakistan cannot be oblivious of the requirements of its security. Nevertheless, we will continue our efforts for establishing good neighbourly relations with India. A beginning was made at Male during the SAARC Summit last November. My recent visit to New Delhi to attend the funeral of Mr. Rajiv Gandhi enabled me to establish personal contacts with leaders of India's main political parties. I was encouraged by the positive response to our desire to improve bilateral relations. We hope that once the new government has assumed power in New Delhi after the elections, it will be possible for us to move forward toward the establishment of tension free relations and the settlement of the Kashmir dispute in accordance with the relevant UN resolutions. This would be in the spirit of Male and that of the Simla Agreement, and would enable the two countries to devote their scarce resources to the improvement in the quality of life of their peoples.

The issue of nuclear non-proliferation in South Asia is another complicating factor in Pakistan-India relations. It is, therefore, necessary to place the issue in its proper perspective.

We suffer from a serious energy shortage which not only hampers economic and industrial growth, but causes hardship to our people. In view of our ever growing energy requirements, we have no option but to rely on the generation of nuclear power for meeting the needs of our expanding economy.

Unfortunately, our efforts to develop nuclear energy and technology for peaceful purposes have been subjected to unfair criticism and discriminatory pressures. We have repeatedly asserted that our nuclear programme is devoted to peaceful purposes. In pursuance of our regional approach to nuclear non-proliferation, we have expressed our willingness to accept any equitable and non-discriminatory regime for keeping South Asia free of nuclear weapons.

We have made the following proposals to prevent nuclear proliferation in South Asia:

(a) Establishment of a Nuclear-Weapon-Free Zone in South Asia, a proposal which has been endorsed repeatedly by the UN General Assembly since 1974.

(b) In view of India's opposition to the establishment of a Nuclear-Weapon-Free Zone

in South Asia, we proposed in 1978 that, as a first step, Pakistan and India should issue a joint declaration renouncing the acquisition or manufacture of nuclear weapons.

(c) In 1979, Pakistan proposed an agreement with India on a system of bilateral inspection of all nuclear facilities on reciprocal basis.

(d) We also proposed in 1979 simultaneous acceptance of IAEA safeguards by Pakistan and India on all nuclear facilities.

(e) Pakistan expressed its readiness in 1979 to accede to Nuclear Non-Proliferation Treaty (NPT) simultaneously with India.

(f) Later in 1987, Pakistan proposed the conclusion of a bilateral or regional Nuclear Test Ban Treaty.

(g) In 1987, Pakistan also proposed convening of a Conference on nuclear non-proliferation in South Asia under the auspices of the United Nations with the participation of regional and other interested states.

The above proposals have been reiterated by us from time to time. Pakistan's commitment to nuclear non-proliferation, both at global and regional levels, is, thus, clear and unwavering. It is not fair, therefore, to cast doubts on Pakistan's intentions and to subject Pakistan to discriminatory treatment. No self-respecting nation can accept that.

We are gratified to note that the regional approach to disarmament is steadily gaining ground in international circles. Our resolution calling for initiatives for confidence-building measures, nuclear non-proliferation and conventional disarmament at regional and sub-regional levels was adopted by the UN General Assembly in 1990 by an overwhelming majority of 142 votes in favour, none against and 10 abstentions.

Nuclear-weapon-free zones have already been established in Latin America and the South Pacific region with the endorsement of the five nuclear-weapon states. Similar proposals have been advanced concerning other regions. Last year, Argentina and Brazil signed an agreement to use nuclear energy exclusively for peaceful purposes. They also agreed to submit their nuclear programmes to bilateral inspection and, later, to IAEA safeguards to ensure the peaceful character of their programmes.

More recently, President Bush has announced a major initiative for arms control on a regional basis in the Middle East. Among other things, the initiative calls for steps by all the regional states to prevent nuclear proliferation in the Middle East. France has also in its recently announced disarmament proposal, called for regional regimes for the prohibition of weapons of mass destruction.

