wooded area near Miramar Lake. He promised them no one would be hurt.

Daniel Harris, who later became the chief prosecution witness against his brother, followed in another car. He testified that they drove to the lake, where Robert Harris fired two rounds into Mayeski, then went after Baker, who was running for his life.

''I went over to John after he was shot. I looked at him for three or four seconds, I guess. I heard some screaming from the bushes, then three or four shots,'' said Daniel, who served three years in Federal prison for his role. Later after he was arrested, Robert Harris boasted to his cellmate that he told the terrified Baker boy to quit crying and die like a man. When the boy started to pray, Harris said, ''God can't help you now, boy. You're going to die.'' After the murders, Robert Alton Harris and his brother finished the boys' half-eaten hamburgers. They then went on to rob the bank. In one of the great ironies of this case, one of the police officers who ended up apprehending Robert Alton Harris was the father of one of their murdered boys.

☐ 1840

Unfortunately, this case is not unique. There are many, many cases like this. But Robert Alton Harris' case took a long time to lead to his conviction.

It was 1979, a year later, when the Superior Court pronounced judgment on him. It was years later when finally the Governor denied his application for clemency. It was years later when he filed his ninth State habeas corpus petition, and he was already then on his fourth Federal habeas corpus petition. In 4 days, Harris filed a fifth and sixth Federal habeas corpus petition. He was not executed, even though this crime occurred in 1978, until 1992.

To repeat, this crime that I have described in some detail occurred in 1978. The judgment was pronounced in 1979, but it was not until 1992, a total delay of 13 years from judgment, that Robert Alton Harris finally finished abusing Federal habeas corpus and was executed. That made him only the second person executed in California under our death penalty since 1978.

We have 400 prisoners sentenced to death in California since the State reinstated the death penalty in 1978. Only two, Robert Alton Harris and David Mason, have been executed.

Today there are 125 California death penalty cases before the Federal courts, and because of the abuse of Federal statutory habeas corpus and this device of endless appeals, we will never perhaps be able to execute these convicted first-degree murderers.

As the Powell Commission wrote, ''The relatively small number of executions as well as the delay in cases where an execution has occurred makes clear that the present system of collateral review,'' referring to statutory habeas corpus, ''operates to frustrate the law.''

Opponents of reform correctly state that our whole system of criminal justice rests on the premise that it is better for 10 guilty men to go free than for one innocent man to suffer, and for that reason, the Constitution requires the States and the Federal Government to provide every criminal defendant the full panoply of protections assured by the Bill of Rights, an unrivaled arsenal of procedural and substantive rights. And that is why, after cases have been fully litigated through the State judicial system, habeas corpus review is available in Federal court, a duplicative system of review that, as Justice Lewis Powell has written, ''is without parallel from any other system of justice in the world.''

The question before us today is not the availability of that habeas review, but, rather, the standard that the Federal courts will use so that we can avoid the kind of repetition and abuse that we saw in the Robert Alton Harris case and that we see in so many cases throughout the country.

The reasonableness standard that I am proposing is already used for factual determinations in habeas cases pursuant to statute and for legal determinations in many cases. This reasonableness standard respects the coordinate role of the States in our constitutional structure, while assuring ample Federal review of State determinations of law and fact.

It strikes a sensible balance that is consistent with the interests of defendants, victims, and States. It is supported by crime victims and law enforcement professionals around the country, including the National District Attorney's Association, which has written to all of us in this Chamber about urging our support for what they call the Cox amendment, what I am calling the Harris amendment, the California District Attorneys' Association, my home State, DA's around the country through the National DA's Association, and as I mentioned, Citizens for Law and Order, and victims' rights groups from across the country and coast to coast, Democrat and Republican attorneys general alike, including the AG's in Texas and California, Democrat and Republican.

I urge your strong support for this strong habeas reform.

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

The CHAIRMAN. Is there a Member who wishes to speak in opposition to the amendment?

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

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] is recognized for 10 minutes in opposition of the amendment.

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

What we have here in this full and fair concept is a throwback to an outmoded idea first advanced in the other body that would effectively end all rights of habeas corpus, if minimal State guarantees are satisfied. In other words, there would be no right of Federal review unless the State court decision is totally arbitrary. This makes the previous one-bite-of-the-apple position of the gentleman from Florida [Mr. MCCOLLUM] of which we argued about and against, look absolutely great.

This is probably the throwback amendment to habeas corpus of all throwbacks. I mean, this would effectively end habeas corpus today at the Federal level. It almost says that: Let each State do their own thing on habeas corpus and forget Federal habeas review. That's a totally untenable position that I am surprised my friend, the gentleman from California, would even drag it out on the floor at this late hour.

This would end even the very modest advances in the McCollum bill, which are very few, indeed.

The CHAIRMAN. The Committee will rise informally in order that the House may receive a message.

MESSAGE FROM THE PRESIDENT

The SPEAKER pro tempore (Mr. LIGHTFOOT) assumed the chair.

The SPEAKER pro tempore. The Chair will receive a message.

MESSAGE FROM THE PRESIDENT

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

PARLIAMENTARY INQUIRY

Mr. WATT of North Carolina. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WATT of North Carolina. How can we rise out of the Committee of the Whole without a motion to that effect? I did not hear anybody make a motion. It is strictly a technical point, but there are some procedural rules that apply in this body, I thought.

The SPEAKER pro tempore. The Chair will inform the gentleman from North Carolina the Committee of the Whole can rise informally just for the purpose of receiving a message.

Mr. WATT of North Carolina. Informally.

The SPEAKER pro tempore. Yes. A motion is not required just for the purpose of receiving a message.

Mr. WATT of North Carolina. I thank the Chair for enlightening me.

The SPEAKER pro tempore. The Committee will resume its sitting.

EFFECTIVE DEATH PENALTY ACT OF 1995

The Committee resumed its sitting.

Mr. CONYERS. Mr. Chairman, in continuing my opposition against the biggest throwback amendment of all, I must express my shock and disappointment at the gentleman from California for really attempting to end Federal habeas corpus, if even the most minimal State guarantees are satisfied.

Presumably the bill, the crime bill, has been reported by the subcommittee, the full committee, it is now on the floor, and now from the Republican ranks we now have another amendment that even vitiates the provisions, the very modest provisions, in the McCollum bill, and so we would end up with not even one bite at the apple which I thought was awfully scarce, no right to counsel even in a postconviction proceeding.

So the result with the 50 States would have 50 different standards for protecting Federal constitutional rights. I do not think that we would want this kind of provision put in the bill under any circumstances.

□ 1850

The full and fair issue was deadlocked in the other body last year, and this amendment is another attempt to pass it again.

I urge overwhelming rejection of this amendment.

Mr. Chairman, I yield 4 minutes to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. I thank the gentleman for yielding this time to me, although I doubt I will take 4 minutes.

I do not know what I can say about this. I just want to make sure people understand what it is we are doing here.

All of my colleagues and the American people are getting, if this amendment passes, the Federal courts completely out of the habeas business. You will not have any Federal habeas rights if this bill passes, because in order for you to get in the Federal court, the Federal court would have to find that a decision that was rendered in the State court was arbitrary or unreasonable interpretation of clearly established Federal law, resulted in a decision that was based on an arbitrary and unreasonable application to the facts, resulted in a decision that was based on an arbitrary and unreasonable determination of the facts in light of the evidence presented in the State proceeding. And what you are doing, really, is inviting rock-throwing between the Federal courts and State courts.

Now, we know how gentlemanly and cordial the courts have been with each other. Federal courts never ever say to a State court that, ''Court, you have been arbitrary and unreasonable.'' That would not even be gentlemanly, would not even be proper protocol, almost, in a Federal court.

I have never seen a Federal court say to a State court, ''Judge, you have been arbitrary and unreasonable.'' That is the kind of stuff that we say to claimants when they file lawsuits.

