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

NOES—142

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

NOT VOTING—3

Cunningham Dixon Gekas

☐ 1537

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

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

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGES FROM THE PRESIDENT

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

EFFECTIVE DEATH PENALTY ACT OF 1995

The SPEAKER pro tempore (Mr. HOBSON). Pursuant to the order of the House of Tuesday, February 7, 1995, and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 729.

☐ 1539

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R, 729) to control crime by a more effective death penalty, with Mr. DREIER in the chair.

The Clerk read the title of the bill.

☐ 1540

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

□ 1550

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The General Accounting Office stated in its report ''Death Penalty Sentencing''

> [The] race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found more likely to be sentenced to death than those who murdered blacks. Last year, 89% of the death sentences carried out involved white victims, even though 50% of the homicides in this country have black victims. Of the 229 executions that have occurred since the death penalty was reinstated, only one has involved a white defendant for the murder of a black person.

A large body of evidence shows that innocent people are often convicted of crimes, including capital crimes, and that some of them have been executed. Since 1970, 48 people have been released from death row because they were found to be innocent.

In February 1994, Justice Harry A. Blackmun stated:

> Twenty years have passed since this court declared that the death penalty must be imposed fairly, and with reasonable consistency or not at all, and, despite the effort of the states and courts to devise legal formulas and procedural rules to meet this daunting

challenge, the death penalty remains fraught with arbitrariness, discrimination, caprice and mistake.

Now, in spite of the studies, in spite of the evidence, and in spite of the dramatic increase in executions in recent years, some still want to make it easier to impose the death penalty and execute the defendant. Is it really justice we are after? Or is it revenge?

Mr. STENHOLM. Mr. Chairman, I rise in strong support of H.R. 729, the Effective Death Penalty Act.

H.R. 729 establishes new and greatly needed restrictions on the use of habeas corpus petitions. This bill would limit the endless appeals process and set fair time limits for the filing of habeas appeals. Not only does this bill place time limits on filing habeas petitions, but also on complete consideration of habeas petitions in death penalty cases by the Federal courts.

Furthermore, this bill would generally limit State prisoners under a sentence of death to a single Federal habeas petition. In order to file another petition, the prisoner would need to show through clear and convincing evidence that, without the constitutional error, the defendant would not be found guilty by a reasonable jury. This provision will help close the loopholes that have allowed prisoners to have their cases reviewed time and time again. The abuse of habeas appeals has had a significant effect on the enforcement of the death penalty in States, and this bill appropriately addresses these abuses.

This bill also simplifies the process of imposing the Federal death penalty by reducing the discretion of the jury in deciding whether to recommend the death penalty. This bill not only eliminates life imprisonment without parole as a possible sentence for the specified Federal crimes subject to the death penalty, but it requires that juries in Federal courts be instructed to recommend a death sentence if the aggravating factors outweigh the mitigating factors.

For far too long now the American taxpayer has footed the bill while death row prisoners have filed appeal after meaningless appeal. It is time for Congress to provide sound guidelines to the appeals process. Those who have been victimized by violent criminals have a right to expect timely justice, and this bill will help to ensure that they receive nothing less. I strongly urge my colleagues to support H.R. 729.

Mr. CONYERS. Mr. Chairman, H.R. 729 is the latest in a series of legislative proposals dating back a decade that have attempted to speed up the execution of the more than 2,300 people on death row in this country. The common thread in these proposals is imposing a time limit on filing the habeas petition, typically set at 6 months to 1 year, and restricting the number of appeals a prisoner can make, that is, one bite at the apple.

The McCollum bill follows this approach, with a few variations, one of which is worth supporting. That is the section providing for automatic stays of execution while a habeas petition is pending. This is a much needed improvement on the current system where the fate of a condemned man hangs in the balance while lawyers scramble at the last minute to find a judge who will issue a stay of execution.

In all other respects, H.R. 729 combines the worst of the habeas bills, for instance, by setting a 6-month deadline for habeas petitions instead of 1 year, or it fails to make meaningful changes.

Thoughtful reformers like my former colleague, Representative Kastenmeier, the American Bar Association, and the Judicial Conference, have suggested that the goals of streamlining the process and eliminating uncertainty could be achieved if the States agreed to adopt measures that would ensure fairness. That is a good tradeoff, in my view.

The McCollum bill, however, imposes all the deadlines and restrictions without any of the fairness. In that sense, it is more of a political statement than a serious attempt to reform the process. The bill may achieve the goal of speedier executions but the cause of justice will not be served. It is an admission of failure to pursue one without the other.

What is missing is any attempt to remedy the most pressing problem at the source: poorly represented defendants at trials where almost all the constitutional errors that are later reversed on appeal occur. The reason for incompetent representation is simple: Many States pay less than $1,500 for trials—not enough to defend a drunk driver, let alone a capital defendant.

When you consider that retrials have been ordered by the Federal courts in 40 percent of the habeas cases since 1976, the McCollum bill's failure to require competent counsel at State trial proceedings is a fatal flaw that makes me unable to support this legislation.

There is another omission in the bill that is even more glaring. It goes to the heart of due process and fundamental fairness: An innocent man should never be executed.

The McCollum bill permits habeas claims only in the difficult-to-imagine situation where there is ''clear and convincing'' evidence of innocence and ''no reasonable juror'' would find the petitioner guilty. I will be supporting an amendment that will substitute ''preponderance of the evidence'' instead of the more restrictive standard.

This amendment simply states that the Federal courts should always be available to hear claims of innocence when based on newly discovered evidence. Representative MCCOLLUM's standard is far better suited to dispose of the claim rather than a standard of whether to hear the claims in the first place.

Mr. PORTMAN. Mr. Chairman, every year nearly 5 million people are victims of violent crime. Despite this, only 65 percent of all reported murders, 52 percent of reported rape, and 56 percent of reported aggravated assault result in the arrest of a suspect. Every year, 60,000 criminals convicted in a violent crime never go to prison. Given these facts, it is easy to understand why crime, especially among young offenders, is increasing. Without an effective criminal justice system, there is no meaningful deterrent to crime.

This is especially the case when you look at death penalty procedures. The death penalty should be the most extreme deterrent against crime. In many countries around the world it has this effect. In the United States, however, it has become so mired in convoluted proceedings, that it has lost its significance as a credible punishment and deterrent to crime. Death row prisoners routinely take advantage of an endless appeals process to delay punishment indefinitely. Since 1991, Federal habeas corpus cases have more than doubled. Thousands of frivolous petitions clog the Federal court system, making it virtually impossible to complete the process and deliver punishment. It is not uncommon for proceedings to take up to 14 years, or more; 14 years from the time a person is sentenced for committing a violent crime until the time he receives his punishment—hardly a credible deterrent. In 1994, district courts fully dismissed only 2 capital habeas corpus petitions, out of the hundreds that were filed to delay the process further. This undermines our whole system of justice.

Today we have the opportunity to remedy this serious problem within our criminal justice system. The Effective Death Penalty Act will streamline the habeas corpus process and reform death penalty procedures, reaffirming the commitment of Congress to ensure swift and effective punishments for perpetrators of the most egregious crimes. I urge my colleagues to support meaningful reform to the habeas corpus process and give the American people a reason to put their faith back into our criminal justice system.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the order of the House of Tuesday, February 7, 1995, the committee amendment in the nature of a substitute is considered as an original bill for the purpose of amendment and is considered as having been read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 729

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Effective Death Penalty Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TITLE I—EFFECTIVE DEATH PENALTY

Subtitle A—Post Conviction Petitions: General Habeas Corpus Reform

SEC. 101. PERIOD OF LIMITATION FOR FILING WRIT OF HABEAS CORPUS FOLLOWING FINAL JUDGMENT OF A STATE COURT.

Section 2244 of title 28, United States Code, is amended by adding at the end the following:

''(d)(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of the following times:

''(A) The time at which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.

''(B) The time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action.

''(C) The time at which the Federal right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable.

''(D) The time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.

''(2) Time that passes during the pendency of a properly filed application for State review with respect to the pertinent judgment or claim shall not be counted toward any period of limitation under this subsection.''.

SEC. 102. AUTHORITY OF APPELLATE JUDGES TO ISSUE CERTIFICATES OF PROBABLE CAUSE FOR APPEAL IN HABEAS CORPUS AND FEDERAL COLLATERAL RELIEF PROCEEDINGS.

Section 2253 of title 28, United States Code, is amended to read as follows:

''§2253. Appeal

''(a) In a habeas corpus proceeding or a proceeding under section 2255 of this title before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

''(b) There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

''(c) An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, or from the final order in a proceeding under section 2255 of this title, unless a circuit justice or judge issues a certificate of probable cause. A certificate of probable cause may only issue if the petitioner has made a substantial showing of the denial of a Federal right. The certificate of probable cause must indicate which specific issue or issues satisfy this standard.''.

SEC. 103. CONFORMING AMENDMENT TO THE RULES OF APPELLATE PROCEDURE.

Federal Rule of Appellate Procedure 22 is amended to read as follows:

''RULE 22

''HABEAS CORPUS AND SECTION 2255 PROCEEDINGS

''(a) APPLICATION FOR AN ORIGINAL WRIT OF HABEAS CORPUS.—An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

''(b) NECESSITY OF CERTIFICATE OF PROBABLE CAUSE FOR APPEAL.—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and in a motion proceeding pursuant to section 2255 of title 28, United States Code, an appeal by the applicant or movant may not proceed unless a circuit judge issues a certificate of probable cause. If a request for a certificate of probable cause is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or the Government or its representative, a certificate of probable cause is not required.''.

SEC. 104. EFFECT OF FAILURE TO EXHAUST STATE REMEDIES.

Section 2254(b) of title 28, United States Code, is amended to read as follows:

''(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State. A State shall not be deemed to have waived the exhaustion requirement, or be estopped from reliance upon the requirement unless through its counsel it waives the requirement expressly.''.

SEC. 105. PERIOD OF LIMITATION FOR FEDERAL PRISONERS FILING FOR COLLATERAL REMEDY.

Section 2255 of title 28, United States Code, is amended by striking the second paragraph and the penultimate paragraph thereof, and by adding at the end the following new paragraphs:

''A two-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of the following times:

''(1) The time at which the judgment of conviction becomes final.

''(2) The time at which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, where the movant was prevented from making a motion by such governmental action.

''(3) The time at which the right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable.

''(4) The time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.''.

Subtitle B—Special Procedures for Collateral Proceedings in Capital Cases

SEC. 111. DEATH PENALTY LITIGATION PROCEDURES.

(a) IN GENERAL.—Title 28, United States Code, is amended by inserting the following new chapter after chapter 153:

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

''§2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

''(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

''(b) This chapter is applicable if a State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

''(c) Any mechanism for the appointment, compensation and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record: (1) appointing one or more counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer; (2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or (3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

''(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

''(e) The ineffectiveness or incompetence of counsel during State or Federal collateral postconviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254 of this chapter. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal postconviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

''§2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

''(a) Upon the entry in the appropriate State court of record of an order under section 2256(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application must recite that the State has invoked the postconviction review procedures of this chapter and that the scheduled execution is subject to stay.