We firmly believe that nuclear non-proliferation in South Asia is a sine qua non for regional peace and progress. We are willing to enter into a bilateral arrangement with India or a regional regime for ensuring that South Asia remains free of All Weapons of Mass Destruction. We are prepared to adopt measures aimed at mutual and balanced reduction of forces consistent with the principle of equal and undiminished security at the lowest level of armaments. However, we cannot and will not take unilateral steps which endanger our national security.

Pakistan and the United States have a history of friendship going back to the 50's. This friendship is solidly based on our shared beliefs in principles and human values, our common commitment to democratic institutions, the respect we attach to individual liberty and sustained cooperation stretching over several decades. There is a close convergence of views on such issues as Afghanistan and regional peace and stability. Therefore, despite the occasional ups and downs, the friendship between Pakistan and US has continued with the passage of time and manifested itself in the expansion of mutual cooperation in diverse fields.

Against this background, the current difficulties in Pakistan-US relations are particularly regrettable. This relationship, which has served the interests of the two countries so well in the past and has so much potential for the future, should not be allowed to be impaired.

It is an irony that the current difficulties in Pakistan-US relations stem from differences of approach to the objective of nuclear non-proliferation, to which both are deeply committed. The United States has focussed almost exclusively on Pakistan's nuclear programme. The fact is that India exploded a nuclear device in 1974. It as a number of nuclear enrichment and re-processing facilities outside the framework of IAEA safeguards. It is also reported to have unsafeguarded plutonium sufficient for producing over 100 Hiroshima-size nuclear bombs. We cannot, therefore, ignore India's fast growing nuclear programme and jeopardise our national security.

Pakistan is ready to enter into multilateral consultations for promoting the cause of nuclear non-proliferation in South Asia. There are indications that the United States, the Soviet Union and China might be inclined to support a regional approach. I hope that they would be wiling to move together with Pakistan and India to achieve the objective of keeping our region free of nuclear weapons.

I would like to propose specifically that the United States, the Soviet Union and China consult and meet with India and Pakistan to discuss and resolve the issue of nuclear proliferation in South Asia. The aim of the meeting should be to arrive at an agreement for keeping this region free of nuclear weapons on the basis of proposals already made or new ideas that may emerge. The nuclear non-proliferation regime to be negotiated during the proposed multilateral consultations should be equitable and non-discriminatory.

We hope that the proposal would receive an early response from the countries concerned so that arrangements can be finalised and the conference held as quickly as possible.

A regional non-proliferation regime, containing guarantees for non-nuclear-weapon states and agreed to by all the regional countries, is a practical method of resolving the problem in all its dimensions. Such a regime would help usher in a climate of mutual trust and strengthen peace and security in South Asia, enabling the states of the region to concentrate their energies and efforts on accelerating economic development and promoting the well-being of their peoples.

I have decided to send to the United States a high-level delegation led by Mr. Wasin Sajjad, Chairman, Senate and including Mr. Akram Zaki, Secretary General, Foreign Affairs and other senior officials to exchange views on the whole range of Pakistan-US relations. We must acquire a better understanding of each other's point of view on various issues such as Afghanistan, regional peace and security, human rights, narcotics control, disarmament, nuclear non-proliferation and cooperation in various fields.

Given sincerity of purpose and mutual goodwill, I am confident that we will ultimately succeed in resolving our current difficulties on the basis of mutual understanding and accommodations. Our search for a way out of the current impasse will be facilitated if each side tries to understand the compulsions of the other and focuses on ultimate objectives rather than the means of achieving them.

Let me conclude by reiterating our desire to develop friendly relations and mutually beneficial cooperation on the basis of equality with all countries, big and small, to serve the interest of international peace and development. We will particularly strive to create a tension-free and peaceful environment in South Asia to usher in an era of progress and prosperity in the region.•

AMERICA AT THE THRESHOLD

• Mr. GARN. Mr. President, last year, President Bush, Vice President QUAYLE, and NASA Administrator Dick Truly challenged Tom Stafford and the Synthesis Group to develop a road map for the future of our space exploration program. Specifically, Tom and the group he assembled were to evaluate a wide range of technologies and mission options, and recommend two or more methods whereby this Nation could meet the President's two long-range objectives of returning to the Moon to stay and launching a manned expedition to Mars.