So here we are now inviting the Federal courts to start throwing rocks at the State court and the State court to start throwing rocks back at the Federal court and doing away with even the one opportunity that was guaranteed, or at least provided in the underlying bill. And we are doing it, I would add, without the benefit of one iota of discussion in committee about it.

I have been banging my head against this wall all day, and I am sure you are going to do whatever you want to do. But at least if you are going to do this, have somebody came in and present some evidence that it makes sense. Ask Federal judges if they think it is a good idea for them to start saying to State judges that, ''You are arbitrary and unreasonable.'' It just does not happen.

So the practical effect of what you are doing is to say that you are never going to have any rights in the habeas arena in Federal court.

I encourage my colleagues to be reasonable and defect this proposed amendment.

Mr. CONYERS. I thank the gentleman from North Carolina, my colleague.

Mr. Chairman, may I remind my friends on the other side on the Committee on the Judiciary that this matter has never come up before that I can recall, before the Committee on the Judiciary. The gentleman from California [Mr. COX] has never appeared before the committee.

Mr. MCCOLLUM. Not in this Congress, but it certainly came up in other Congresses.

Mr. CONYERS. Just a minute, please. I will be happy to yield time. We have never considered this matter in this 104th Congress. It has never come up, was never the subject of an amendment.

Mr. Chairman, I will give the gentleman from Florida [Mr. MCCOLLUM] a chance to correct anything he would like to correct. But this has never been put before the Committee on the Judiciary for a vote, and the gentleman from California [Mr. COX] has never presented this subject matter before, and we are literally blind-sided in the last hour of this debate on this very important part where you have advanced the habeas part of the Contract With America, and now we have another amendment that goes in a completely different way.

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

Mr. CONYERS. I would yield to my friend, the chairman of the Subcommittee on Crime.

Mr. MCCOLLUM. I thank the gentleman for yielding.

Mr. Chairman, I would just like to point out to the gentleman that at hearings of the subcommittee, on January 19, 1995, we had two panels on habeas corpus reform, and both panels addressed this question. One panel involved the Attorney General of California, Daniel Lungren. Attorney General Lungren spent a great deal of time discussing and arguing for the full and fair concept that Mr. COX is advocating here tonight.

Mr. CONYERS. Mr. Chairman, I was there. He did mention, it was rather fulsome testimony on a great range of subjects. But I could hardly consider that that was the notice that we needed to come here tonight. In the markup, it was never mentioned at all. As a matter of fact, it was the gentleman's provisions on habeas that we gave great attention to.

Mr. Chairman, I yield further to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Chairman, I would like to inquire of the gentleman from Florida [Mr. MCCOLLUM] if, in fact, testimony was presented and the committee then dealt with this and thought it was a wonderful idea, why was it not in the original bill? Why are we coming to the floor with it at the 99th hour on this bill and dealing with it in 10 minutes of debate?

If you all thought it was a great idea, I would have thought you would have incorporated it into the bill.

Mr. MCCOLLUM. If the gentleman will yield further.

Mr. CONYERS. Briefly.

Mr. MCCOLLUM. I thank the gentleman.

Briefly, the idea of 10 minutes of debate was by unanimous consent request. We did not have to follow that.

Second, it has come to the floor the way it has. The gentleman from California [Mr. COX] is not a member of the committee. We did not bring it up, the committee did not bring it up. He has a right to bring it up, to bring it forward, and he has.

The CHAIRMAN. The time is controlled by the gentleman from California [Mr. COX], who has 1½ minutes remaining.

Mr. COX of California. I thank the Chairman.

Mr. Chairman, I just point out that the language of the amendments says reasonable. It also says arbitrary. But a separate standard is reasonable. It is arbitrary or unreasonable.

Obviously, the reasonableness test is the more difficult to meet.

Simply stated, the Federal courts will defer to reasonable decisions on the facts, reasonable decisions on the law, and reasonable decisions on mixed questions of law and fact made at the State courts.

That is exactly what they should do because after all we are already requiring in this bill that criminal defendants exhaust all of their State remedies, if they go through trial, if they have an appeal, if they have another appeal, and so on. All of this within the State court system.

But if habeas corpus, statutory habeas corpus is available simply to throw out the whole State judicial system, why do we have it in the first place? If we are going to look at all of these questions from scratch, de novo, facts, evidence, law, the whole thing, as if the State proceeding had never happened, then Robert Alton Harris would be able to, in the future, to be able to delay his execution for 13 more years.

(The letter referred to by Mr. COX of California is as follows:)

FEBRUARY 8, 1995.

HON. HENRY HYDE,
Chairman of the House Judiciary Committee, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN HYDE: We would first of all like to thank you for your tireless effort on behalf of habeas corpus reform. As Attorneys General for our respective states we are confronted with a system of federal habeas review that is often intrusive, cumbersome, and time consuming. It also imposes a great cost on victims of crime and undermines finality in our criminal justice system.

The central problem underlying federal habeas corpus review is a lack of comity and respect for state judicial decisions. The lower federal courts should simply not be relitigating matters that were handled properly and reasonably by the state judicial systems. This not in any way a criticism of those who serve in the federal judiciary, but rather a demonstration of the need for Congressional action to reform the federal statutory scheme.

In this regard, we strongly support an amendment that will be offered by Congressman Christopher Cox to title I H.R. 729, which would give deference to state court decisions on federal habeas review, as long as the state courts acted reasonably in their adjudication of the case. Specifically, the amendment would provide:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was decided on the merits in state proceedings unless the adjudication of the claim:

1. resulted in a decision that was based on an arbitrary or unreasonable interpretation of clearly established federal law as articulated in the decisions of the Supreme Court of the United States;

2. resulted in a decision that was based on an arbitrary or unreasonable application to the facts of clearly established federal law as articulated in the decisions of the Supreme Court of the United States; or

3. resulted in a decision that was based on an arbitrary or unreasonable determination of the facts in light of the evidence presented in the state proceeding.

We believe that meaningful habeas corpus reform must contain such a standard of deference to reasonable state court decisions. This is essential if the trial of criminal defendants is to be the ''main event'' rather than a sideshow for ultimate resolution of the case on federal habeas corpus review.

Thank you again for your continued effort on behalf of prosecutors and crime victims. We look forward to working with you on this and other issues in the future.

Sincerely,

Dan Morales, Attorney General of Texas; Grant E. Woods, Attorney General of Arizona; Franie Sue Del Papa, Attorney General of Nevada; Daniel E. Lungren, Attorney General of California; W. A. Drew Edmondson, Attorney General of Oklahoma; Joseph P. Mazurek, Attorney General of Montana; Pamela Carter, Attorney General of Indiana, Jeff Sessions, Attorney General of Alabama; Ernest D. Preate, Jr., Attorney General of Pennsylvania.

THE HARRIS CASE FOR HABEAS CORPUS REFORM

On July 5, 1978, Robert Alton Harris murdered two teenage boys in San Diego. Two days later, he was arraigned.

On March 6, 1979, the San Diego Superior Court pronounced judgment on Harris, following a trial in which the jury convicted him of two counts of first degree murder and returned a death sentence.

Five days before execution, Gov. Wilson denied Harris's application for clemency. Harris filed his 9th state habeas corpus petition and 4th federal habeas corpus petition.

In the next four days, Harris filed his 5th and 6th federal habeas corpus petitions.

Harris was even the named plaintiff in a class action filed in U.S. district court on behalf of all California death-row inmates. The suit alleged that the gas chamber was a cruel and unusual means of execution and sought a stay on Harris' execution.

On April 21, 1992, Harris was finally executed.

The total delay from judgment to execution was 13 years.

In all, Harris filed 6 federal habeas corpus petitions.

69% of the 141 significant events in the Harris proceedings occurred in federal court. Only 31% occurred at the state level.