''(b) A stay of execution granted pursuant to subsection (a) shall expire if—

''(1) a State prisoner fails to file a habeas corpus petition under section 2254 within the time required in section 2258, or fails to make a timely application for court of appeals review following the denial of such a petition by a district court;

''(2) upon completion of district court and court of appeals review under section 2254 the

petition for relief is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

''(3) before a court of competent jurisdiction, in the presence of counsel and after having been advised of the consequences of his decision, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254.

''(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution or grant relief in a capital case unless—

''(1) the basis for the stay and request for relief is a claim not previously presented in the State or Federal courts;

''(2) the failure to raise the claim is (A) the result of State action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal postconviction review; and

''(3) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the petitioner guilty of the underlying offense.

''(d) Notwithstanding any other provision of law, no Federal district court or appellate judge shall have the authority to enter a stay of execution, issue injunctive relief, or grant any equitable or other relief in a capital case on any successive habeas petition unless the court first determines the petition or other action does not constitute an abuse of the writ. This determination shall be made only by the district judge or appellate panel who adjudicated the merits of the original habeas petition (or to the district judge or appellate panel to which the case may have been subsequently assigned as a result of the unavailability of the original court or judges). In the Federal courts of appeal, a stay may issue pursuant to the terms of this provision only when a majority of the original panel or majority of the active judges determines the petition does not constitute an abuse of the writ.

''§ 2258. Filing of habeas corpus petition; time requirements; tolling rules

''Any petition for habeas corpus relief under section 2254 must be filed in the appropriate district court within one hundred and eighty days from the filing in the appropriate State court of record of an order under section 2256(c). The time requirements established by this section shall be tolled—

''(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

''(2) during any period in which a State prisoner under capital sentence has a properly filed request for postconviction review pending before a State court of competent jurisdiction; if all State filing rules are met in a timely manner, this period shall run continuously from the date that the State prisoner initially files for postconviction review until final disposition of the case by the highest court of the State, but the time requirements established by this section are not tolled during the pendency of a petition for certiorari before the Supreme Court except as provided in paragraph (1); and

''(3) during an additional period not to exceed sixty days, if (A) a motion for an extension of time is filed in the Federal district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254; and (B) a showing of good cause is made for the failure to file the habeas corpus petition within the time period established by this section.

''§ 2259. Scope of Federal review; district court adjudications

''(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

''(1) the result of State action in violation of the Constitution or laws of the United States;

''(2) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

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

''(b) Following review subject to the constraints set forth in subsection (a) and section 2254(d) of this title, the court shall rule on the claims properly before it.

''§ 2260. Certificate of probable cause inapplicable

''The requirement of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to the provisions of this chapter except when a second or successive petition is filed.

''§ 2261. Application to State unitary review procedure

''(a) For purposes of this section, a 'unitary review' procedure means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. The provisions of this chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

''(b) A unitary review procedure, to qualify under this section, must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2256(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

''(c) Sections 2257, 2258, 2259, 2260, and 2262 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State 'post-conviction review' and 'direct review' in those sections shall be understood as referring to unitary review under the State procedure. The references in sections 2257(a) and 2258 to 'an order under section 2256(c)' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, then the start of the one hundred and eighty day limitation period under section 2258 shall be deferred until a transcript is made available to the prisoner or his counsel.

''§ 2262. Limitation periods for determining petitions

''(a)(1) A Federal district court shall determine such a petition or motion within 60 days of any argument heard on an evidentiary hearing, or where no evidentiary hearing is held, within 60 days of any final argument heard in the case.

''(2)(A) The court of appeals shall determine any appeal relating to such a petition or motion within 90 days after the filing of any reply brief or within 90 days after such reply brief would be due. For purposes of this provision, any reply brief shall be due within 14 days of the opposition brief.

''(B) The court of appeals shall decide any petition for rehearing and or request by an appropriate judge for rehearing en banc within 20 days of the filing of such a petition or request unless a responsive pleading is required in which case the court of appeals shall decide the application within 20 days of the filing of the responsive pleading. If en banc consideration is granted, the en banc court shall determine the appeal within 90 days of the decision to grant such consideration.

''(3) The time limitations contained in paragraphs (1) and (2) may be extended only once for 20 days, upon an express good cause finding by the court that the interests of justice warrant such a one-time extension. The specific grounds for the good cause finding shall be set forth in writing in any extension order of the court.

''(b) The time limitations under subsection (a) shall apply to an initial petition or motion, and to any second or successive petition or motion. The same limitations shall also apply to the redetermination of a petition or motion or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings, and in such a case the limitation period shall run from the date of the remand.

''(c) The time limitations under this section shall not be construed to entitle a petitioner or movant to a stay of execution, to which the petitioner or movant would otherwise not be entitled, for the purpose of litigating any petition, motion, or appeal.

''(d) The failure of a court to meet or comply with the time limitations under this section shall not be a ground for granting relief from a judgment of conviction or sentence. The State or Government may enforce the time limitations under this section by applying to the court of appeals or the Supreme Court for a writ of mandamus.

''(e) The Administrative Office of United States Courts shall report annually to Congress on the compliance by the courts with the time limits established in this section.

''(f) The adjudication of any petition under section 2254 of this title that is subject to this chapter, and the adjudication of any motion under section 2255 of this title by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters.

''§ 2263. Rule of construction

''This chapter shall be construed to promote the expeditious conduct and conclusion of State and Federal court review in capital cases.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part VI of title 28, United States Code, is amended by inserting after the item relating to chapter 153 the following new item:

''154. Special habeas corpus procedures in capital cases ..... 2256''.

Subtitle C—Funding for Litigation of Federal Habeas Corpus Petitions in Capital Cases

SEC. 121. FUNDING FOR DEATH PENALTY PROSECUTIONS.

(a) IN GENERAL.—Part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following new section:

''FUNDING FOR LITIGATION OF FEDERAL HABEAS CORPUS PETITIONS IN CAPITAL CASES

''SEC. 523. Notwithstanding any other provision of this subpart, the Director shall provide grants to the States, from the funding allocated pursuant to section 511, for the purpose of supporting litigation pertaining to Federal habeas corpus petitions in capital cases. The total funding available for such grants within any fiscal year shall be equal to the funding provided to capital resource centers, pursuant to Federal appropriation, in the same fiscal year.''.

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting after the item relating to section 522 the following new item:

''Sec. 523. Funding for litigation of Federal habeas corpus petitions in capital cases.''.

TITLE II—FEDERAL DEATH PENALTY PROCEDURES REFORM

SEC. 201. FEDERAL DEATH PENALTY PROCEDURES REFORM.

(a) IN GENERAL.—Subsection (e) of section 3593 of title 18, United States Code, is amended by striking ''shall consider'' and all that follows through the end of such subsection and inserting the following: ''shall then consider whether the aggravating factor or factors found to exist outweigh any mitigating factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants. The jury shall be instructed that its recommendation concerning a sentence of death is to be based on the aggravating factor or factors and any mitigating factors which have been found, but that the final decision concerning the balance of aggravating and mitigating factors is a matter for the jury's judgment.''.

(b) CONFORMING AMENDMENT.—Section 3594 of title 18, United States Code, is amended by striking ''or life imprisonment without possibility of release''.

The CHAIRMAN. Pursuant to a previous order of the House, the bill shall be considered for amendment under the 5-minute rule for a period not to exceed 6 hours.

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. MCCOLLUM

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

The Clerk read as follows:

Amendment offered by Mr. MCCOLLUM: Page 20, line 6, strike ''shall'' and insert ''is authorized to.''

Mr. MCCOLLUM. Mr. Chairman, this is purely a technical amendment. We had unintentionally done an appropriations and authorization bill, and we simply needed to change the language to make sure that, in the section of the bill dealing with the funding portions of this with respect to the director providing grants to the States for prosecution and litigation pertaining to habeas corpus, we do not actually direct the funding, but rather, we authorize it. It is a technical amendment.

Mr. Chairman, I do not have anything else I can say except we need to do this. I urge the adoption of the amendment.

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

Mr. Chairman, I have seen the gentleman's amendment. It is truly a technical amendment. I have no objection to that. I believe our side has no objection to it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. MCCOLLUM].

The amendment was agreed to.

The CHAIRMAN. Are there other amendments to the bill?

AMENDMENT OFFERED BY MR. SCHUMER

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

The Clerk read as follows:

Amendment offered by Mr. SCHUMER: After subtitle B of title I insert the following:

Subtitle C—Competent Counsel in Death Penalty Cases in State Court

SEC. 121. COMPETENT COUNSEL IN STATE COURT.

(a) IN GENERAL.—Title 28, United States Code, is amended by inserting after the chapter added by section 111 the following:

''CHAPTER 154A—COMPETENT COUNSEL IN STATE COURT

''Sec.
''2263. Competent counsel in State court.

''§ 2263. Competent counsel in State court

''(a) If an action under section 2254 of this title, brought by an applicant under sentence of death, the court determines that—

''(1) the relevant State has established or identified a counsel authority which meets the requirements of subsections (b) through (e) of this section, to ensure that indigents in capital cases receive competent counsel and support services at trial in State court and on direct review in the appropriate State appellate courts;

''(2) if the applicant in the instant case was eligible for the appointment of counsel and did not waive such an appointment, the counsel authority actually appointed an attorney or attorneys to represent the applicant; and

''(3) the counsel so appointed met the qualifications and performance standards established by the counsel authority;

then the court shall not apply subsection (f) of this section to the claims presented in the application.

''(b) The counsel authority may be—

''(1) the highest State court having jurisdiction over criminal matters;

''(2) a committee appointed by the highest State court having jurisdiction over criminal matters; or

''(3) a defender organization.

''(c) The counsel authority shall publish a roster of attorneys qualified to be appointed in capital cases, procedures by which attorneys are appointed, and standards governing the qualifications, performance, compensation, and support of counsel; and, upon the request of a State court before which a death penalty is pending, shall appoint counsel to represent the client.

''(d) An attorney who is not listed on the roster shall be appointed only on the request of the client concerned and in circumstances in which the attorney requested is able to provide the client with competent legal representation.

''(e) Upon receipt of notice from the counsel authorized that an individual entitled to the appointment of counsel under this section has declined to accept such an appointment, the court requesting the appointment shall conduct, or cause to be conducted, a hearing, at which the individual and counsel proposed to be appointed under this section shall be present, to determine the individual's competency to decline the appointment, and whether the individual has knowingly and intelligently declined it.

''(f) Except as provided by subsection (a) of this section, in an action under section 2254 of this title, brought by an applicant under sentence of death, the court shall not decline to consider a claim on the ground that it was not previously raised in State court at the time and in the manner prescribed by State law and, for that reason, the State courts refused or would refuse to entertain it.''.

(b) CLERICAL AMEMDMENT.—The table of chapters at the beginning of part VI of title 28, United States Code, is amended by inserting after the item relating to the chapter added by section 111 the following new item:

''154A, Competent Counsel in State Court ..... 2263''.

Redesignate succeeding subtitles and sections (and any cross references thereto) accordingly.

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

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

There was no objection.

Mr. SCHUMER. Mr. Chairman, as I have mentioned before, I favor the procedural form in the bill before us as it was reported, because I take the need for these reforms seriously. I support the death penalty in appropriate cases, and I believe that it should be carried out when the time comes.