General Stafford's report, "America at the Threshold," has now been submitted to the President and warmly endorsed by him. Each Member of this body has been furnished a copy of this important report.

The group which General Stafford assembled is unique in the breadth and depth of its knowledge and experience in all of the scientific disciplines that play a role in the space program. Their report is most impressive and I recommend that each of my colleagues study it carefully.

This is much more than a report on a potential set of missions or requirements for a specific space exploration activity. This report, in my view, provides a fresh look at our Nation's civil space program. It takes the long-range view, looking forward into the next century. In doing so, it shows us, in simple yet dramatic terms, why we need a civil space program, and how all the pieces of it fit together. We can see, in this report, why we need a space station, why we need advanced and heavy-lift launch systems, and why we need a healthy, aggressive technology development program. We can see not only how all of this can bring about the realization of mankind's greatest dream, but how it can also serve as the greatest single catalyst for the improvement of the human condition throughout our plant.

In spite of its futuristic orientation, this report tells us in real, practical terms about ways we can begin today to meet mankind's greatest challenge: the extension of civilization beyond our planet.

What the Synthesis Group report shows us is that it is no longer just a

dream; that we have the ability to move outward, into our solar system, if we have the courage, the will, and the commitment to do so.

Mr. President, I urge my colleagues to study this exciting report. I urge them to see the vision that it presents to us and the challenge and opportunity it provides for us to ensure that as mankind inevitably moves into space, it will be guided by American values and principles.●

TRIBUTE TO THE ACADEMY OF THE SACRED HEART

● Mr. BREAUX. Mr. President, I rise to congratulate the students at the Academy of the Sacred Heart in New Orleans. Martha de la Houssaye's honors government class placed in the top five in the National Competition on the Bicentennial of the Constitution and the Bill of Rights, held in Washington, DC, April 26 to 29. Having won the State competition in March, these 27 students earned the privilege of representing Louisiana in the national competition.

This is the fourth consecutive year Sacred Heart has represented Louisiana. In 1988, they finished 11th; in 1989, 4th; and in 1990, 16th.

Team members include: Sarah Bradley, Rebecca Brown, Tara Burst, Keely Carrere, Nicole Charbonnet, Leslie Copeland, Jennifer Couch, Elizabeth Daly, Gina DiMarco, Sheri Ellis, Katherine Endom, Desiree Evans, Jennifer Guste, Gigi Haydel, Ann Heard, Tory Hebert, Kelly Johnson, Christine Lomasney, Wendy Lund, Becky Perroyea, Katie Peyton, Renee Reymond, Lauren Raynolds, Kelly Seymour, Stacy Sins, Allison Thomas, and Melissa Zaegel.

The students' performance attests to their high standard of academic excellence and strong interest in our great system of government. Against various reports of the apathy of U.S. youth and the low quality of our educational system, the Academy of the Sacred Heart provides a stellar example of all there is to be proud about our Nation's young people! It is reassuring to know that these students have such a complete understanding of and keen interest in our political process.●

CONGRATULATIONS, NANCY HOWE—1991 DUCK STAMP ARTIST

● Mr. JEFFORDS. Mr. President, columnist George Miller has called the Federal Duck Stamp Competition "The Duck That Laid the Golden Egg." That fitting title hints at what a beneficial program the Duck Stamp Program has been for all involved. The artists, duck stamp collectors, waterfowl hunters, and the waterfowl whose wetlands are protected by stamp revenue, all benefit directly. Not many Federal programs receive that kind of praise, but the duck stamp deserves it.