THE HARRIS CASE IS NOT UNIQUE—THAT'S THE TRAGEDY

One Ninth Circuit Judge has called the Harris case, even before its particularly egregious final rounds of litigation, ''a textbook example'' of the abuse of federal habeas corpus.

While 400 prisoners have been sentenced to death in California since the state reinstated the death penalty in 1978, only Robert Alton Harris and David Mason have been executed.

Today, there are 125 California death penalty cases before the federal courts.

A similar case in Washington state: 4 federal habeas corpus petitions dragged out for 12 years the execution of Charles Campbell. Campbell was a convicted rapist who murdered 3 people while on work furlough from prison. The victims were his earlier rape victim, a neighbor who had testified against him, and her 8-year-old daughter. The 9th Circuit took 5 years to resolve must one of the habeas corpus petitions.

Mr. Chairman, I yield to the gentleman from Florida [Mr. MCCOLLUM] to close.

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding, and I would like to say that everything we are doing here is reasonable. If there is a full and fair review of the provisions by the courts, the Federal courts, of what is going on underneath, and if the lower courts have made this decision, why should one Federal judge overturn the rulings of the State court judge, five State intermediate appellate courts, and perhaps nine Supreme Court justices.?

The CHAIRMAN. All time has expired.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent to proceed for 30 additional seconds.

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

There was no objection.

□ 1900

Mr. CONYERS. Mr. Chairman, I just want everybody in this Chamber to know that, as opposed as I am to this Draconian amendment offered by the gentleman from California [Mr. COX], ironically, if adopted, it may be the kiss of death for any habeas corpus reform since we know that the Senate is almost sure to deadlock.

So, Mr. Chairman, I say to my colleagues, Have it your way, gentlemen. The McCollum habeas and the Cox habeas are in direct contradiction, and you——

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from California [Mr. COX].

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 291, noes 140, not voting 3, as follows:

[Roll No 106]

AYES—291

Allard	Dickey	Johnson (SD)
Archer	Dooley	Johnson, Sam
Armey	Doolittle	Jones
Bachus	Dornan	Kanjorski
Baesler	Doyle	Kaptur
Baker (CA)	Dreier	Kasich
Baker (LA)	Duncan	Kelly
Ballenger	Dunn	Kim
Barcia	Edwards	King
Barr	Ehlers	Kingston
Barrett (NE)	Ehrlich	Klink
Bartlett	Emerson	Klug
Barton	English	Knollenberg
Bass	Ensign	Kolbe
Bateman	Everett	LaHood
Bereuter	Ewing	Lantos
Bevill	Fawell	Largent
Bilbray	Fields (TX)	Latham
Bilirakis	Flanagan	LaTourette
Bliley	Foley	Laughlin
Blute	Forbes	Lazio
Boehlert	Fowler	Leach
Boehner	Fox	Lewis (CA)
Bonilla	Franks (CT)	Lewis (KY)
Bono	Franks (NJ)	Lightfoot
Borski	Frelinghuysen	Lincoln
Boucher	Frisa	Linder
Brewster	Frost	Lipinski
Browder	Funderburk	Livingston
Brownback	Gallegly	LoBiondo
Bryant (TN)	Ganske	Longley
Bunn	Gekas	Lucas
Bunning	Geren	Manzullo
Burr	Gilchrest	Martini
Burton	Gillmor	Mascara
Buyer	Gilman	McCollum
Callahan	Goodlatte	McCrery
Calvert	Goodling	McDade
Camp	Gordon	McHale
Canady	Goss	McHugh
Castle	Graham	McInnis
Chabot	Green	McIntosh
Chambliss	Greenwood	McKeon
Chapman	Gunderson	Menendez
Chenoweth	Gutknecht	Meyers
Christensen	Hall (OH)	Mica
Chrysler	Hall (TX)	Miller (FL)
Clement	Hancock	Minge
Clinger	Hansen	Molinari
Coble	Harman	Montgomery
Coburn	Hastert	Moorhead
Coleman	Hastings (WA)	Moran
Collins (GA)	Hayes	Morella
Combest	Hayworth	Murtha
Condit	Hefley	Myers
Cooley	Heineman	Myrick
Costello	Herger	Nethercutt
Cox	Hilleary	Neumann
Cramer	Hobson	Ney
Crane	Hoekstra	Norwood
Crapo	Hoke	Nussle
Cremeans	Holden	Ortiz
Cubin	Horn	Orton
Cunningham	Hostettler	Oxley
Danner	Hunter	Packard
Davis	Hutchinson	Parker
Deal	Hyde	Paxon
DeLay	Inglis	Payne (VA)
Deutsch	Istook	Peterson (FL)
Diaz-Balart	Jefferson	Peterson (MN)

Petri	Seastrand	Tejeda
Pickett	Sensenbrenner	Thomas
Pombo	Shadegg	Thornberry
Porter	Shaw	Tiahrt
Portman	Shays	Torkildsen
Poshard	Shuster	Torricelli
Pryce	Sisisky	Traficant
Quillen	Skeen	Upton
Quinn	Skelton	Vucanovich
Radanovich	Smith (MI)	Waldholtz
Ramstad	Smith (NJ)	Walker
Regula	Smith (TX)	Walsh
Richardson	Smith (WA)	Wamp
Riggs	Solomon	Watts (OK)
Roberts	Souder	Weldon (FL)
Roemer	Spence	Weldon (PA)
Rogers	Stearns	Weller
Rohrabacher	Stenholm	White
Ros-Lehtinen	Stockman	Whitfield
Roth	Stump	Wicker
Roukema	Stupak	Wilson
Royce	Talent	Wolf
Salmon	Tanner	Wyden
Sanford	Tate	Young (AK)
Saxton	Tauzin	Young (FL)
Scarborough	Taylor (MS)	Zeliff
Schaefer	Taylor (NC)	Zimmer

NOES—140

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

NOT VOTING—3

Andrews	Collins (MI)	Metcalf

☐ 1919

Ms. FURSE, Mr. POMEROY, and Mr. RAHALL changed their vote from ''aye'' to ''no.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

☐ 1920

The CHAIRMAN. Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. FIELDS OF LOUISIANA

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

The Clerk read as follows:

Amendment offered by Mr. FIELDS of Louisiana: In the matter proposed to be inserted in section 3593(e) of title 18, United States Code, by section 201, insert ''or a sentence of life imprisonment without the possibility of release'' after ''shall recommend a sentence of death''.

Strike subsection (b) of section 201 and eliminate the subsection designation and heading of subsection (a).

Mr. FIELDS of Louisiana. Mr. Chairman, I ask unanimous consent that time on my amendment and all amendments thereto be limited to 10 minutes, equally divided on both sides.

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

There was no objection.

The CHAIRMAN. The gentleman from Louisiana [Mr. FIELDS] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

Does the gentleman from Pennsylvania [Mr. GEKAS] wish to manage the opposition to the Fields amendment?

Mr. GEKAS. I do, Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GEKAS] will be recognized for 5 minutes.

The Chair recognizes the gentleman from Louisiana [Mr. FIELDS].

Mr. FIELDS of Louisiana. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Illinois [Mrs. COLLINS].

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

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

Mr. Chairman, today my Republican friends continue along with their stampede to undo over 200 years of constitutional rights and protections afforded all of our citizens. I have decided that the GOP should rename their 100-day legislative agenda the Assault on America.

I am truly disturbed with the short-sighted and politically misguided attempts by those on the other side of the aisle to limit individual liberties and establish an eye-for-an-eye justice system in the United States. Their irrational cries for vengeance as a form of crime control do nothing but blind society to the real solutions to the problems with which we are confronted and inevitably heighten divisiveness among varying races and socioeconomic classes across our Nation.