I believe that the time for this ultimate penalty should not be delayed over and over and over again by repeated, redundant, and frivolous petitions. Those who bring the petitions are morally opposed to capital punishment. I respect that view. However, their view is not the prevalent law of the land in most of the Sates, and they should not be allowed to use that moral preference to just delay and delay and delay.

Mr. Chairman, I think that the general proposal made by the gentleman from Illinois is a fair one. I supported it in committee and intend to support it on the floor of the House, at least as it was reported. I do not know what amendments will come from the other side.

However, Mr. Chairman, I also strongly believe that to put people on trial for their very lives without giving them good counsel is fundamentally unfair and ultimately outrageous. It is not worthy of all the good and decent and fair things that make us proud of our country and of our unique system of justice. Unfortunately, Mr. Chairman, the sad truth is that we do just that in far too many cases.

The greatest single cause of error in death penalty cases is poor counsel at trial. Let me be blunt, Mr. Chairman, about what the words ''poor counsel'' mean. They mean lawyers who are drunk at trial. They mean lawyers who openly speak of their clients in racially

insulting terms. They mean lawyers who do not have a clue about how to stand up to the emotion and community pressure that is inevitably generated in every death penalty case. This is a national disgrace. Yet, this reform bill before us contains not one word, not one single word, to ensure that people put on trial for their lives have good lawyers at trial.

Mr. Chairman, my amendment would correct this important omission. Of course, the States are already required by the Constitution to provide some kind of counsel to all criminal defendants, but that is not the point. The point is whether they provide good, competent lawyers who know how to handle death penalty cases and are willing and able to do so. Unfortunately, the evidence is that in all too many instances, lawyers are appointed who are incompetent, who are overworked, who are cronies of trial judges, or, most shameful of all, are actually prejudiced against their clients.

Mr. Chairman, my amendment does not require the States to do anything. It is not a mandate of any form. It does not dictate standards from Washington. It simply gives every State a simple choice. It may choose to set up an independent counsel authority, and that authority can be the highest court, a committee appointed by that court, or a defender organization.

There is wide latitude in that part of the choice. It will be up to the State authority to set standards of competence for counsel, means of appointing counsel, and adequate pay for counsel. If the State chooses to set up an authority, then Federal courts will not review claims that should have been raised in State courts but were not. To a large extent, that is the law that now exists.

On the other hand, Mr. Chairman, if a State chooses not to set up a counsel authority, then Federal courts will consider claims that petitioners fail to raise in State court but did not. It is a very simple choice. It is saying,

If you provide adequate counsel, without we, the Federal Government, dictating what adequate counsel is, then you don't have to have full Federal review of your claims. However, if you don't, there ought to be a full Federal review.

That makes eminent sense to anyone, it seems to me, who is fair-minded and looks at capital punishment fairly. I say that again as somebody who supports capital punishment.

Let me give the Members a few examples, all from within the last 10 years of how it happens that these claims are not raised.

A lawyer in Florida admitted to the trial judge in chambers that, ''I am at a loss,'' he told the judge. He said, ''I really don't know what to do in this type of proceeding. If I had been through one, I would, but I have never handled one except this time.''

A lawyer in an Alabama trial asked for time between the guilt phase and the death penalty phase to read the Alabama death penalty statute. A lawyer in Pennsylvania built his client's defense around a statute.

The CHAIRMAN. The time of the gentleman from new York [Mr. SCHUMER] has expired.

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

Mr. SCHUMER. Mr. Chairman, the lawyer from Pennsylvania billed his client's defense around a statute that 3 years earlier had been declared unconstitutional. These are only a few cases of many, many examples that show bad lawyers are appointed to death penalty cases.

If a person has a bad lawyer, that lawyer obviously will fail to raise issues that should be raised when they should be raised. When that happens, Mr. Chairman, the only place they can be effectively heard is in Federal court on a habeas petition.

If one has a good lawyer, however, that will raise all the important issues, so that they are heard of and disposed of in States courts, there is no need to review them in Federal court unless the State court has made a mistake in law.

In other words, it will be done right the first time, and for so many of the members on that side of the aisle and on this side of the aisle who really feel that there is too much delay and too much appeal, the best way to ensure that there is not that delay, not only on a statutory but on a constitutional basis, is to make sure in this way that there is adequate counsel at trial.

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The amendment will help make sure we do it right the first time. It is fair, it is just, it is needed.

I urge every member, whatever their view is on the ultimate bill, to support this very reasonable amendment.

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

Mr. Chairman, I rise in opposition to this amendment. The gentleman I am sure is sincere about what he wishes to accomplish but quite frankly if this amendment is adopted, it is going to destroy the underpinnings of this bill to speed up the process of carrying out the death sentences in this country.

Right now the way the bill works is that you have to have as a State an agreement to appoint certain counsel as prescribed in the legislation, certain attorneys or lawyers, for defendants in State habeas proceedings, not at the trial level.

If you opt to do that, then the time limits come down for taking the appeals to the Federal court to 180 days instead of the lengthy time that is otherwise in the bill, and you would otherwise be subjected to. You gain the limits on successive petitions so that there is no right to have these successive petitions, and you engage the timetables in this bill that are designed at every stage of the proceeding to reduce the amount of time involved in death row cases.

What the gentleman is suggesting is that essentially this be expanded, this right to counsel, this provision of opting in, that the States in order to be able to be eligible for all of the kinds of changes in the law we are going to enact today if we pass this bill must provide counsel under the procedures that he has described at the trial level, at the original trial level.

I think everybody needs to understand that under the laws of this country, since Gideon versus Wainwright, every accused has the right to counsel and the State must provide that counsel, adequate counsel, to the accused in any case, be that a death penalty case or otherwise. If inadequate counsel is provided and sometimes unfortunately that has happened and the gentleman is quite right on that point, then in that particular case there is a grievance that is appropriately presented in the court system and sometimes that is presented in the habeas corpus petitions that we are discussing today in Federal court, and if indeed that is upheld that somebody did not have the proper counsel, did not have adequate counsel, then he is entitled to have his entire case retried, and that certainly would not be something we would particularly want to have happen.

But the truth of the matter is that we do have a procedure for adequate counsel and all kinds of protections for the accused that are built into that system at the trial level.

What the gentleman wants to do and what he does by his amendment today is to add a series of things that people have to go through, a roster has to be formed, a State has to pass a counsel authority in one of three or four forms and you have to comply with all of these procedures and in the end the expense and the problems and the difficulty of going through this in my judgment and many others' who have looked at this will mean that most States will choose not to do this. They will simply choose to not opt in. Therefore, we will not have an effective bill. We will not shorten the time death row inmates have for carrying out their sentences that we want to do. The underlying bill will indeed fail in its objective if this indeed occurs.

Right now, under current law in most Federal cases, a court cannot hear a claim on Federal collateral review that was not first raised in State collateral review. This is known as a procedural default.

The purpose of this rule is to ensure that State courts first have an opportunity to correct constitutional errors. It discourages sandbagging of claims and encourages the orderly consideration of claims by State and Federal courts.

The Schumer amendment in addition to everything else I have said will gut this important rule if States do not adopt his counsel requirements. His

amendment puts States in a no-win situation. Either they adopt his expensive requirements of counsel, which I do not think many will do, at all stages of State review, for the first time in history putting counsel in State capital trials under the thumb of Congress, or face more delays in litigation in Federal court.

Under the Schumer amendment, States can choose between an unfunded mandate or greater delay for capital cases.

Our bill gives States the option of continuing to litigate cases under current law or getting stronger rules of finality as the benefit for having provided counsel on collateral review, the State habeas proceedings that we are talking about rather than the requirements at the trial level that the gentleman from New York [Mr. SCHUMER] is talking about.

We do not punish States that want to impose the death penalty as the Schumer amendment would do and the amendment as I view it is insulting to victims and to States. It would not result in reform. It would be a retrogression, and it should be rejected.

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

Mr. Chairman, I rise to oppose the Effective Death Penalty Act, and in favor of the Schumer amendment.

Earlier today we pulled the teeth out of the fourth amendment. Now we are continuing our assault on the Constitution by making it near to impossible for a prisoner sentenced to death to seek justice. The Framers said in Article I, section 9 that ''the privilege of the Writ of Habeas Corpus shall not be suspended.'' Today, we are not just suspending it. We are ripping it to shreds.

Like so many things in the contract, we resort to coping with genuine problems with artificial deadlines, gimmicks and smoke and mirrors—instead of effective solutions.

Make no mistake, there are problems with the way the courts are required to handle habeas corpus petitions. If you talk to the lawyers and the judges who deal with this every day, you will know what the problem is. It is that many of the attorneys trying death penalty cases are not qualified. I am not saying that we should pay Johnny Cochran or Robert Shapiro to represent every accused killer. But, to really solve this problem, we have to improve the caliber of attorneys in death cases. That way, a prisoner could not come back to the court on countless occasions and say that their attorney was ineffective in his case.

That is why the Schumer amendment makes so much sense. This strategy would allow us to balance the need to preserve the Constitution, with better efficiency in our courts.

There are so many things that are unfair about the Effective Death Penalty Act. The sole incentive for a state to provide counsel at the habeas stage is to reduce the statute of limitations. But that is grossly unfair to the prisoner. Just think about it. How can a new lawyer, however competent, freshly investigate the case, develop legal arguments and effectively prepare a petition in just 6 months. This law begs for the very ineffectiveness of counsel we are trying to end.

Further, the standard for filing a second habeas petition is so tough that it renders habeas a constitutional memory. How could a prisoner like Walter McMillan seek justice? This is a man who was finally able to convince a court that he was the wrong man, but only after four habeas petitions. We must allow prisoners to present newly discovered evidence in a habeas petition.

The title of this bill is the Effective Death Penalty Act. But it is anything but effective. It is unfair, unjust and unconstitutional.

A lot of my colleagues on the other side of the aisle have cited Jefferson and Madison in these debates. They assure us that they would approve of what we are doing. But they do not cite their words.

The fact is that we know precisely what the Founders have said. They said, ''no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.''

They said, ''The Privilege of the Writ of Habeas Corpus shall not be suspended.''

This is what they said. This is our Constitution. Let's begin to pay attention to it. Let us not tear it up.

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

Mr. Chairman, the Latin phrase habeas corpus may cause people's eyes to glaze over, but the reforms in this bill begin to address what I consider to be the biggest problem in the Federal justice system, the seemingly unending string of appeals that convicted criminals may file to postpone again and again the day of final judgment.

Mr. Chairman, there is no good reason for the taxpayers in my community, Cincinnati, or anywhere else to foot the bill for the John Wayne Gacys and other criminals in this world who have taken human life, innocent human life so they can play games with our legal system from their prison cells for year after year after year.

There ought to come a point, Mr. Chairman, after a trial by a jury of one's peers and after going through the appeals process in the State court system and then finally the Federal court system where enough is finally enough.

By moving forward on this bill, the Effective Death Penalty Act, we are fulfilling another element of the Contract With America. In doing so, we are also attempting to ensure that the death penalty is of more than academic interest to jailhouse lawyers.