Since its inception in 1934, revenues raised from the duck stamp have been dedicated to preserving vanishing wetlands vital to migratory ducks and geese. To date, over 350 million duck stamp dollars have gone to preserve 4 million acres of wetlands for waterfowl and other wildlife that rely on the wetlands habitat.

Nancy Howe, this year's winning artist, is the first woman to win the contest. Her winning design features a pair of king eiders resting on the subarctic tundra common to Alaska and Canada and was selected from among 626 other entries. As a Vermonter and an outdoor enthusiast, Nancy feels a responsibility to speak out about the dangers threatening the wetlands accompanies her role as the winning artist.

Nancy has painted since childhood and plans to become a full-time artist. She has exhibited her work in numerous art shows including a Ducks Unlimited show, and the Art for Parks tour sponsored by the National Park Academy of the Arts. Nancy and her husband, Jim Russell, have two young boys, Tyler and Ryan.●

COMMENDING SGT. RONALD JONES, 3d ARMORED DIVISION

● Mr. McCONNELL. Mr. President, the gallantry and fighting prowess of the 3d Armored Division during Operation Desert Storm has been well documented. Squaring off against Saddam Hussein's elite Republican Guard, members of that division guaranteed Iraq's timely defeat.

While we owe thanks and praise to all our service men and women who answered the call of duty when sounded, I want to take a moment to share with my colleagues the heroic deeds of Sgt. Ronald Jones, A Troop, 4th Battalion, 7th Cavalry Regiment, 3d Armored Division. I note with pride that he is a native of Salem, KY.

On February 26, 1991, while ensuring the 3d Armored Division would not be outflanked by enemy forces, Sergeant Jones' Bradley Fighting Vehicle came under hostile fire. Rendered inoperable by a damaged transmission, Sergeant Jones ordered his crew to evacuate the vehicle. Seconds after pulling his driver to safety, the vehicle was hit by a missile. Shrapnel unfortunately wounded the driver.

Having repositioned themselves inside his platoon leader's vehicle, Sergeant Jones administered first aid to his injured soldier. Soon after, two rounds from a T-72 Iraqi tank hit the Bradley. "There were flash fires inside the vehicle. I had burns on the left side of my face, head and neck," recalled Sergeant Jones.

Despite his wounds—and this is what distinguishes the quality of today's soldier, Mr. President—Sergeant Jones continued to care for his driver and other injured troops. In fact, he refused medical attention until Army medics had examined and stabilized all other injured servicemen.

For his heroic and selfless deeds, Sergeant Jones was recently awarded the Silver Star by Vice President QUAYLE. I know my colleagues will join me in extending a heartfelt thanks to Sergeant Jones and his family. Mr. President, it is this quality of soldier that contributes to the excellence of our Armed Forces.

I ask that a copy of an article in the Paducah Sun appear in the RECORD so that my colleagues may learn more of this true American hero.

The article follows:

[From the Paducah Sun, June 20, 1991]

LIVINGSTON NATIVE EARNS SILVER STAR

Sgt. Ronald Jones is a hero.

And he has something tangible to prove it: a Silver Star awarded to him by Vice President Dan Quayle. The Silver Star, given for gallantry in battle, is one of the highest awards given to soldiers.

Jones, a native of Salem, is a soft-spoken young man whose job in the Army is to lead a squad of Bradley Fighting Vehicles, the Army's heavily-armed armored personnel carriers. A trained scout, his mission in battle is to go forward and look for the enemy.

A seven-year Army veteran, Jones said he was proud to receive the Silver Star from the vice president, who was on a five-nation European tour with his wife, Marilyn, and two of their three children. Quayle came to Erlangen, Germany, home of the U.S. 1st Armored Division's 2nd brigade, to welcome home the Germany-based VII Corps from the war.

More than 1,200 soldiers and family members, representing various U.S. Army Europe units throughout Germany, traveled to Erlangen to see the vice president pin medals on seven of their comrades.

Jones, a member of A Troop, 4th Battalion, 7th Cavalry Regiment of the 3rd Armored Division, is stationed in Hanau with his wife, Beate, and 14-month-old daughter, Romina.