We have a perfect example of this, Mr. Chairman, in the bill before us, H.R. 729, the Effective Death Penalty Act. The title of this legislation is an absolute oxymoron. No study that I am aware of has ever proven the deterrent effect of the death penalty, and yet the leadership wants to accelerate the rate of executions in this country while at the same time greatly curtailing the rights of defendants to receive not only adequate representation and fair trials, but also sufficient protections against wrongful executions.

No matter what your stance on the death penalty, I firmly believe that few in America wish to run the risk of putting an innocent person to death. However, this bill clearly heightens that risk.

Not only does H.R. 729 fail to require that States provide defendants with competent lawyers at the critical trial stage of death penalty cases, it also effectively bars defendants from second habeas corpus petitions even where newly discovered evidence shows that the defendant is most likely innocent of the charges leveled against him or her.

I am particularly alarmed because, as Supreme Court Justice Harry Blackmun stated last year, ''the death penalty experiment has failed * * * it remains fraught with arbitrariness, discrimination, and caprice, and mistake.'' Given that this is the case, why in the world would the GOP want to expand its use?

It is becoming increasingly clear, Mr. Chairman, that the Republicans believe the Constitution applies only selectively to those individuals and groups that they deem acceptable or deserving—poor, underserved, minority Americans need not apply.

Mr. Chairman, the fate of our system of justice rests on the citizenry believing that it is fair. Whenever that fairness is lost, so follows the justice. Unfortunately, the bill before us would only bring greater unfairness to the system.

I urge my colleagues to vote no on this nonsensical attempt to accelerate government-sanctioned executions in the United States.

Mr. FIELDS of Louisiana. Mr. Chairman, I yield myself such time as I may consume. Let me briefly explain the amendment.

The amendment under the present piece of legislation that is before us—it provides in no uncertain terms that the jury or, if there is no jury, the court shall recommend a sentence of death. What this amendment simply would do is not take out, it would not take out the sentence of death, as much as I would want to do that, but it would maintain that language, but it would add to, to give the jury and the court the opportunity of not only being able to recommend a sentence of death but give them the option to either recommend a sentence of death or a sentence of life in prison without the possibility of release.

That is all the amendment does.

Now, philosophically, I am very strongly and adamantly opposed to capital punishment, but it does not do away with capital punishment in the bill. But I do think if we leave the bill as it is in its present form, we will have a bill that would give the judge and would give the jury no option whatsoever. Due to the fact that many of the people who are victims of capital punishment are the people who do not have capital, many times he who does not have the capital normally get punished.

So this amendment certainly gives us an opportunity to give the judge and the jury the option of either imposing capital punishment or giving a person life in prison without parole.

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

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

Mr. Chairman, if the gentleman's amendment should be accepted by the House, it would in effect make the

present bill that calls for instructions to the jury to carry a certain essence with them, would make those provisions unconstitutional.

We have to recall that in the crime bill that is now the law of the land the flawed language, which we consider to be flawed, calling for instructions to the jury that no matter what the aggravating circumstances and mitigating circumstances might be, no matter what weight is placed on them allowing the jury to find life or the sentence of death is clearly unconstitutional.

What we do is implant language into the bill which makes it mandatory to find the death penalty, if a jury, in the second hearing, in the bifurcated hearing, determines that the aggravating circumstances outweigh the mitigating circumstances.

That conforms with many of the States who have crafted death penalties of their own with respect to the jury instructions, and the Supreme Court has blessed the language of at least 15 States who have similar mandatory language, finding that the aggravating circumstances outweighing the mitigating circumstances requires a death penalty.

Now, what this gentleman's amendment does is allow another alternative to the jury, as I understand it, life imprisonment without patrol, which means that the mandatory feature, that which the Supreme Court has found to be constitutional and which forms the bedrock of the provisions in the present legislation, which we are offering to the House, would render it unconstitutional.

We have gone through this road many times. In a strange way, adopting this amendment would be like repeating last year's error in the crime bill, which itself took us back to prior to 1974, before the Supreme Court struck down the death penalty. And provides for a jury deliberation on the death penalty that allows for so much discretion that discrimination or racial or gender basis or age or any of those things could enter into the picture, where in our language, in our bill, because of the mandatory features, if aggravating circumstances outweigh mitigating, the chances for discrimination, bias, gender, race, all of those are eliminated.

So we would ask that the gentleman's amendment be defeated.

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

Mr. FIELDS of Louisiana. Mr. Chairman, this amendment has nothing to do with race. There is not race in the bill. It has nothing to do with race.

Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Vermont [Mr. SANDERS].

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

I think the Fields amendment is eminently sensible.

At a time when many of our friends are saying, get the big, bad Federal Government off the backs of local communities, what the Fields amendment says to judges and juries all over America, if they understand what the circumstances are in the case and if they want to rule for the death penalty, OK, they can do that, but if they want to rule for life imprisonment, they also have that right.

□ 1930

It is flexible, it is consistent with local control.

In a more general sense, Mr. Chairman, I get a little bit nervous with the fervor that we hear here about the death penalty. I would point out to my friends that to the best of my knowledge, the United States of America remains the only major industrialized nation on Earth that allows for the death penalty in all circumstances other than war crimes and in treason. Our friends in Canada do not have the death penalty. Our friends south of us in Mexico do not have the death penalty.

What the amendment of the gentleman from Louisiana [Mr. FIELDS] says is, give juries and give judges the option. I think it is a sensible proposal.

The CHAIRMAN. The Chair will inform the gentleman from Louisiana [Mr. FIELDS] that he has 2 minutes remaining, and the gentleman from Pennsylvania [Mr. GEKAS] has 2 minutes remaining.

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

It is well-known, and it is so well-embedded in the CONGRESSIONAL RECORD in previous sessions and in newspaper reports, television reports, and in every poll known to mankind that the American people, by a wide margin, 75, 80 percent, favor the imposition of the death penalty in a proper case. They do not exactly favor the imposition of the death penalty, they favor the concept of allowing a jury that hears the facts to have the option of listening to whether aggravating circumstances appear in a particularly vicious case to determine that a death penalty is the proper sentence.

Mr. Chairman, the amendment that we have here returns us to the stone age of the death penalty, where discretion was so freakishly applied by the jury, and that word ''freakishly'' is in the Supreme Court opinion that struck down the death penalty, that we cannot be certain that bias and prejudice would not enter into the final decision made by the jury.

The amendment that we have at hand would do much of the same. In giving unfettered discretion to the jury to determine, regardless of the aggravating circumstances or the mitigating circumstances, that they could find death or life throws us back to the unconstitutional days of the death penalty, which we are trying to avoid, and which this bill corrects and brings into play language already approved by the Supreme Court. Thereby we avoid the possibility of the death penalty. The Supreme Court has said that this language, as it appears in the State criminal statutes in 10, 12, 15 States, is sound, is constitutional, is proper, and we are lifting it from a Supreme Court opinion already in existence, so that we would be safe in assuming that this language cures our constitutional problems with the imposition of the death penalty.

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

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. GEKAS] has expired.

Mr. FIELDS of Louisiana. Mr. Chairman, I yield 30 seconds to the gentleman from Vermont [Mr. SANDERS].

Mr. SANDERS. Mr. Chairman, the gentleman is correct, I think, in saying that polls in America support the death penalty. People want judges and juries to have the option to use the death penalty. I think the gentleman will not disagree with me that polls and studies also indicate that the public wants judges and juries to have the option to use the death penalty or not to use the death penalty to allow for life imprisonment. That is precisely what the Fields amendment is.

Mr. FIELDS of Louisiana. Mr. Chairman, I yield 1½ minutes to the gentleman from Illinois [Mr. DURBIN] to close the debate.

Mr. DURBIN. Mr. Chairman, I thank my colleague, the gentleman from Louisiana, for yielding time to me.

Mr. Chairman, I would say to the committee that I have a different position on the death penalty than the gentleman who has offered the amendment. I favor the death penalty, he opposes it, but I still believe he offers a valuable amendment.