□ 1610

If the death penalty is to serve as a real deterrent, we must see that it is imposed fairly and surely—and reasonably swiftly. This bill is just a start, but it is a good start.

Our colleagues should understand that the statutory habeas corpus provisions we are reforming today are not related to the habeas corpus protections contained in the Constitution. The constitutional protections apply to remedy lawless incarcerations by the executive without court authority; they do not deal with imprisonment ordered by State officials pursuant to court order after conviction at trial. But confusion over the shared Latin title should not confuse the issue: Our Constitution does not mandate, nor does common sense decree, today's system of virtually unlimited frivolous Federal appeals.

Unlike the valuable protections our Constitution provides, today's statutory scheme as interpreted by the courts allows endless appeals after endless delays. If a decision ever is reached, the convicted criminal simply starts the process all over again on some other point. In effect, there is now no statute of limitations, and no finality of Federal review of State court convictions. The statutory habeas system is not rational, it's not just, and it's not followed by any other civilized nation.

As former Supreme Court Justice Lewis Powell said in his review of our flawed process: ''I know of no other system of justice structured in a way that assures no end to the litigation of a criminal conviction.''

Mr. Chairman, this bill makes a start toward bringing victims of crime some closure to their ordeals. Some may not believe that this reform goes far enough, but it is reform, and I urge the bill's adoption and I urge defeat of the Schumer amendment.

Mr. CONYERS. Mr. Chairman, Sixty-three years ago, in Powell versus Alabama, the case involving the Scottsboro boys, the Supreme Court established as a constitutional principle that indigent defendants would not be sentenced to death unless they were represented by competent counsel.

That promise remains unfulfilled to this day and it is one of the most glaring omissions in the McCollum bill.

Having competent counsel is so important because failure at the front end, that is, the trial stage, leads to the delays and multiple petitions at the back end that resulted in retrials being ordered in 40 percent of all habeas petitions filed since 1976. Without competent counsel at trials any reform is meaningless.

Leaving it to the States to appoint counsel is no solution because the current system is a disaster: in Kentucky, attorneys who represented a quarter of the State's 26 death row inmates have since been suspended, disbarred, or convicted of crimes.

In Mississippi and Arkansas, compensation for death row attorneys was limited by statute to $1,000, though hundreds of hours of work are involved.

In one judicial district in Georgia, capital cases were awarded to the lowest bidder.

South Carolina pays $10 per hour for out-of-court work and $15 for in-court work.

That is the system the McCollum bill would seek to preserve: uncompensated, ill-prepared and inexpert counsel for those whose lives are hanging in the balance. Surely, we can do better.

Habeas cases are among the most complex in all litigation. In addition to the highest stakes possible—life or death—there is a very complex body of constitutional law and unusual procedures that do not apply in other criminal cases. There are often two separate trials with very different sets of issues. Jury selection standards are different. The penalty phase requires in-depth investigation into personal and family history.

The McCollum bill is woefully inadequate in providing counsel and I urge my colleagues to support the amendment to require counsel at the trial as well as postconviction phase.

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

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

RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 149, noes 282, not voting 3, as follows:

[Roll No 104]

AYES—149

Abercrombie	Gordon	Obey
Ackerman	Gutierrez	Olver
Baldacci	Hall (OH)	Owens
Barcia	Hamilton	Pallone
Barrett (WI)	Hastings (FL)	Pastor
Becerra	Hilliard	Payne (NJ)
Beilenson	Hinchey	Pelosi
Berman	Hoyer	Peterson (FL)
Bishop	Jackson-Lee	Pomeroy
Bonior	Jacobs	Rangel
Boucher	Jefferson	Reed
Brown (CA)	Johnson, E. B.	Reynolds
Brown (FL)	Johnston	Richardson
Brown (OH)	Kaptur	Rivers
Bryant (TX)	Kennedy (MA)	Roemer
Cardin	Kennedy (RI)	Roybal-Allard
Clay	Kennelly	Rush
Clayton	Kildee	Sabo
Clyburn	Kleczka	Sanders
Coleman	LaFalce	Sawyer
Collins (IL)	Lantos	Schroeder
Conyers	Levin	Schumer
Costello	Lewis (GA)	Scott
Coyne	Lipinski	Serrano
de la Garza	Lofgren	Skaggs
DeFazio	Lowey	Slaughter
DeLauro	Luther	Spratt
Dellums	Maloney	Stark
Dicks	Manton	Stokes
Dingell	Markey	Studds
Dixon	Martinez	Stupak
Doggett	Mascara	Thompson
Durbin	Matsui	Torres
Engel	McCarthy	Torricelli
Eshoo	McDermott	Towns
Evans	McHale	Tucker
Farr	McKinney	Velazquez
Fattah	McNulty	Vento
Fazio	Meehan	Visclosky
Fields (LA)	Meek	Ward
Filner	Menendez	Waters
Flake	Mfume	Watt (NC)
Foglietta	Miller (CA)	Waxman
Ford	Mineta	Williams
Frost	Mink	Wise
Furse	Moakley	Woolsey
Gejdenson	Mollohan	Wyden
Gephardt	Nadler	Wynn
Gibbons	Neal	Yates
Gonzalez	Oberstar	

NOES—282

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

NOT VOTING—3

Collins (MI)	Frank (MA)	Radanovich

□ 1631

The Clerk announced the following pair:

On this vote:

Miss Collins of Michigan for, with Mr. Radanovich against.

Messrs. ROSE, SPENCE, KLINK, MURTHA, ORTIZ, and DOYLE changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Page 4, line 26, strike the period and insert the following:

''or a substantial showing that credible newly discovered evidence which, had it been presented at trial, would probably have resulted in an acquittal for the offense for which the sentence was imposed or in some sentence other than incarceration.''

Page 4, line 26, Strike the entire sentence beginning with the word ''The'' and ending with ''standard.''

Page 15, line 7, delete the period and insert ''; or''

Page 15, after line 7 add:

''(4) the facts underlying the claim consist of credible newly discovered evidence which, had it presented to the trier of fact or sentencing authority at trial, would probably have resulted in an acquittal of the offense for which the death sentence was imposed.''

Mr. WATT of North Carolina. Mr. Chairman and colleagues, we have heard, again, the Constitution of the United States is under attack in this bill.

There is only one place in the United States Constitution where the words habeas corpus are written. It is Article I, section 9, clause 2, which says, ''The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.''

As much as I have looked for rebellion or invasion in our streets, among all the crime I have not found it. Yet here we are attempting to undermine the provision in the Constitution again.

In the committee, Mrs. SCHROEDER brought in some evidence, a letter which was a letter of support from a number of different people and groups. And one of those groups was some people who felt strongly about supporting the Constitution because they had been involved with the Civil War issue. And the question was raised: Why would they have an interest in this? And I went back and looked, and I pointed out to the committee members that the reason that somebody who had some interest in slavery would have an interest in this bill was because the provisions, original provisions in the Constitution having to do with slavery, are in article I of the Constitution also.

That provision in the Constitution says, and this is section 9, clause 1 of

article I of the Constitution, says, ''The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808,'' and then it goes on.

My colleagues, we fought a Civil War a hundred years later in this country over this provision in the Constitution. A hundred years after the year 1808, southerners were still claiming that they had the right to bring slaves into the South. And a whole war was fought about this single line in the Constitution.

And in 1 day in our Judiciary Committee, and apparently in less than 2 hours or so of debate on this floor, we are getting ready to do essentially what a civil war was fought about in our country.

We are undermining a simple provision in the Constitution, not the same provision, but I would submit to you that if that language 100 years after the prohibition in the Constitution had expired, clearly based on the language was worth fighting for, surely the right of habeas corpus in this country ought to be worth fighting for.

But here we are again, conservatives saying, ''This is a conservative group of people, we have a conservative Contract With America, we are conservatives, but we don't believe in the most conservative document that our country has ever had, and we would undermine it.''

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

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 4 additional minutes.)

Mr. WATT. Mr. Chairman, the language is simple. It says, point blank, this is the only place you will find these words in the Constitution, there being no other reference to habeas corpus in the entire Constitution, and listen, let them resonate in this body, if they will, if anybody will listen to them. This is the Constitution of the United States that we are talking about.

It simply says the privilege of the writ of habeas corpus shall not be suspended unless when in the cases of rebellion or invasion the public safety may require it. There is no rebellion or invasion. There may be a bunch of crime in the streets, but I ''ain't'' seen a rebellion and no invasion.

□ 1640

And here we are, undermining the writ, and I say to my colleagues, ''Mind you, it doesn't say we can suspend it if we find probable cause. That's not here. That's what the language of the bill says, but that's not here in the Constitution. Nothing about probable cause. Probable cause is what we were arguing about in the last assault on the Constitution just a couple of hours ago that these conservative Members would have us do away with.''

Well, what does my amendment do? It says, ''At least, if somebody comes forward with credible evidence of innocence, at least they ought to be guaranteed the protections that our Constitution provides to us.''

And we are seeing it every day now. Advances in technology have given us DNA testing that allows us to run specific DNA testing to determine whether a person is guilty or innocent, and in a number of cases where this sophisticated technology—cases where people have been in jail for 20 years, been on death row—this DNA technology is coming forward now and saying we went back, and we checked that blood sample, or that hair strand, or that fingerprint, or that little piece of clothing, and this person could not have been the perpetrator of this crime. Yet they sat in jail. They have been subjected to facing the death penalty.

Mr. Chairman, all this amendment would do is preserve that right for them to raise credible evidence of innocence. We are talking about protecting people who can come in with credible evidence of innocence at any time during the proceeding.

My colleagues, I am the last person who is going to get into an argument about who is the most conservative person in this body. I think I have demonstrated, when it comes to the Constitution, though not bragging rights in my district to go home and say I am a conservative, but, my colleagues, it is a conservative principle to uphold the Constitution of the United States. This is not radical liberal stuff. This is the stuff that our country is made of.

So, Mr. Chairman, I ask my colleagues, in their haste to undermine habeas in a general way, at least preserve the rights and protections to those people who can still come forward with credible evidence of their own innocence. We should never, never, ever, put a person to death in this country when they are innocent because of procedural technicalities. In the last bill they were arguing all these procedural technicalities. Well, look. Give me a break. Give the people a break. We should never put anybody to death on a procedural technicality, and that is what this bill does. It poses an additional procedural technicality.

Mr. MCCOLLUM. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from North Carolina [Mr. WATT].

Mr. Chairman, on the face of what the gentleman from North Carolina says and offers, one might make the assumption that it sounds perfectly reasonable. He says he wants somebody to have a shot at habeas corpus petitions and to appeal his conviction if he has newly discovered evidence which, had it been presented at trial, would probably have resulted in acquittal for the offense for which the sentence was imposed or in some sentence other than incarceration. That sounds reasonable, however it is contrary to existing law. It is contrary to existing court interpretation.

I say to my colleagues, ''The standard for review of the question of whether or not you get a chance to set aside your death penalty case today on the basis of newly discovered evidence of guilt or innocence is that the petitioner, in the absence of constitutional error, which is other stuff, must show that the new factual evidence that he has presented unquestionably establishes innocence.'' That is a 1993 recent decision of the U.S. Supreme Court. Consequently what the gentleman offers would weaken the current law with respect to these processes.