During the war, his division's mission was to attack and entrap several units of the Iraqi Republican Guard. When Jones' armored personnel carrier was hit, he and his crew were making sure no enemy forces were anywhere close to one of the 3rd AD's flanks as the division pushed across the desert.

"Our mission was to pull a flank screen for the 3rd AD as they were advancing on the Republican Guard. We were to keep the enemy from coming around and flanking us on the side," Jones explained.

As he moved along the division's flank, Jones' vehicle was hit in the transmission by machine-gun fire. Realizing that worse things were heading their way, Jones told his crew to evacuate the vehicle.

"I pulled my driver out of the hatch seconds before a missile hit the Bradley's turret," said Jones.

As Jones and his crew were making their way to their platoon leader's Bradley, which was nearby, Jones' driver was hit by shrapnel. As Jones was administering first aid to his driver inside the platoon leader's vehicle, that vehicle was shot twice by a T-72 Soviet-made Iraqi tank.

"There were flash fires inside the vehicle," said Jones. "I had burns on the left side of my face, head and neck."

Despite his own injuries, Jones continued to perform first aid on his driver and others in the vehicle. When the group finally made it to Army medics, Jones continued to help the other soldiers and refused to let the medics work on him until the others were cared for.

"I wanted to make sure my driver, who was injured a second time by shrapnel, was stable before I let them treat me," said Jones. "I had to make sure he was OK."

The incident occurred Feb. 26, the third day of the war. When a cease fire was called on Feb. 27, Jones said he felt good.

"I felt we'd done what we set out to do," he said. "We didn't need to push farther. We already accomplished our mission."●

A TRIBUTE TO DREW JOHNSON

● Mr. BREAUX. Mr. President, I rise to recognize the courage and fortitude of Drew Johnson, a 6-year-old boy from Zachary, LA, who has been selected as the 1991 National Poster Child for the Muscular Dystrophy Association. Drew and his parents, Sam and Teri Johnson, provide a stellar example to families across the Nation who are struggling against a common insidious enemy.

Drew will also be prominently featured on the "Jerry Lewis Telethon" over Labor Day. It is people like Drew and his united family who represent the strengths to which we all aspire and attest to the highest qualities of human kind. Our daily tribulations and problems pale in comparison to the personal challenges Drew faces every day. I know we all can look to Drew in our everyday lives for courage and support.●

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. Friday, June 21; that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders be reserved for their use later in the day; that there be a period for morning business not to extend beyond 10:30 a.m. with Senators permitted to speak therein for up to 5 minutes each.

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

ORDER FOR RESUMPTION OF THE CRIME BILL—S. 1241

Mr. FORD. Mr. President, I ask unanimous consent that the previous order regarding resumption of S. 1241 be changed to reflect a change in time of 10:30 a.m.

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

RECESS UNTIL TOMORROW AT 10 A.M.

Mr. FORD. Mr. President, if there be no further business to come before the Senate today, I ask unanimous consent that the Senate now stand in recess under the previous order until 10 a.m. Friday, June 21, 1991.

There being no objection, the Senate, at 9:03 p.m., recessed until Friday, June 21, 1991, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate June 20, 1991:

U.S. INFORMATION AGENCY

CHARLES GRAVES UNTERMEYER, OF TEXAS, TO BE AN ASSOCIATE DIRECTOR OF THE U.S. INFORMATION AGENCY, VICE RICHARD W. CARLSON.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

JOYCE ELAINE TUCKER, OF ILLINOIS, TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR A TERM EXPIRING JULY 1, 1996. (REAPPOINTMENT)

DEPARTMENT OF JUSTICE

THOMAS B. HEFFELFINGER, OF MINNESOTA, TO BE U.S. ATTORNEY FOR THE DISTRICT OF MINNESOTA FOR THE TERM OF 4 YEARS VICE JEROME G. ARNOLD, TERM EXPIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. EUGENE H. FISCHER, [redacted] U.S. AIR FORCE.