If Members believe in the bedrock of the American judicial system, it is trial by jury. It is a decision by America's citizens as to the guilt or innocence of an individual.

What the gentleman from Louisiana [Mr. FIELDS] is suggesting is that that jury, under the most heinous crimes and heinous circumstances, would be given two options and not one. Under the bill, they have only one option, the death penalty. Under the amendment offered by the gentleman from Louisiana [Mr. FIELDS], they have a second option of life in prison without parole.

It strikes me we are dealing with factors that are somewhat subjective, aggravating and mitigating factors. I think that if we believe in the Constitution and the bedrock of our judicial system, we give to that jury these two options.

Both options protect society from those individuals who have committed such violent crimes that we no longer want to see them on the streets or in our neighborhoods, but I think it is reasonable to offer this option. I salute my colleague, the gentleman from Louisiana, for offering that option.

I hope that my colleagues, despite their fervor over the death penalty, will understand that this gets to the

bedrock principle of justice in this country, whether or not a decision is to be made by a jury of a person's peers.

The CHAIRMAN. All time has expired.

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

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

RECORDED VOTE

Mr. GEKAS. Mr. Chairman, I demand a recorded.

A recorded vote was ordered.

The CHAIRMAN. This is a 15-minute vote.

The vote was taken by electronic device, and there were—ayes 139, noes 291, not voting 4, as follows:

[Roll No 107]

AYES—139

Abercrombie	Gutknecht	Payne (NJ)
Ackerman	Hamilton	Pelosi
Barrett (WI)	Hastings (FL)	Pomeroy
Becerra	Hefner	Rahall
Beilenson	Hilliard	Rangel
Bentsen	Hinchey	Reynolds
Berman	Hoyer	Rivers
Bishop	Jacobs	Roemer
Bonior	Jefferson	Rose
Boucher	Johnson, E. B.	Roth
Brewster	Johnston	Roybal-Allard
Brown (CA)	Kennedy (MA)	Rush
Brown (FL)	Kennelly	Sabo
Brown (OH)	Kildee	Sanders
Chapman	Kleczka	Sawyer
Clay	LaFalce	Schroeder
Clayton	LaTourette	Scott
Clyburn	Laughlin	Serrano
Collins (IL)	Levin	Shays
Conyers	Lewis (GA)	Skaggs
Coyne	Lofgren	Slaughter
de la Garza	Lowey	Smith (MI)
DeFazio	Luther	Spratt
Dellums	Maloney	Stark
Dingell	Markey	Stokes
Dixon	Martinez	Studds
Doggett	Matsui	Thompson
Duncan	McCarthy	Thornton
Durbin	McDermott	Thurman
Edwards	McKinney	Torkildsen
Engel	McNulty	Torres
Eshoo	Meek	Towns
Evans	Mfume	Tucker
Farr	Miller (CA)	Velazquez
Fattah	Mineta	Vento
Fazio	Minge	Visclosky
Fields (LA)	Mink	Ward
Filner	Moakley	Waters
Flake	Mollohan	Watt (NC)
Foglietta	Nadler	Waxman
Ford	Neal	Williams
Frank (MA)	Oberstar	Wise
Furse	Obey	Woolsey
Gejdenson	Olver	Wynn
Gonzalez	Owens	Yates
Green	Pallone	
Gutierrez	Pastor	

NOES—291

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

NOT VOTING—4

Andrews	Metcalf
Collins (MI)	Wilson

□ 1951

Mr. SMITH of Michigan changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. SMITH OF TEXAS

Mr. SMITH of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SMITH of Texas: Proposed section 2257 of title 28, United States Code, in section 111 of H.R. 729, is amended—

(1) in subsection (b)—

(A) by striking '', or fails to make a timely application for court of appeals review following the denial of such a petition by a district court'' in paragraph (1);

(B) by striking paragraph (2);

(C) by redesignating paragraph (3) as paragraph (2);

(D) by striking the period at the end of paragraph (2) as so designated and inserting ''; or''; and

(E) by adding a new paragraph (3) as follows:

''(3) a State prisoner files a habeas corpus petition under section 2254 within the time required in section 2258 and fails to make a substantial showing of the denial of a Federal right or is denied relief in the district court or at any subsequent stage of review.''; and

(2) in subsection (c), by striking ''If one of the conditions in subsection (b) has occurred, no Federal court thereafter'' and inserting ''On a second or later habeas corpus petition under section 2254, no Federal court''.

Proposed section 2260 of title 28, United States Code, in section 111 of H.R. 729, is amended to read as follows:

''§ 2260. Certificate of probable cause

''An appeal may not be taken to the court of appeals from the final order of a district court denying relief in a habeas corpus proceeding that is subject to the provisions of this chapter unless a circuit justice or judge issues a certificate of probable cause. A certificate of probable cause may only issue if the petitioner has made a substantial showing of the denial of a Federal right. The certificate of probable cause must indicate which specific issue or issues satisfy this standard.''.

In the table of sections for proposed chapter 154 of title 28, United States Code, in section 111 of H.R. 729, the item relating to proposed section 2260 of title 28, United States Code, is amended by striking ''inapplicable''.

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

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

There was no objection.

Mr. SMITH of Texas. Mr. Chairman, I ask unanimous consent that debate on my amendment and all amendments thereto be limited to 10 minutes, 5 minutes per side.

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

There was no objection.

The CHAIRMAN. The gentleman from Texas [Mr. SMITH] is recognized for 5 minutes.

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the committee bill provides for an automatic stay of execution throughout all stages of federal review for the first federal habeas petition for states that provide counsel on state collateral review. Some States had raised concerns that this provision may have the unintended effect of prolonging litigation by allowing a stay of execution even where the federal habeas petition presents no substantial claim for the federal court to consider.

This amendment has bipartisan support.

I would like to read an excerpt from a letter from the attorney general of Texas, a Democrat, Dan Morales. This letter reads in part,

Providing for an automatic stay regardless of the merit of the issues raised is inconsistent with the purpose of federal habeas review, and as a practical matter, will lead to unwarranted delay in the imposition of valid sentences. The goal of affording death sentence inmates ''one bite of the apple'' should at the very least be accomplished without staying an execution while a petitioner pursues frivolous appeals.

Mr. Chairman, the amendment before us provides that the automatic stay will terminate once State court review is completed if that petitioner fails to make a substantial showing of the denial of a Federal right or a denied relief on his petition in the Federal district court or at a later stage of Federal habeas review. Under current law, Federal courts routinely must evaluate whether an issue exists to warrant review in granting of a stay, so the rights of the inmate are still protected.

This amendment improves the legislation, Mr. Chairman, and I urge its adoption.

OFFICE OF THE ATTORNEY GENERAL
Austin, TX, February 7, 1995.

HON. LAMAR S. SMITH,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE SMITH: The recently introduced House of Representatives Bill 729 raises significant concerns for the State of Texas in the post-conviction litigation of capital cases. Specifically, I am concerned with the provision of proposed §2257 for an automatic stay of execution while a death-sentenced inmate litigates a complete round of federal habeas review, from district court through the circuit courts of appeals and the Supreme Court and the provision of proposed §2258 eliminating the certificate of probable cause requirement for appeals. Providing for an automatic stay, regardless of the merit of the issues raised, is inconsistent with the purpose of federal habeas review and, as a practical matter, will lead to unwarranted delay in the imposition of valid death sentences. The goal of affording death-sentenced inmates ''one bite of the apple'' should at the very least be accomplished without staying an execution while a petitioner pursues frivolous appeals. I urge you to support a floor amendment eliminating these two provisions.