I would like to remind all of my colleagues that we are now not talking about somebody who has not gone through the due process considerations. We are not even talking about whether he had a competent counsel or not. We are talking about somebody who has been to trial, gone through a jury trial, been found guilty of some heinous crime that merits at least in the abstract principle the death penalty on the books of a State or the Federal Government, has taken an appeal of that undoubtedly all the way through the State, if it is a State case, the State supreme court, perhaps the U.S. Supreme Court, probably has gone through one or at least numerous appeals in Federal court under the habeas corpus statute, and I would commend the gentleman to technically observe, and it is just a technical question, that the habeas corpus we are talking about today is statutory, not the great writ in the Constitution. But he has probably taken several statutory habeas corpus appeals, perhaps State habeas, certainly Federal, and he has been denied. Somebody has found him to all the procedures to have been fine. He is found guilty the first time around. He was sentenced properly, et cetera, and how he comes up and comes up with some new standard that is going to be put in law that says for the first time, different from anything that we have done before in the history of the country on these cases, that, ''If you find new credible evidence that would probably have resulted in an acquittal for the offense for which the sentence is imposed, then a Federal court judge can set aside the case and sentence in the conviction and require a new trial.'' It means that there is going to be a relitigation virtually in front of this Federal judge because that Federal judge has got to make a decision that the new evidence would probably have resulted in an acquittal in the first place.

This is a new complexity. It will give new opportunities for appeals. Most of these probably will be denied, and we would have lots more time dillydallying around before these sentences are carried out.

So, as well-meaning as the gentleman's amendment may be on the surface, it actually undermines the very effort we are about to hear today,

which is to speed up the process of carrying out the death sentences in this country.

We have a process now, I think that process is very, very fair. We do not alter it except in timetable sequence here today. We are not changing the underlying law and the rules that we play by in reviewing cases and death penalty cases. But the gentleman from North Carolina's amendment would change the underlying law. He would give another bite at the apple in the conditions and circumstances today the Supreme Court says, ''You don't have that right,'' and even establish an entirely new standard that does not presently today exist for appeals of death penalty cases.

So, for all of those reasons I would oppose this amendment.

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

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

Mr. WATT of North Carolina. Let me be sure that the gentleman understands my amendment because I think he has a misconception of my amendment or he has a misconception of the law.

My amendment only gets the person who is filing the habeas in the courthouse. This is not the standard for determining whether he wins or loses the case. This is the standard for determining whether the court will hear the case.

I say to my colleague, ''If you look at page four where I have amended the bill, it says, 'An appeal may not be taken to the Court of Appeals unless certain things apply,' and that's where my amendment comes into play. It allows him to take appeal. It doesn't set a different standard for that appeal once it is taken.''

□ 1650

If you look on page 14, it says, ''The District Court shall only consider a claim.'' And then it spells out certain circumstances.

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

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mr. MCCOLLUM was allowed to proceed for 3 additional minutes.)

Mr. MCCOLLUM. Mr. Chairman, I continue to yield to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. In that section it says, ''The court shall only consider a claim under certain circumstances.''

I agree with the gentleman that this is not the standard for an ultimate disposition of the case, but it is the prevailing standard for determining whether one gets review or not. That standard was set out very recently by the court again in the case of Schlup versus Delo, January 23, 1995. This is the standard for getting a review. It is not the standard for determining whether somebody gets off or not.

In that case, the court says, ''The standard requires the habeas petitioner to show that 'a constitutional violation has probably resulted in the conviction of one who is actually innocent.''' That is the same language that I have picked up.

So I just wanted to make sure that the gentleman understands. I am not trying to change the ultimate standard on which the person wins or loses. All this does is get the person into the courthouse so the court can evaluate the evidence.

Mr. MCCOLLUM. Mr. Chairman, reclaiming my time, I understand the point of the gentleman. But he changes the rules of how you get into the courthouse in the first place by striking out the current standards of having to have a constitutional infirmity. You do not have to have a constitutional infirmity after you have put your provision in. All you have to show is there is a probability that if you retry the case, you would be found innocent.

In fact what the net result or net defect of this is going to be is that you have established a new process. You may technically say the standards have not changed in the sense that ultimately somewhere down the road the Supreme Court rulings would not be overturned, but the fact of the matter is you have given another bite of the apple to somebody on death row that he does not today have because today you have gained access under this process under something less heavy, a burden on him, than a burden that requires that you show a constitutional defect to get there.

Mr. WATT of North Carolina. If the gentleman will yield further, I am not disputing what the gentleman says. Your bill says you have to raise a constitutional issue.

Mr. MCCOLLUM. So does current law.

Mr. WATT of North Carolina. My amendment says that if you show that you are probably innocent, you should not have to raise a constitutional issue.

If you can come into court at the outset and show there is evidence that you are probably innocent, why should we be telling somebody that they have got to raise a constitutional claim if they are probably innocent?

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

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

Mr. MCCOLLUM. Mr. Chairman, I just want to explain to the gentleman and anybody else here listening to this, other Members, that the current standard, the current threshold for all of this, is either that you have a constitutional infirmity of some sort that gets you into the habeas corpus setting, and your appeals are then heard on that basis, you did not have the proper lawyer or whatever, or the factual evidence is that you are unquestionably innocent. And that is the standard, the Herrera case, a 1993 case. It has been confirmed in the Schlup case in January of this year.

I would submit to the gentleman, while he may be intending to do something less than it is perceived by me to be doing, it seems on its face that he is making a weaker and less stringent standard in terms of getting to the appeal process, and thereby undermining what we are trying to do, to carry out sentences more quickly, and I urge the defeat of his amendment.

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

Mr. Chairman, as I understand the amendment, and the gentleman from North Carolina [Mr. WATT] can correct me if I am wrong, this is for people who are alleging that they are innocent and they are asking for an opportunity to be heard, and they have evidence that would show that they will probably be found not guilty if the evidence were to be heard.

It seems to me that we have an unfortunate situation in that we have to have the same procedure for those that are in fact guilty and those that are in fact innocent, and we do not know until they are heard which category they fit in. So we have to have one procedure. So we are going to have the procedure for people that are innocent, and the gentleman's amendment would allow the person that is innocent to be heard.

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

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

Mr. WATT of North Carolina. I think the gentleman from Florida [Mr. MCCOLLUM] is debating a different amendment than the one I offered. I am not trying to change the standard by which somebody wins or loses ultimately. What I am trying to do is make sure that somebody who has a credible claim of innocence does not sit in jail for 30, 40, or 50 years without any remedies or rights; that somebody who has been sentenced to death does not go to the gas chamber or be put to death without being able to come into court and at least present their evidence. Once they present their evidence, the standard of whether they win or not is still going to be the same as the one that the gentleman from Florida [Mr. MCCOLLUM] has talked about.

I cannot be any more blunt. I mean, the Supreme Court has said this is the exact standard, and they said it as recently as January 23, 1995.

So on the last bill we were trying to codify case law. This time we are trying to keep from codifying case law, because we do not care whether somebody is innocent or guilty; we just do not want them in our court system.

Mr. Chairman, I cannot believe we would stand in this body and talk about some kind of procedural technicality to put somebody to death and not give somebody the opportunity if

they have got credible evidence of innocence to present that evidence. Have we become absolutely inhumane in our society and in our quest to deal with the crime problem in this country?

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

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

Mr. HEINEMAN. Mr. Chairman, let us enter into this debate with a little practicality and a little what really happens out there in the street. We will walk the walk a little bit.

On December 3, 1980, Kermit Smith kidnaped Whellette Collins and two of her girlfriends. He kidnaped them from Hallifax, NC. He robbed, raped, and murdered Whellette Collins. He attempted to rob her two girlfriends. They escaped.

Mr. Kermit Smith was apprehended at the scene of the crime. He was tried and convicted of murder and sentenced to death.

Despite the conviction, this case dragged on for 14 years, going before 46 judges and to the U.S. Supreme Court 5 times. Over 150 different writs, stays, and motions were filed during these 14 years. Each delay caused the family of Whellette Collins horrendous pain, and justice was denied them over and over again. And just yesterday we were talking about victims compensation.

Worse still, Smith should have been in prison at the time of the murder for an earlier offense. Not only do we have a problem with outrageous numbers of appeals on death row, but we also are turning criminals loose from a revolving door criminal justice system. I wish this was an isolated incident, but I am willing to wager that every Member in this distinguished body has a Kermit Smith in his or her district.

In the course of ensuring the rights of criminals, we are throwing away the rights of the victims and the victims' families from these painful, extended habeas corpuses.

□ 1700

The current appeals process takes far too long and ties up our court system. Right now State courts hearing death penalty appeals are taking as long as 2½ years. When the Federal appeals process is factored in, an appeal can take as long as 15 years.

Over 300,000 Americans have been murdered since the Supreme Court decision reinstating the death penalty. Approximately 250 criminals have been executed for those crimes. Some say the death penalty is not a deterrent. It would be a deterrent if it were carried out with surety and swiftness. Part of the reason it is not being used is because of the continual unending appeals process. Today we will change that.

The public's safety is the first duty of government. It is why governments were created in the first place, to protect us from predators, both foreign and domestic.

We are, in essence, all victims of government's inept handling of its first duty. Costs of victimization far outweigh the costs of incarceration. Violent crimes are escalating exponentially, despite the good intentions of the administration's hug-a-thug approach to criminal justice. According to the Department of Justice, if something drastically different is not done to reduce crime, five out of six of today's 12 year olds, your children and mine, will be victims of a successful or at least attempted violent crime in their lifetimes. That is five out of six.

As a former chief of police with 38 years of law enforcement experience, I am deeply disturbed by these trends in our criminal justice system. As a father and grandfather, I am outraged.

As the Congressman from the Fourth District of North Carolina and a member of the Committee on the Judiciary, I intend to take action. In this bill the Effective Death Penalty Act, we will return to the notion of deterrence. The only deterrence to criminal activity is punishment. Criminals, by their very definition, do not obey the law. We need to play hard ball so. So far we have not.

More laws will only help if they affect the way the system works. This bill will change the way punishment is meted out. It creates consistent and fair procedures for the application of the death penalty and streamlines the appeals process. In America it seems we try anything once, except criminals.

Over and over and over again criminals play the courts like the lottery, hoping to escape punishment on technicalities.

I strongly urge my colleagues to vote for the Effective Death Penalty Reform Act.

STATE OF NORTH CAROLINA,
Raleigh, NC, January 27, 1995.

Hon. FRED HEINEMAN,
House of Representatives, Longworth House Office Building, Washington, DC.

DEAR CONGRESSMAN HEINEMAN: I urge you to push for action in Congress this year to reduce the time for appeals in capital murder cases to the minimum required by the Constitution.

You may have read about the case of Kermit Smith, executed this week for the brutal kidnapping, rape and murder of a college cheerleader. Despite Smith's conviction, this case dragged on for 14 years, going before 46 judges and to the United States Supreme Court five times. As the victim's family and friends told me, each delay caused new anguish. This is not right.