THE FOLLOWING OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED, UNDER THE PROVISIONS OF SECTIONS 593, 8218, 8373, AND 8374, TITLE 10, UNITED STATES CODE:

To be brigadier general

COL. RICHARD C. COSGRAVE, [redacted] AIR NATIONAL GUARD OF THE UNITED STATES.

IN THE ARMY

THE U.S. ARMY NATIONAL GUARD OFFICER NAMED HEREIN FOR APPOINTMENT IN THE RESERVE OF THE ARMY OF THE UNITED STATES IN THE GRADE INDICATED BELOW, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 593(A), 3385 AND 3392:

To be major general

BRG. GEN. NATHANIEL H. ROBE [redacted]

CONFIRMATIONS

Executive nominations confirmed by the Senate June 20, 1991:

DEPARTMENT OF LABOR

ROBERT MICHAEL GUTTMAN, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF LABOR.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

ARMY

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. RICHARD G GRAVES [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS VICE CHIEF OF STAFF OF THE ARMY AND APPOINTMENT TO THE GRADE OF GENERAL WHILE SERVING IN THAT POSITION UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 601 AND 3034:

To be vice chief of staff of the Army

To be general

LT. GEN. DENNIS J. REIMER [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. JAMES E. THOMPSON [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. THOMAS N. GRIFFIN, JR. [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. JOSEPH S. LAPOSATA [redacted] U.S. ARMY.

MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS COMMANDANT OF THE MARINE CORPS, HEADQUARTERS, U.S. MARINE CORPS, AND APPOINTMENT TO THE GRADE OF GENERAL WHILE SERVING IN THAT POSITION UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 5043:

To be Commandant of the Marine Corps

To be general

LT. GEN. CARL E. MUNDY, JR. [redacted] USMC.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. NORMAN H. SMITH [redacted] USMC.

THE FOLLOWING NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, FOR ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY AS FOLLOWS:

To be lieutenant general

MAJ. GEN. WILLIAM M. KEYS [redacted] USMC.

NAVY

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. JIMMY PAPPAS, U.S. NAVY [redacted]

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. RAYMOND P. ILG, U.S. NAVY [redacted]

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. KENNETH C. MALLEY, U.S. NAVY [redacted]

IN THE ARMY

ARMY NOMINATION OF CHARLES F. BROWER, IV, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF MAY 6, 1991.

ARMY NOMINATIONS BEGINNING DANIEL P. BURNS, AND ENDING VICKI L. BROSNAHAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF MAY 15, 1991.

ARMY NOMINATIONS BEGINNING MICHAEL H. CHEMA, AND ENDING JAMES L. WALLINGFORD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF MAY 15, 1991.

ARMY NOMINATIONS BEGINNING LARRY S. MERCK, AND ENDING MICHAEL L. WALTERS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JUNE 3, 1991.

ARMY NOMINATIONS BEGINNING THOMAS L. ABBENANTE, AND ENDING 364X, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JUNE 3, 1991.

ARMY NOMINATIONS BEGINNING DANIEL F. ABAHAZY, AND ENDING 414A, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JUNE 3, 1991.

ARMY NOMINATIONS BEGINNING JOHN D. ALTENBURG, AND ENDING PAUL C. SMITH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE ON JUNE 10, 1991, AND APPEARED IN THE CONGRESSIONAL RECORD OF JUNE 11, 1991.

ARMY NOMINATIONS BEGINNING RONNY BERRY, AND ENDING JOHN L. WYDEVEN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE ON JUNE 10, 1991, AND APPEARED IN THE CONGRESSIONAL RECORD OF JUNE 11, 1991.

IN THE NAVY

NAVY NOMINATIONS BEGINNING EDWARD L. ABNER, AND ENDING LEE SMITH, III, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JUNE 3, 1991.

NAVY NOMINATIONS BEGINNING RICHARD JOHN ACKERMANN, AND ENDING RICHARD ARNOLD NELSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JUNE 3, 1991.