As I'm sure you are aware, death-sentenced petitioners pursuing federal habeas review have, virtually without exception, pursued a direct appeal to the state's highest court of the review, and, in most instances, sought certiorari review of the state court's disposition of the direct appeal. Further, most if not all such petitioners have litigated at least one complete round of state habeas review. Under these circumstances, if a petitioner cannot satisfy the standard of *Barefoot* v. *Estelle*, 463 U.S. 880 (1983), which requires a substantial showing of the denial of a federal right, then a stay is unwarranted. As demonstrated by existing practice, United States district courts, circuit courts of appeals and the Supreme Court are fully able to evaluate whether there exists an issue which warrants review and a stay.

Notably, the certificate of probable cause requirement was originally enacted to eliminate or reduce the number of unwarranted stays of execution entered while death-sentenced inmates pursued frivolous appeals. *Barefoot* v. *Estelle*, 463 U.S. at 892 n.3 (and citations therein). Thus, the proposed automatic stay, which would extend through the appeal and disposition of a petition for certiorari review, represents a step backward rather than forward in the goal of expediting post-conviction review. Indeed, the automatic stay is an unwarranted step in the opposite direction from the ''full and fair'' provisions that have garnered so much support in the past. Rather than deferring to a state court's reasonable disposition of constitutional issues, the automatic stay provisions disregard the significant amount of review that precedes federal habeas review. The ''full and fair'' concept aside, the current practice of allowing each federal court from the district court through the Supreme Court to determine whether a stay is warranted is preferable.

The effect of the automatic stay is not ameliorated by the time limits imposed on adjudication at each stage or by the designation of a finite period of time to go from state review into federal habeas review. The time limits imposed do very little, if anything, to streamline the process of the United States District Courts in Texas, the Fifth Circuit Court of Appeals, or the Supreme Court. For example, a death-sentenced inmate has normally delineated his grounds for relief in state court and exhausted state remedies with respect to those grounds. It simply does not require 180 days to transform a state petition into a federal petition founded on the same legal bases and, in practice, federal district courts in Texas normally require a petition to be filed if the petitioner has been allowed, on the average, 60 or more days following state habeas review. Similarly, the time limits imposed for adjudication at each stage do not impose real limitations. For example, allowing the district court 60 days after argument to rule does not limit the time a petition may languish on the court's docket before argument.

Finally, by staying an execution until the Supreme Court denies a petition for certiorari review, the legislation almost assures additional litigation by death-sentenced inmates. Capital litigation will expand to fill anytime allowed. If an execution date cannot be set until after the Supreme Court's disposition of a certiorari petition, the time between the vacating of the stay and the scheduled execution date will afford a petitioner the opportunity to formulate a second round of review, which will have to be resolved regardless of the limitations imposed on successive petitions. By contrast, if a state is able to schedule an execution date to coincide approximately with the filing of a certiorari petition, the initial round of review is likely to be the only round.

In short, I urge you to support an amendment to the expedited procedures providing for the retention of the certificate of probable cause requirement for the first tour of federal habeas review and eliminating the automatic stay. The provisions of the ''expedited'' federal habeas procedures would lengthen the time between conviction and imposition of sentence beyond the current 8.5 year average for Texas. Indeed, although it is expected that the Texas legislature will, in the immediate future, enact habeas reform that fully complies with the requirements of proposed §§2256–2262, federal habeas review would be expedited by Texas choosing not to ''opt in'' to those provisions.

In addition, I urge you to support the amendment sponsored by Representative Cox which would require federal habeas courts to defer to state court decisions as long as the state courts acted reasonably in their adjudication of the case and application of federal law. As I noted earlier, the State of Texas expends considerable judicial and law enforcement resources assuring that capital convictions comply with the constitutions of the United States and Texas. Relitigation of issues fully and fairly resolved by the state courts is unnecessary and inappropriate unless those issues have not been reasonably resolved by the state courts in accord with federal constitutional principles.

Very best wishes,
Sincerely,

DAN MORALES,
Attorney General.

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

The CHAIRMAN. Is there a Member who wishes to speak in opposition to the amendment?

Mr. CONYERS. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] is recognized for 5 minutes.

Mr. CONYERS. Mr. Chairman, I yield myself 1½ minutes.

The gentleman from Texas, with this amendment, has unerringly gone to the one part of the McCollum habeas reform matter that we could have complimented him on, because he institutes an automatic stay of execution while the habeas petition is pending.

By honing in on this one provision, we are now saying that there will not be any need for Federal habeas because the petitioner may be executed while his petition is pending. He might not ever live to find out that he was granted habeas.

This is the most ultimately inhumane proposal that we have heard tonight.

It is amazing that we have had these contradictory provisions coming from the side of the aisle that wrote the habeas bill that we do not like, and now we have these worsening amendments as the night goes on.

I urge the strong strenuous rejection of this proposal by the gentleman from Texas.

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

Mr. SMITH of Texas. Mr. Chairman, I yield myself such time as I may consume.

As has been the case so often this evening, the real question is whether we are going to allow those who have been convicted of capital crimes to indulge themselves in almost endless appeals. I think the American people would answer ''no'' to that question. I think Congress should answer ''no'' to that question.

Mr. Chairman, I yield the balance of my time, 3 minutes, to the gentleman from Florida [Mr. MCCOLLUM], the chairman of the subcommittee.

Mr. McCOLLUM. Mr. Chairman, I thank the gentleman for yielding me this time.

I simply wanted to point to everybody here, and I will not consume the entire 3 minutes, but the amendment before us provides the automatic stay that we are going to routinely have in the bill underlying will terminate once

State court review is completed, if the petitioner fails to make a ''substantial showing of the denial of a Federal right'' or is denied relief on his petition in the Federal district court or at a later stage of Federal habeas review.

It really is only a statement of what the law truly is and is intended to be in a codified form. If somebody does not make a substantial showing after denial of a Federal right, there should not be any stay. It seems self-evident, but we have had problems technically with this during the courts and the process.

If there is an appeal ongoing and there obviously is a request for a stay, if the appeal has any meaning at all, the Federal court is going to grant the stay.

This does not say you cannot have it. It just is not going to be automatic. There can be somebody who stops that stay along the process before you go through a whole bunch of hoops to go in there and say, ''Look, this is not a substantial showing of the denial of a Federal right. Let's go on and get the execution carried out'' instead of having automatic stuff that the statute would otherwise require.

I think what we did when we wrote this bill was probably err in going overboard on these automatic stays, so the gentleman from Texas is correcting a flaw in the underlying bill.

I urge my colleagues to vote for it.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield for a question?

Mr. MCCOLLUM. I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, the question here is, and again being mindful of the fact that we do not want to allow endless appeals, but let us say that the defendant is in the process of going to the judge to ask for an appeal, can the State rush him to execution before that appeal is adjudicated one way or another?

□ 2000

As I understand it, that is the purpose of the automatic stay, that you do not have this sort of very obscene sort of beat-the-clock game, ''we can rush him to do it before you can rush to the judge.'' An automatic stay, my understanding has always been, usually works for a very short period of time. Again, the great length of appeals that we have heard in the cases has been dealt with in the main body of the bill, something that I agree with. Now answer that question.

Mr. MCCOLLUM. Reclaiming my time, I would simply say the difference is that the stay is not automatic.

Mr. Chairman, I yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for his continued generosity in yielding.

My specific question is that: While the defendant's attorney is making a petition to the judge, a motion to the appellate judge for appeal, could the State execute that gentleman while they are trying to get that appeal, under the gentleman from Texas' amendment?

Mr. MCCOLLUM. Theoretically, I suppose that could occur, but it would be an awfully fast execution because you could certainly get that effort up there very quickly to the courts. That is the way that things work. You have people working the midnight oil in all the courts in the country and certainly in that State during the time under consideration.

I urge a ''yes'' vote on the gentleman's amendment.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. I thank the gentleman for yielding. I will not take a minute.