The current appeals process takes far too long and ties up our court system. Right now, state courts hearing death penalty appeals are taking as long as 2½ years. When the federal appeals process is factored in, an appeal can take as long as 15 years. I have included for your review, a procedural outline of the Smith case.

In the last two years, North Carolina has taken significant steps to combat violent crime. We have built or authorized the construction of more than 12,800 new prison beds, built prison work farms and boot camps, and toughened punishment for violent offenders. However, there is still much more to be done to fight crime and protect the citizens of North Carolina. I look forward to working with you on this important issue.

My warmest personal regards.

Sincerely,

JAMES B. HUNT, Jr.,
Governor.

Enclosure.

PROCEDURAL OUTLINE ON KERMIT SMITH

12–3–4–80—Kermit Smith kidnapped Whellette Collins, Dawn Killen and Yolanda Woods. He robbed, raped and murdered Whellette Collins, he attempted to rob Dawn Killen and Yolanda Woods. Smith was apprehended and arrested at the scene.

12–09–80—Halifax County Grand Jury returned true bills of indictment charging Kermit Smith with murder, (Whellette Collins) in Case #80 CRS 15266, Robbery with a Dangerous Weapon, (Whellette Collins) in Case #80 CRS 15271 and First Degree Rape (Whellette Collins) in Case #80 CRS 1565.

04–30–81—Trial in Halifax County Superior Court, before the Honorable George M. Fountain; Smith was found guilty of second degree rape, common law robbery, first degree murder, and received the Death Penalty for the first degree murder conviction.

04–30–81—Notice of Appeal to North Carolina Supreme Court.

10–07–81—Motion to By-Pass the Court of Appeals for second degree rape and common law robbery was granted.

01–29–82—Defendant-Appellant's Brief was filed in the North Carolina Supreme Court.

02–18–82—State's brief was filed in the North Carolina Supreme Court.

06–02–82—Opinion by the North Carolina Supreme Court, affirming convictions and sentences. *State* v. *Smith*, 305 N.C. 691, 292 S.E.2d 264 (1982).

08–22–22—Petition for Writ of Certiorari filed by Smith in United States Supreme Court, No. 8205335.

11–29–82—Certiorari was denied by the U.S. Supreme Court. *Smith* v. *North Carolina*, 459 U.S. 1056, 103 S.Ct. 474, 74 L.Ed.2d 622 (1982).

06–06–83—Motion for Appropriate Relief filed by Smith in Halifax County Superior Court.

08–19–83—Order by Judge Frank R. Brown, limiting issues for hearing. D.A. to file answer to claim V in 20 days.

11–23–83—Amendment to Motion for Appropriate Relief filed by Smith in Halifax County Superior Court.

11–30–83—Answer to Motion for Appropriate Relief by State.

12–5–16–83—Evidentiary hearing. State's proposed Findings of Fact and Conclusions of Law.

12–16–83—Order denying Motion for Appropriate Relief by the Honorable Donald L. Smith, Halifax County Superior Court.

12–16–83—Order setting new date for execution. Date of execution is March 9, 1984.

01–30–84—Order Staying Execution of Death Sentence by Honorable Joseph Branch, Chief Justice of the North Carolina Supreme Court.

08–14–84—Petition was filed by defendant to the North Carolina Supreme Court for certiorari to review the denial of his Motion for Appropriate Relief.

08–13–85—Order by the North Carolina Supreme Court denying Petition for Writ of Certiorari to review the Superior Court of Halifax County. *State* v. *Smith*, N.C. , 333 S.E.2d 495 (1985).

10–15–85—Petition for a Writ of Certiorari filed in the Supreme Court of the United States.

11–12–85—Brief in opposition to petition for writ of certiorari to the North Carolina Supreme Court.

12–09–85—Order by the Supreme Court of the United States denying certiorari. *Smith* v. *North Carolina*, 474 U.S. 1026, 106 S.Ct. 582, 88 L.Ed.2d 565 (1985).

01–30–86—Renewed Petition for Certiorari and Alternative Motion to Reconsider denial of certiorari filed by Smith to the North Carolina Supreme Court.

02–11–86—Order in response to Smith's renewed petition; dismissed without prejudice to allow Smith to file a motion for appropriate relief on the issue in the Superior Court of Halifax County.

04–04–86—Second Motion for Appropriate Relief by defendant to Halifax County Superior Court.

04–04–86—Brief in support of Motion for Appropriate Relief by defendant.

09–26–86—State's answer to Smith's Motion for Appropriate Relief filed April 4, 1986.

10–10–86—Smith's reply to the State's answer.

10–16–86—Brief in opposition to Kermit Smith's Motion for Appropriate Relief by the State.

03–02–87—Oral argument scheduled for hearing on defendant's Motion for Appropriate Relief.

03–06–87—Defendant's proposed Findings of Fact.

03–06–87—Motion for Appropriate Relief denied by Order of Superior Court Judge I. Beverly Lake, Jr.

06–01–87—Petition to the North Carolina Supreme Court for certiorari to review the order of Judge Lake.

02–05–88—Certiorari denied by the North Carolina Supreme Court by the Honorable J. Whichard. *State* v. *Smith*, N.C. , 364 S.E.2d 668 (1988).

02–25–88—Motion for Stay of Execution of Death Sentence, execution scheduled for April 26, 1988; Motion Denied.

03–01–88—Motion for Stay of Execution to the North Carolina Supreme Court.

03–09–88—Stay of Execution denied by Order of the Court in conference, Honorable J. Whichard, North Carolina Supreme Court.

04–15–88—Petition for Writ of Certiorari filed in United States Supreme Court seeking review of the Superior Court of Halifax County, North Carolina.

04–19–88—Motion for stay of execution pending disposition of Petition for Writ of Certiorari and filing of petitions for Writ of Habeas Corpus.

04–20–88—Response to Smith's motion for a Stay of Execution.

04–21–88—Order Staying execution of death sentence.

04–27–88—Order by United States Supreme Court denying certiorari. *Smith* v. *North Carolina*, 485 U.S. 1030, 108 S.Ct. 1589, 99 L.Ed.2d 903 (1988).

05–20–88—Petition for Writ of Habeas Corpus filed by Smith pursuant to 28 U.S.C. §2254.

06–30–88—Answer to Petition for Writ of Habeas Corpus—Habeas Corpus Rule 5, 28 U.S.C. 2243.

12–15–88—Motion for evidentiary hearing. (Rule 8, Rules Governing §2254 cases in the United States District Courts.

12–15–88—Request for Discovery. (Rule 6, Rules Governing §2254 cases in the United States District Courts.

12–15–88—Memorandum in support of Petitioner's Motion for Evidentiary Hearing.

12–15–88—Memorandum of Law in Support of Petitioner's request for discovery.

12–22–88—Memorandum in Opposition to request for discovery, Habeas Rule 6(a), Local Rules 4.05 and 5.01—Denied.

01–23–89—Memorandum in Support of Petition for Reconsideration/Request for Reconsideration.

01–31–89—Request for Reconsideration denied.

02–16–89—Request to expand the length of Petitioner's brief.

02–22–89—Request to expand both petitioner and respondent's brief is allowed.

02–28–89—Brief in Support of Petition for Writ of Habeas corpus by Petitioner.

03–28–89—Motion for Extension of Time to file respondent's brief.

03–30–89—Order granting extension of time to file brief in response to Petitioner's brief is allowed. Brief should be filed by May 1, 1989.

04–21–89—Brief in support of respondent's answer to petition for Writ of Habeas Corpus.

04–24–89—Motion for extension of time within which to file petitioner's reply brief and for permission to file a reply brief in excess of their pages.

05–30–89—Memorandum in support of renewed motion for evidentiary hearing, discovery, and expert assistance.

05–30–89—Renewed motion for evidentiary hearing, discovery and expert assistance.

10–11–89—Order from United States District Judge, W. Earl Britt, reference decision in *State* v. *McKoy*.

11–27–89—Reponse to Motion for Authorization to obtain services of Resource Counsel.

04–27–90—Order allowing extension of time by petitioner. Motion to defer further proceedings is denied by Judge Britt, United States District Judge.

05–04–90—Petitioner's brief on the applicability of the Supreme Court's decision in *McKoy* v. *North Carolina*, 494 U.S. 433 (1990).

07–06–90—Motion to remand to the Superior Court of Halifax County for the imposition of a life sentence, or, in the alternative, petition for writ of certiorari.

07–06–90—Memorandum in Support of Motion to Defer Further Proceedings pending Re-exhaustion in the Courts of North Carolina.

07–06–90—Motion to Defer further proceedings pending re-exhaustion in the Courts of North Carolina.

07–31–90—Memorandum in opposition to Petitioner's motion to defer further proceedings pending re-exhaustion in the Courts of North Carolina.

08–09–90—Order—Petitioner's motion is allowed and further consideration of petition by the Court is deferred pending ruling by the North Carolina Supreme Court of petitioner's ''Motion to Remand to the Superior Court of Halifax County for the Imposition of a Life Sentence'', or, in the alternative, Petition for Writ of Certiorari.

09–24–90—Reponse in Opposition to Petitioner's Motion to Remand to the Superior Court of Halifax County for the Imposition of a Life Sentence, or, in the Alternative, Petition for Writ of Certiorari.

11–01–90—Order—the motion by respondent for leave to amend his answer to the petition is allowed.

11–07–90—Reply (Traverse) to amended answer to petition for Writ of Habeas Corpus.

12–10–90—Brief in support of Respondent's Amended Answer to Petition for Writ of Habeas Corpus. Habeas Rule 5, 28 U.S.C. §2243.

12–11–90—Motion to suspend page limitation of local rule 5.05.

12–12–90—Motion to extend page limitation.

12–13–90—Motion to suspend page limitation of local rule 5.05 for supporting memorandum is granted.

12–13–90—Petitioner's supplemental brief on the issue of retroactively.

06–10–91—Memorandum Opinion: For reason stated in Section III.C. of this opinion Kermit Smith's petition for a Writ of Habeas Corpus is hereby granted, subject to further review by the North Carolina Supreme Court. Petitioner is not entitled to any relief on the remainder of his claim.

06–10–91—It is ordered that for reasons stated in Section III.C. of the Memorandum Opinion filed on June 10, 1991, the petition for a writ of habeas corpus is hereby granted subject to further review by the North Carolina Supreme Court and the petitioner is not entitled to any relief on the remainder of his claim. *Smith* v. *Dixon*, 766 F.Supp. 1370 (E.D.N.C. 1991).

06–20–91—Respondent's Motion for Amendment of Judgment, Fed.R.Civ.Proc. 59(e).

06–20–91—Memorandum in support of respondent's Motion for Amendment of Judgment, Local Rules 4.04 and 5.01.

06–24–91—Memorandum in support of Petitioner's Motion to alter or to amend the Judgment.

06–24–91—Petitioner's Motion to Alter or to Amend the Judgment.

07–15–91—Petitioner's response to respondent's Motion for Amendment of Judgment.

08–14–91—Order: It is ordered and adjudged that for the reasons stated in Section III.C. of the Memorandum Opinion filed on June 10, 1991, the petition for a writ of habeas corpus is hereby granted and defendant is ordered discharged from his sentence of death to be re-sentenced to life imprisonment unless the State of North Carolina shall conduct a re-sentencing hearing pursuant to N.C.Gen.Stat. §15A–2000 within 180 days of the entry of judgment. Entry of this judgment is stayed for 90 days to permit respondent to seek further review in the North Carolina Supreme Court in accordance with *Clemons* v. *Mississippi*, 494 U.S. 738 (1990). If such review is not obtained by November 15, 1991, this judgment will then become effective. If such review is obtained during this time period, entry of judgment will remain stayed until the stay is lifted by this court on motion by either party. Petitioner is not entitled to any relief on the remainder of his claims.

08–19–91—Corrected Amendment: that for reasons stated in Section III.C. of the Memorandum Opinion filed on June 10, 1991, the petition for writ of habeas corpus is hereby granted and defendant is ordered discharged from his sentence of death to be resentenced to life imprisonment unless the State of North Carolina shall conduct a resentencing hearing pursuant to N.C.Gen.Stat. §15A–2000 within 180 days of the entry of judgment.

10–01–91—Petition for Writ of Certiorari filed by State in North Carolina Supreme Court requesting clarification of basis for finding on direct appeal that ''especially heinous, atrocious, or cruel'' was supported by evidence, and whether instructional error was harmless.

11–14–91—Order: The stay in the entry of the Court's judgment is hereby extended from its current expiration date of November 15, 1991 until seven days followed the denial of the petition or seven days following a decision on the merits in the event that the State of North Carolina grants certiorari.

11–15–91—North Carolina Supreme Court denied State's petition, believing it did not have appellate jurisdiction. *State* v. *Smith*, 330 N.C. 617, 412 S.E.2d (1991).

12–02–91—Order: The Clerk is hereby directed to enter the corrected amended judgment which was filed on August 18, 1991.

12–13–91—Motion for stay of order granting writ of habeas corpus Fed. R. App. P. 8(a).

12–13–91—Notice of Appeal: State enters notice of appeal to the United States Court of Appeals for the Fourth Circuit from the final judgment entered June 10, 1991, modified August 19, 1991, and ordered into effect on November 30, 1991 issuing a writ of habeas corpus to Kermit Smith, Jr. requiring resentencing.

12–13–91—State's Memorandum in support of motion for stay of writ of Habeas Corpus.

12–24–91—State's Appeal docketed in the United States Court of Appeals for the Fourth Circuit.

12–27–91—Notice of Smith's Cross-Appeal to the United States Court of Appeals for the Fourth Circuit.

12–27–91—Response to respondent's motion for stay of order granting writ of habeas corpus.

12–27–91—Memorandum in support of Petitioner's request for issuance of a certificate of probable cause.

12–30–91—Smith's Cross-Appeal docketed in Fourth Circuit.

01–03–92—Order: August 19, 1991 judgment is hereby stayed until further order of this Court; respondent is not required to post a supersedeous bond. The court finds that petitioner does have probable cause for his cross appeal and therefore grants a certificate of probable cause.

01–11–92—Fourth Circuit appoints C. Frank Goldsmith, Jr., of Marion, N.C., and Martha Melinda Lawrence of Raleigh, N.C., as counsel, and the North Carolina Resource Center as ''consultant.''

01–11–92—Fourth Circuit's Briefing Order, directing State's opening Brief and Appendix to be filed by 2–20–92.

01–16–92—State's Letter to Smith's counsel designating Appendix.

01–31–92—Smith's designations for Appendix.

02–18–92—Order Appointing Counsel *Nunc Pro Tunc.*

02–20–92—The State timely filed its opening Brief of Appellant in Fourth Circuit.

03–02–92—District Court Order approving CJA Form 20 payment for counsel's requesting hours; and in addition, reimbursement for expenses incurred.

03–06–92—Smith's motion to exceed page limitation for his Brief.

03–10–92—Order by Fourth Circuit granting Smith leave to file Brief not to exceed 100 pages.

03–24–92—Smith first submitted to Fourth Circuit his 100-page Brief of Appellee/Cross-Appellant.

03–26–92—Brief returned to Smith because of improper material in the addendum; Smith was directed to resubmit his Brief in proper form on or before April 6, 1992; State's time not to begin running until Smith's Brief resubmitted and filed.

04–05–92—Smith refiled Brief of Appellee/Cross-Appellee.

04–22–92—State filed motion to suspend page limitation, seeking leave to file a Brief not to exceed 100 pages.

04–27–92—Order by Fourth Circuit granting State leave to file Brief not to exceed 100 pages.

05–08–92—State filed its Brief of Appellant/Cross-Appellee.

05–12–92—Smith's motion to exceed page limitation for his Reply Brief.

05–18–92—Order by Fourth Circuit granting Smith leave to file Reply Brief not to exceed 50 pages.

05–26–92—Smith filed his Reply Brief.

05–27–92—State's Letter of Additional Authorities.

09–22–92—Smith's Letter of Additional Authorities.

09–23–92—Smith's Motion for Additional Time for Oral Argument.

09–28–92—State's Letter of Additional Authorities, citing *Nickerson* v. *Lee*, 971 F.2d 1125 (4th Cir. 1992), CERT. DENIED, U.S. , 113 S. Ct. 1289 (1983).

09–28–92—Smith's Letter of Additional Authorities.

09–29–92—Order by Fourth Circuit denying Smith's motion for additional oral argument time.

09–30–92—Argument heard in Fourth Circuit before Wilkins, Butzner, and Sprouse.

05–10–93—State's Letter of Additional Authorities.

06–11–93—Fourth Circuit 2-to-1 panel decision affirming District Court's grant of resentencing, but otherwise denying relief on remaining grounds. *Smith* v. *Dixon*, 996 F.2d 667 (4th Cir. 1993).

06–22–93—State filed Petition for Rehearing and Suggestion for Rehearing *In Banc.*

06–25–93—Letter from Fourth Circuit to Smith's counsel requesting answer to State's Petition for Rehearing and Suggestion for Rehearing *In Banc*, and that answer be filed by 7/6/93.

07–06–93—Smith's Response to Petition for Rehearing and Suggestion for Rehearing *In Banc.*

07–19–93—Order by Fourth Circuit making technical amendments to opinion filed 6/11/93.

07–23–93—Order by Fourth Circuit granting rehearing *In banc*, calendaring case for October session, and directing additional copies of briefs and appendix to be filed.

08–23–93—Smith's Motion for Leave to File Supplement Brief.

09–03–93—Order by Fourth Circuit granting ''the parties leave to file supplemental briefs not in excess of 25 pages each''; required Smith's brief to be filed on or before 9–13–93, and that State's responsive brief, if any, be filed on or before 9–21–93.

09–08–93—Smith filed motion seeking to reorder the supplemental briefing schedule so that briefs to be filed simultaneously, or he be granted extension of time.

09–08–93—State's Response to Smith's motion to reorder briefing/for extension of time.

09–09–93—Order by Fourth Circuit extending time for Smith to file his supplemental brief until 9–17–93, and directing that any responsive brief by the State be filed on or before 9–24–93.

09–20–93—Smith's Supplemental Brief received by Fourth Circuit.

09–21–93—State was notified by Henderson Hill of North Carolina Resource Center that Kenneth J. Rose, counsel for David Huffstetler, would be submitting a motion for leave to file an *amicus curiae* brief in Smith's appeal.

09–22–93—State was served with copies of Huffstetler's motion, *amicus curiae* brief, and attachments, along with a motion for leave to file the attachments to the *amicus curiae* brief.

09–23–93—State's Supplemental Brief forwarded to Fourth Circuit by facsimile, with originals sent to Fourth Circuit by Federal Express.

09–23–93—State filed motion for leave to file attachments to its Supplemental Brief, and Attachments under separate cover.

09–24–93—State filed Response in Opposition to Huffstetler's motions for leave to file *amicus curiae* brief and for leave to file attachments.

09–24–93—Smith's Letter of Additional Authorities.

09–28–93—Argument on Rehearing *in Banc.*

01–21–94—Fourth Circuit decision reversing district court's grant of rescentencing, 9–to–5, *Smith* v. *Dixon*, F.2d. (4th Cir., Jan. 21, 1994) (*In Banc*).

02–04–94—Smith's Petition for Rehearing.

02–28–94—Fourth Circuit Order denying Smith's Petition for Rehearing.

03–93–94—Smith's Motion for Stay of Mandate.

03–14–94—Fourth Circuit Order granting Smith's Motion and staying issuance of mandate for 30 days.

05–27–94—Smith's Petition for Writ of Certiorari filed in United States Supreme Court seeking review of Fourth Circuit's *en banc* decision on appeal. No. 93–9353.

08–22–94—State's Brief in Opposition to Petition for Writ of Certiorari filed in United States Supreme Court.

10–03–94—Certiorari denied by the United States Supreme Court. *Smith* v. Dixon, U.S. , 115 S.Ct. 129, 130 L.Ed.2d 72 (1994).

10–27–94—Hearing held in Halifax County Superior Court, and Superior Court Judge James C. Spencer, Jr. Rescheduled Smith's execution for Tuesday, January 24, 1995.

12–09–94—Smith's filed Motion for Consideration of untimely Petition for Rehearing, along with Petition for Rehearing in United States Supreme Court.

12–19–94—Smith filed Third Motion for Appropriate Relief in Halifax County Superior Court.

12–29–94—State filed Answer to Smith's Third Motion for Appropriate Relief.

01–03–95—Hearing held before Superior Court Judge J.B. Allen, Jr. in Halifax County Superior Court on Smith's Third Motion for Appropriate Relief, and Memorandum Opinion and Order Denying Motion.

01–04–95—Clemency Hearing held before Honorable James B. Hunt, Jr., Governor of North Carolina.

Mr. Chairman, I yield to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding. He is my colleague from North Carolina. Both of us represent different parts of the State, and I have the utmost respect for him. He has been involved in law enforcement for a number of years.

I am not going to try to take issue with the fact that everybody could come to this floor and bring an example where the process has been abused.

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

(On request of Mr. WATT of North Carolina, and by unanimous consent, Mr. HEINEMAN was allowed to proceed for 1 additional minute.)

Mr. HEINEMAN. Mr. Chairman, I yield to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, there is one part of what the gentleman said that I just want to make sure that everybody understands. He talked about being a father and being a grandfather and doing what is necessary to protect his children and grandchildren.

I want to make sure that I am clear that the gentleman would not go out, a father and grandfather, and avenge a crime committed against his child or his grandchild by shooting somebody who is innocent. And that is what this amendment deals with.

I have no problem with the gentleman taking out whatever animosity or whatever frustration he has against victims, against a person who is guilty. But if a person is innocent, we do not sanction in this country going out and taking the life of somebody else just because the gentleman is frustrated.

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

Mr. Chairman, I rise in support of the Watt amendment and perhaps unlike

some other supporters, I am not, I repeat, not an opponent of the death penalty. But I felt I had to rise today to remind my colleagues, some of whom are on the other side, that the issue is not speed, the issue is justice. And the distinguished gentleman from Florida said that in looking at this amendment, we are creating another way to get to court. And the only way that the defendant ought to get to court is if he alleges under current law that there is some sort of constitutional infirmity with his conviction.