I would just rise in opposition to this amendment and say that this bill already speeds up the appeals process. My amendment that I offered that would have tried to redeem people who come forward with evidence of innocence was defeated, and now we are going to rush to judgment without any stay, and this is just criminal.

I urge strongly that this amendment be defeated.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to my colleague, the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. I thank the gentleman for yielding.

Mr. Chairman, just summing up to my colleagues on both sides of the aisle what the gentleman from Florida, Mr. MCCOLLUM's answer to the question would mean: It would indeed mean that there could in case after case be a sort of rush, petitioners' attorneys rushing to get a judge to authorize a stay and the State, in many cases, rushing to execute the defendants.

That kind of result, those of us who are for the death penalty, those who are against the death penalty, that is not the kind of result we would want. And there are better ways to cure the endless appeals that have gone on than this. I think this amendment deserves to be defeated in a bipartisan way. It just besmirches some of the food efforts the gentleman from Florida [Mr. MCCOLLUM] is trying to do.

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] has 1½ minutes remaining and is entitled to close debate on this amendment.

Mr. CONYERS. Ladies and gentlemen, we are now taking out the one redeeming feature in McCollum habeas reform. I want to just point out that the section providing for automatic stays of execution while a habeas is pending was a much needed improvement on the current system where the fate of a condemned man hangs in the balance while lawyers scramble at the last minute to find a judge that will stay the execution. We had corrected that.

Why on Earth he got talked into having that undone at the last minute of the final minutes of debate on the floor amazes me. It was the gentleman's amendment all the time. Mr. MCCOLLUM literally wrote this bill. He put in the stay. Now it is being taken out.

Did we do something wrong? Have we disappointed you in some way?

Please let us keep the automatic stay feature in. It will not make this habeas bill much better, but it will certainly be a lot better than going back to the system of lawyers scrambling around looking for judges before a person is executed, who may find out or who may never find out that his habeas was in fact granted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. SMITH].

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 241, noes 189, not voting 4, as follows:

[Roll No. 108]

AYES—241

Allard	Doyle	Kelly
Archer	Dreier	Kim
Armey	Duncan	King
Bachus	Dunn	Kingston
Baesler	Ehrlich	Klink
Baker (CA)	Emerson	Klug
Baker (LA)	English	Knollenberg
Ballenger	Ensign	Kolbe
Barr	Everett	LaHood
Barrett (NE)	Ewing	Largent
Bartlett	Fawell	Latham
Barton	Fields (TX)	LaTourette
Bass	Flanagan	Lazio
Bateman	Foley	Leach
Bereuter	Forbes	Lewis (CA)
Bilbray	Fowler	Lewis (KY)
Bilirakis	Fox	Lightfoot
Bliley	Franks (CT)	Linder
Blute	Franks (NJ)	Livingston
Boehlert	Frelinghuysen	LoBiondo
Boehner	Frisa	Longley
Bonilla	Funderburk	Lucas
Bono	Gallegly	Martini
Brewster	Ganske	McCollum
Brownback	Gekas	McCrery
Bryant (TN)	Geren	McDade
Bunn	Gilchrest	McHugh
Bunning	Gillmor	McInnis
Burr	Goodlatte	McIntosh
Burton	Goodling	McKeon
Buyer	Goss	Metcalf
Callahan	Graham	Mica
Calvert	Green	Miller (FL)
Camp	Greenwood	Molinari
Canady	Gutknecht	Montgomery
Castle	Hall (TX)	Moorhead
Chabot	Hancock	Myers
Chambliss	Hansen	Myrick
Chenoweth	Hastert	Nethercutt
Christensen	Hastings (WA)	Neumann
Chrysler	Hayworth	Ney
Coble	Hefley	Norwood
Coburn	Heineman	Nussle
Collins (GA)	Herger	Ortiz
Combest	Hilleary	Oxley
Condit	Hobson	Packard
Cooley	Hoekstra	Parker
Cox	Hoke	Paxon
Crane	Holden	Peterson (MN)
Crapo	Horn	Petri
Cremeans	Hostettler	Pombo
Cubin	Hunter	Porter
Cunningham	Hutchinson	Portman
Davis	Hyde	Pryce
Deal	Inglis	Quillen
DeLay	Istook	Quinn
Diaz-Balart	Johnson (CT)	Radanovich
Dickey	Johnson, Sam	Ramstad
Doolittle	Jones	Regula
Dornan	Kasich	Richardson

Riggs	Skeen	Upton
Roberts	Smith (MI)	Vucanovich
Roemer	Smith (TX)	Waldholtz
Rogers	Smith (WA)	Walker
Rohrabacher	Solomon	Walsh
Ros-Lehtinen	Souder	Wamp
Roth	Spence	Watts (OK)
Roukema	Stearns	Weldon (FL)
Royce	Stenholm	Weldon (PA)
Salmon	Stockman	Weller
Sanford	Stump	White
Saxton	Talent	Whitfield
Scarborough	Tate	Wicker
Schaefer	Tauzin	Wolf
Schiff	Taylor (MS)	Wyden
Seastrand	Taylor (NC)	Young (AK)
Sensenbrenner	Tejeda	Young (FL)
Shadegg	Thomas	Zeliff
Shaw	Thornberry	Zimmer
Shays	Tiahrt	
Shuster	Traficant	

NOES—189

Abercrombie	Gonzalez	Nadler
Ackerman	Gordon	Neal
Baldacci	Gunderson	Oberstar
Barcia	Gutierrez	Obey
Barrett (WI)	Hall (OH)	Olver
Becerra	Hamilton	Orton
Beilenson	Harman	Owens
Bentsen	Hastings (FL)	Pallone
Berman	Hayes	Pastor
Bevill	Hefner	Payne (NJ)
Bishop	Hilliard	Payne (VA)
Bonior	Hinchey	Pelosi
Borski	Houghton	Peterson (FL)
Boucher	Hoyer	Pickett
Browder	Jackson-Lee	Pomeroy
Brown (CA)	Jacobs	Poshard
Brown (FL)	Jefferson	Rahall
Brown (OH)	Johnson (SD)	Rangel
Bryant (TX)	Johnson, E. B.	Reed
Cardin	Johnston	Reynolds
Chapman	Kanjorski	Rivers
Clay	Kaptur	Rose
Clayton	Kennedy (MA)	Roybal-Allard
Clement	Kennedy (RI)	Rush
Clinger	Kennelly	Sabo
Clyburn	Kildee	Sanders
Coleman	Kleczka	Sawyer
Collins (IL)	LaFalce	Schroeder
Conyers	Lantos	Schumer
Costello	Laughlin	Scott
Coyne	Levin	Serrano
Cramer	Lewis (GA)	Sisisky
Danner	Lincoln	Skaggs
de la Garza	Lipinski	Skelton
DeFazio	Lofgren	Slaughter
DeLauro	Lowey	Smith (NJ)
Dellums	Luther	Spratt
Deutsch	Maloney	Stark
Dicks	Manton	Stokes
Dingell	Manzullo	Studds
Dixon	Markey	Stupak
Doggett	Martinez	Tanner
Dooley	Mascara	Thompson
Durbin	Matsui	Thornton
Edwards	McCarthy	Thurman
Ehlers	McDermott	Torkildsen
Engel	McHale	Torres
Eshoo	McKinney	Torricelli
Evans	McNulty	Towns
Farr	Meehan	Tucker
Fattah	Meek	Velazquez
Fazio	Menendez	Vento
Fields (LA)	Meyers	Visclosky
Filner	Mfume	Volkmer
Flake	Miller (CA)	Ward
Foglietta	Mineta	Waters
Ford	Minge	Watt (NC)
Frost	Mink	Waxman
Furse	Moakley	Williams
Gejdenson	Mollohan	Wilson
Gephardt	Moran	Wise
Gibbons	Morella	Woolsey
Gilman	Murtha	Wynn

NOT VOTING—4

Andrews	Frank (MA)
Collins (MI)	Yates

□ 2021

Messrs. DEFAZIO, BEVILL, and JOHNSON of South Dakota changed their vote from ''aye'' to ''no.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there other amendments to the bill? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Pursuant to the order of the House of yesterday, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. QUINN) having assumed the chair, Mr. DREIER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 729) to control crime by a more effective death penalty, pursuant to the order of the House of Tuesday, February 7, 1995, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the order of the House of yesterday, the previous question is ordered.