I understand that. I have practiced a little law in my time. But the point, Mr. Chairman, is this, that, yes, you ought to be able to get into the courthouse if you have a constitutional infirmity in your case. You ought to be able to make your case. But you also ought to be able to get into the courthouse if you are innocent.

If you have evidence of probable innocence, our American judicial system ought to say, the courthouse door swings open for you. You can come through the door and present that evidence.

Now, the gentleman may suggest, well, that is a radical change. I am not going to debate that point. I would suggest, maybe it is. In the State of Maryland we recently had a man who sat on death row for 8 years for a rape-murder, probably as tragic and horrific as any of my colleagues can imagine. After 8 years, through DNA evidence, it was determined he was in fact not the perpetrator. Thankfully, he had not been executed.

That evidence should be available to the court. That at least ought to get him in the courthouse door.

There have been other cases throughout the country in which recantations of testimony have resulted in the determination that the accused sitting on death row was in fact an innocent man.

As I said, Mr. Chairman, it is not a question of speed, it is a question of justice. And justice demands that if someone can prove or establish the probability of their innocence, they ought to at least be allowed to come through the courthouse door. There will be time to conduct the execution, if that is merited, if that is the case, but certainly, we ought to seek justice before we seek speed.

Mr. Chairman, I yield to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, just for the brief purpose of assuring the gentleman that this is not a radical change. January 1995, January 23, 1995, this year, the Supreme Court said that this is the law. And all I am trying to do is stop them from changing the law.

I want them to put the law in as the Supreme Court has said it is. This is not a change from existing law. I assure the gentleman.

Mr. WYNN. Reclaiming my time, Mr. Chairman, I want to thank the gentleman for pointing that out and also commend him for the thoroughness of his research. To the extent it is not a radical change, I do not even believe the opposition can rely on that argument.

We are simply attempting, according to the sponsor, to codify existing law which has been well reasoned by the higher courts in determining that once again justice takes precedence over expediency.

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

Mr. Chairman, the gentleman from North Carolina is very articulate and obviously feels very strongly about this particular subject. Many of us on this side of the aisle, however, feel very strongly as well.

To address the issue of habeas corpus, the allegation is made that many on this side of the aisle want to attack the Constitution and that we are not really conservative because we are attacking the constitution. That is inaccurate. And there is a report that I would like to refer to at this time, the Supreme Court Justice Lewis Powell recently chaired an ad hoc committee of Federal habeas corpus in capital cases. I would like to read a couple of sentences from that, because I think it really clears up some of the things that have been said here today.

What it says is that, ''contrary to what may be assumed, the Constitution does not provide for federal habeas corpus review of state court decisions.''

The Constitution does not provide that.

''The writ of habeas corpus available to state prisoners is not that mentioned in the Constitution. It has evolved from a statute enacted by Congress, now codified in section 28 U.S.C. section 2254.''

So it is not an attack on the Constitution. What we are talking about is a revision, a change in statute that was enacted by this body. So this body is now taking appropriate action to change a previous statute.

□ 1710

Mr. Chairman, let us look at what is really happening here. The people of this country feel very much the way I do, that the death penalty in this country is not being used to the degree that most people want it to be used. We have a death penalty on the books. There are many people, particularly of a liberal persuasion, who will say that the death penalty is not a deterrent to murder, it is not a detterent to crime.

I would submit, Mr. Chairman, that if that is true, and I do not agree that that is true, but if it is true, it is because of the way the death penalty in this country has been carried out. That is, that people remain on death row for years and years and years.

Let us just look at the case of John Wayne Gacy in Chicago. John Wayne Gacy, the killer clown who killed dozens of people and was stuffing them underneath his porch, underneath his basement, this man was on death row for 16 years, so for 16 years the taxpayers are keeping this gentleman alive, providing him with television, providing him with food, providing him with an attorney. It took 16 years to execute this individual. That is not that unusual in this country. People are on death row for 10 years, 12 years.

The last execution we have had in my State, the State of Ohio, was in the early sixties. It has been over 30 years. I will sometimes have people in Ohio say, generally, again, of the liberal persuasion, they will tell me that the death penalty is not a deterrent. If it is not, it is because of the way that it has been carried out in this country.

Mr. Chairman, I would submit that what we need to do is to have a fair appeals process, but an appeals process that is much shorter than what we have right now. I would submit that sometime in the near future I would like to see the death penalty process dramatically reduced to a year, 2 years, something like that. Even whether with what we are proposing here today it is still going to be much longer than what I would like to see it, but it is an improvement over what we have now. That is why I strongly support this measure and believe that it is time that we made the death penalty work in this country. If it does not work right now, it is because of the length of time that people remain on death row at taxpayer expense. The people in this country are sick and tired of paying for cable TV and paying for the food and lawyers for those that have killed innocent people.

One final point I would like to make. The people it is really not fair to are the victims, those families of the people that were murdered, those innocent victims that have the appeals process come up, they have to go in and testify. It is like ripping open that wound, until the person is finally executed. It is time we had a fair and fast appeals process so that the death penalty really will be a deterrent. Then we are really protecting life in this country.

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

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

Mr. WATT of North Carolina. I appreciate the gentleman yielding.

Mr. Chairman, I want to make sure the gentleman is clear. This is not about whether we support the death penalty or not. There is nothing in this that deals with the death penalty. It is not about the length of appeals. It is about how you get your foot in the door to raise an issue, whether if you have credible evidence that you did not commit the crime, credible evidence of innocence, that you can go through the same process that you go through that you set up in the bill.

Mr. CHABOT. Reclaiming my time, let us also be clear as to what has happened. A jury of one's peers has already

convicted this person beyond reasonable doubt.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. CHABOT] has expired.

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

Mr. CHABOT. Mr. Chairman, let us also be clear that the person who is on death row, if we are talking the death penalty, and I am in this particular instance, that person was already convicted by his or her peers at a fair trial beyond a reasonable doubt. It has already gone through a fairly extensive appeals process.

We are talking about another layer after they have gone through the State appeals, they are at the Federal appeals. I think the gentleman from North Carolina [Mr. WATT] would probably agree that it does not make any sense for people to remain on death row for 10, 12, 16 years.

Mr. WATT of North Carolina. If the gentleman will continue to yield, Mr. Chairman, I just want to make sure that the process that the gentleman has set up for raising constitutional issues is the same process within which this language would fit.

It does not change that process. It does not prolong it any longer than raising a constitutional claim prolongs it.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. CHABOT] has expired.

(At the request of Mr. MCCOLLUM and by unanimous consent, Mr. CHABOT was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. If the gentleman will continue to yield, Mr. Chairman, it is not about the death penalty procedure, it is about somebody coming in with credible evidence of innocence. I just wanted to make sure the gentleman understands.

Mr. CHABOT. Reclaiming my time, Mr. Chairman, I yield to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the point of this is that by doing this new procedure that the gentleman wants us to put into this law today, the gentleman would extend the opportunity for delay, because he would extend the opportunity for another bite at the apple.

Granted, it is not a constitutional right. The gentleman is creating a new one here, to come in under a probably innocent standard of some sort to get into the door for another appeal.

As the gentleman from Ohio [Mr. CHABOT] has stated, somebody might have had 10 or 15 appeals already on a constitutional basis and then they come up with new affidavit, some missing aunt or uncle comes in and says ''At 10 o'clock that night, by golly, I saw him down on Park Avenue, instead of where the crime was committed.''

Here is new evidence. If it had been admitted, maybe a Federal judge will say it is probably something the court would have considered and found the guy innocent for. By golly, they have a new appeal, and it does delay the carrying out.

That is why the District Attorney's Association nationally has said that the Watt amendment would dramatically expand death row inmates' opportunities to relitigate their convictions, and opposes this. That is why they say that the amendment of the gentleman from North Carolina [Mr. WATT] would make it easier for death row inmates to reopen their cases and delay the caseload of death row inmates, delaying their sentences.

Mr. Chairman, I think the gentleman has made a point, the gentleman from Ohio [Mr. CHABOT]. I understand the point of the gentleman from North Carolina [Mr. WATT], but I think the gentleman's point is equally and I believe preferentially made, and I believe this amendment should be defeated, because it would delay further the carrying out of sentences on death row inmates, and not do anything more than add a new door, a new avenue to that appellate process.

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

Mr. Chairman, I was not going to participate in this discussion, but I think it is important that voices be raised on this subject. Seemingly, to me, since I have come to Washington, people have spent a lot of time trying to make simple things complex.

The gentleman from North Carolina [Mr. WATT] has offered a very simple amendment that says that if there is evidence of innocence that an objective court would consider as a circumstance in which the person would probably be found innocent, then that should allow them an opportunity to bring that matter before the court.

We are off talking about how quickly people should be put to death and all these other matters. Now we have the gentleman who just previously spoke talking about aunts and uncles.

We should not trivialize the matter of innocence in terms of people who should not be victimized in terms of imprisoned in our land, or suffer the ultimate penalty, the death penalty, if in fact they are innocent.

Mr. Chairman, just as the case has been made that there are people who have strung these things out who were obviously guilty, I think that in almost every state of the union we could find examples of people who have been found innocent who have been in prison for long periods of time, and who have been put under the death penalty.

Whether we come to the floor and parade horrendous crimes that have been committed on one hand, and people seemingly have not suffered the appropriate punishment, or rather, whether we would take the time and look at the cases of people who have been jailed year in and year out, some for decades, almost lifetimes, who were absolutely innocent, that the same D.A. associations and others would be just as concerned for innocent Americans being wrongfully convicted and being locked out of an opportunity to present their cases to the court.

Mr. Chairman, the preamble to our Constitution requires us to, in part, participate in the process of creating a justice system in our land. That is our responsibility. It is not our responsibility to join the mob out in front of the jailhouse asking that someone be hung, or killed that night, before a trial and a jury have found them to be absolutely guilty beyond a reasonable doubt.

Mr. Chairman, I would say, finally, being not a lawyer, I am constantly interested in these matters, nonetheless. Reading the trade journal of the American Bar Association in January 1994, January a year ago, there were two interesting articles.

One was about a young man in one of our 50 States who was on death row, and because of some procedural circumstances, could not get his case back before the court, who appeared to be innocent based on all of the evidence now available.

□ 1720

There was another case this same magazine had in it in the same month of a young man who admitted, confessed that he had killed two people in the process of a drug transaction who had now served some 10 years and had been let go and was then a student at that time in law school in another one of our 50 States.

This is an interesting circumstance that now the Congress tonight, after disposing, after voting against the notion of competent counsel for people would now suggest that even if there is probable cause of innocence that that is not in and of itself enough to give them an opportunity to present their case.

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

Mr. Chairman, I rise in strong support of the amendment offered by the gentleman from North Carolina [Mr. WATT] and in opposition to H.R. 729, the Effective Death Penalty Act. I do not believe that this debate is whether we should have a death penalty under circumstances under which it should be imposed. Rather it is about whether a person who is innocent can be spared from having a capital punishment exacted upon them.

The amendment of the gentleman from North Carolina [Mr. WATT] is more necessary now than before, because this crime bill, the series of bills being put together now continues what I consider to be the unfortunate trend of last year's crime bill which made more crimes punishable by the death penalty.

One would think that if one were a strong advocate for capital punishment