The previous question was ordered.

The SPEAKER pro tempore. Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The CHAIRMAN. The question is on the engrossment and third reading of the bill.

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

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

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 297, noes 132, not voting 5, as follows:

[Roll No. 109]

AYES—297

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

NOES—132

Abercrombie	Dixon	Hall (OH)
Ackerman	Doggett	Hastings (FL)
Baldacci	Durbin	Hefner
Barrett (WI)	Ehlers	Hilliard
Becerra	Engel	Hinchey
Beilenson	Eshoo	Hoyer
Berman	Evans	Jackson-Lee
Bishop	Farr	Jacobs
Bonior	Fattah	Jefferson
Brown (CA)	Fazio	Johnson, E. B.
Brown (FL)	Fields (LA)	Johnston
Brown (OH)	Filner	Kaptur
Bryant (TX)	Flake	Kennedy (MA)
Clay	Foglietta	Kennedy (RI)
Clayton	Ford	Kennelly
Clyburn	Frank (MA)	Kildee
Collins (IL)	Furse	Kleczka
Conyers	Gejdenson	LaFalce
Coyne	Gephardt	Lantos
DeFazio	Gibbons	Levin
DeLauro	Gonzalez	Lewis (GA)
Dellums	Gutierrez	Lofgren

Lowey	Obey	Skaggs
Luther	Olver	Slaughter
Maloney	Owens	Stark
Markey	Pallone	Stokes
Martinez	Pastor	Studds
Matsui	Payne (NJ)	Thompson
McCarthy	Pelosi	Thornton
McDermott	Pomeroy	Thurman
McKinney	Rahall	Torres
McNulty	Rangel	Towns
Meehan	Reed	Tucker
Meek	Reynolds	Velazquez
Mfume	Rivers	Vento
Miller (CA)	Rose	Visclosky
Mineta	Roybal-Allard	Ward
Minge	Rush	Waters
Mink	Sabo	Watt (NC)
Moakley	Sanders	Waxman
Mollohan	Sawyer	Williams
Nadler	Schroeder	Wise
Neal	Scott	Woolsey
Oberstar	Serrano	Wynn

NOT VOTING—5

Andrews	Collins (MI)	Yates
Clinger	Houghton	

☐ 2041

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 665, THE VICTIM RESTITUTION ACT OF 1995, H.R. 666, THE EXCLUSIONARY RULE REFORM ACT OF 1995, AND H.R. 729, THE EFFECTIVE DEATH PENALTY ACT OF 1995

Mr. MCCOLLUM. Mr. Speaker, I ask unanimous consent that in the engrossment of the bills, H.R. 665, H.R. 666, and H.R. 729, the Clerk be authorized to make such clerical and technical corrections as may be required.

The SPEAKER pro tempore (Mr. QUINN). Is there objection to the request of the gentleman from Florida?

There was no objection.

GENERAL LEAVE

Mr. MCCOLLUM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 666 and H.R. 729, the bills just considered and passed.

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

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 667, THE VIOLENT CRIMINAL INCARCERATION ACT

Mr. SOLOMON, from the Committee on Rules, submitted a privileged report (Rept. No. 104–25) on the resolution (H. Res. 63) providing for the consideration of the bill (H.R. 667) to control crime by incarcerating violent criminals, which was referred to the House Calendar and ordered to be printed.

PERSONAL EXPLANATION

Mr. DIXON. Mr. Speaker, during rollcall vote 103 of H.R. 666, I was unavoidably detained. Had I been present, I would have voted ''no.''

NOTICE OF CONTINUATION OF NATIONAL EMERGENCY WITH RESPECT TO IRAQ—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC NO. 104–29)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations:

To the Congress of the United States:

I hereby report to the Congress on the developments since my last report of August 2, 1994, concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 of August 2, 1990. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c).

Executive Order No. 12722 ordered the immediate blocking of all property and interests in property of the Government of Iraq (including the Central Bank of Iraq), then or thereafter located in the United States or within the possession or control of a United States person. That order also prohibited the importation into the United States of goods and services of Iraqi origin, as well as the exportation of goods, services, and technology from the United States to Iraq. The order prohibited travel-related transactions to or from Iraq and the performance of any contract in support of any industrial, commercial, or governmental project in Iraq. United States persons were also prohibited from granting or extending credit or loans to the Government of Iraq.

The foregoing prohibitions (as well as the blocking of Government of Iraq property) were continued and augmented on August 9, 1990, by Executive Order No. 12724, which was issued in order to align the sanctions imposed by the United States with United Nations Security Council Resolution 661 of August 6, 1990.

Executive Order No. 12817 was issued on October 21, 1992, to implement in the United States measures adopted in United Nations Security Council Resolution 778 of October 2, 1992. Resolution No. 778 requires U.N. Member States temporarily to transfer to a U.N. escrow account up to $200 million apiece in Iraqi oil sale proceeds paid by purchasers after the imposition of U.N. sanctions in Iraq, to finance Iraqi's obligations for U.N. activities with respect to Iraq, such as expenses to verify Iraqi weapons destruction, and to provide humanitarian assistance in Iraq on a nonpartisan basis. A portion of the escrowed funds will also fund the activities of the U.N. Compensation Commission in Geneva, which will handle claims from victims of the Iraqi invasion of Kuwait. Member States also may make voluntary contributions to the account. The funds placed in the escrow account are to be returned, with interest, to the Member States that transferred them to the United Nations, as funds are received from future sales of Iraqi oil authorized by the U.N. Security Council. No Member State is required to fund more than half of the total transfers or contributions to the escrow account.

This report discusses only matters concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 and matters relating to Executive Orders Nos. 12724 and 12817 (the ''Executive orders''). The report covers events from August 2, 1994, through February 1, 1995.

1. There has been one action affecting the Iraqi Sanctions Regulations, 31 C.F.R. Part 575 (the ''Regulations''), administered by the Office of Foreign Assets Control (FAC) of the Department of the Treasury, since my last report on August 2, 1994. On February 1, 1995 (60 Fed. Reg. 6376), FAC amended the Regulations by adding to the list of Specially Designated Nationals (SDNs) of Iraq set forth in Appendices A (''entities and individuals'') and B (''merchant vessels''), the names of 24 cabinet ministers and 6 other senior officials of the Iraqi government, as well as 4 Iraqi state-owned banks, not previously identified as SDNs. Also added to the Appendices were the names of 15 entities, 11 individuals, and 1 vessel that were newly identified as Iraqi SDNs in the comprehensive list of SDNs for all sanctions programs administered by FAC that was published in the *Federal Register* (59 Fed. Reg. 59460) on November 17, 1994. In the same document, FAC also provided additional addresses and aliases for 6 previously identified Iraqi SDNs. This *Federal Register* publication brings the total number of listed Iraqi SDNs to 66 entities, 82 individuals, and 161 vessels.

Pursuant to section 575.306 of the Regulations, FAC has determined that these entities and individuals designated as SDNs are owned or controlled by, or are acting or purporting to act directly or indirectly on behalf of, the Government of Iraq, or are agencies, instrumentalities or entities of that government. By virtue of this determination, all property and interests in property of these entities or persons that are in the United States or in the possession or control of United States persons are blocked. Further, United States persons are prohibited from engaging in transactions with these individuals or entities unless the transactions are licensed by FAC. The designations were made in consultation with the Department of State. A copy of the amendment is attached to this report.