

human being. I know she was over there all the time, giving solace, support, comfort. It is typical of these two, who served in the Senate with us for so many years and did such a great job, to continue to do a great job in our home State. That family really deserves a lot of credit. Not only the immediate family but the extended family exercised their faith and prayers on behalf of this young woman.

I hope everything is OK with her. It is certainly OK compared to what she has gone through. I hope everybody who knows her and knows that family will lend support and solace and comfort to help them to reunite in every way and help this young woman to overcome the terrible experience she has had over the last 9 months.

AMERICA'S COMMITMENT TO INTERNATIONAL LAW

Mr. BINGAMAN. Mr. President, when future generations reflect on the fallout from the terrorist attack of 9/11/2001, I fear they will see our own commitment to international law as a casualty of that event. I do.

For some time now, there has been a contest within the U.S. foreign policy establishment between those who believe our greater security lies with the strengthening of international institutions and agreements, on the one hand, and, on the other, those who believe our security is enhanced if we demonstrate the will and capacity to prevail; that is, to dominate the new world and shape it to our liking.

The election of President Bush and the attack of 9/11 have moved U.S. policy to endorse this second vision—that of U.S. dominance of a world that meets our standards of acceptable conduct.

The result of this shift in U.S. foreign policy is now evident in the statements and actions of the President regarding Iraq. Unless I misread those statements by the President and his foreign policy team, sometime within the next few days, the United States, and possibly British, troops will begin an invasion of Iraq. The mission, according to the President, will be to disarm Saddam Hussein, to capture and destroy his weapons of mass destruction, to liberate the people of Iraq from his despotic rule, to install a new and democratic government, and to hold up Iraq as a model for freedom and democracy that can be emulated by other Middle Eastern countries.

These are noble objectives. My concern is not with the objectives but with the apparent decision the President has made to proceed with an invasion now while many Americans and many of our traditional allies believe that alternatives to war still exist.

In his State of the Union Address, the President spoke about a circumstance where “war is forced upon us.” After the President spoke, I came to the Senate floor to make what I considered an obvious point; that is, that war had not

been forced upon us. It is still my view today that war with Iraq has not been forced upon us. Our allies who are urging that the U.N. weapons inspectors be given more time to do their work agree with that view.

In the report to the Security Council last Friday, Hans Blix and Mohamed ElBaradai, the heads of the U.N. inspection teams, reported progress toward the goal of ensuring that Iraq has been disarmed. They pointed out that more cooperation by Iraq is needed, but they acknowledged that cooperation has increased.

President Bush and Secretary of State Powell have correctly pointed out that Iraq's increased level of cooperation does not constitute full compliance with Security Council Resolution 1441, in that Iraq has not fully, completely, and immediately disarmed.

The question is whether this failure to fully comply with the U.N. resolution justifies an armed invasion of Iraq at this time. Many Security Council members believe it does not, and, in my view, it does not.

Our Government's position appears to be that we will enforce the U.N. Security Council resolution even though the Security Council itself does not support that action at this time. In other words, we will act in coordination with the views of the world community of nations as long as those views agree with our own. When those views differ from our own, we will use our great military capability to impose our will by force.

I, for one, can support a policy of imposing our will by force, notwithstanding the views of our allies, if there is an imminent threat to our own security and if all options, other than war, have been exhausted. But neither of those circumstances prevails today.

A decision to wage war at this time, absent the support of our traditional allies, contradicts the foreign policy on which this Nation has been grounded for many decades. It undermines the international institution that previous U.S. administrations worked to establish as an instrument for world peace. It clearly signals that even absent an imminent threat to our security, we consider ourselves the ultimate arbiter of acceptable behavior by other governments and that we will act to “change regimes” when we determine the actions of other governments to be unacceptable.

Madam President, this is an unwise and dangerous precedent for us to establish. Stripped of its niceties, it is essentially a foreign policy premised on the belief that “might makes right.” At this point in world history, we have the might and, therefore, accommodating the views of others seems a low priority. But the day will surely come when others also have the might, and then we may wish we had shown restraint so that we can argue that others should as well.

There is a famous scene from “A Man For All Seasons,” the magnificent play

Robert Bolt wrote, about the conflict between Sir Thomas More, a man of conscience and the law, and his sovereign, Henry VIII.

More and Roper, his son-in-law, are arguing about the law at this point in the play. Their conversation is instructive. Roper, the son-in-law, exclaims: “So now you'd give the Devil benefit of law!” More replies: “Yes. What would you do? Cut a great road through the law to get after the Devil?” Roper says: “I'd cut down every law in England to do that,” to which More responds: “. . . And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast . . . and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then?” “Yes, I'd give the Devil benefit of law, for my own safety's sake.”

I submit that if the United States determines to circumvent the U.N. in this case, the Devil may well turn round on us, and we could reap the whirlwind for years to come.

I yield the floor.

HOUSTON, WE HAVE A PROBLEM

Mr. LEAHY. Mr. President, after years of shortchanging our nation's crime labs, the Administration has unveiled a proposal to spend more than \$1 billion over five years on forensic DNA programs. This proposal is overdue, but it is welcome, and it will make a difference.

For two years I have repeatedly urged the Administration and House Republicans to fully fund existing programs aimed at eliminating the DNA backlog crisis and, in particular, the inexcusable backlog of untested rape kits. Until now, the Justice Department has simply refused to make this a high priority. In the meantime, untested critical evidence has been piling up while rapists and killers remain at large, while victims continue to anguish, and while statutes of limitation expire.

I am pleased that the Administration's new commitment to funding DNA programs includes \$5 million a year for post-conviction DNA tests that can be used by inmates to prove their innocence. Post-conviction DNA testing has already been used to exonerate more than 120 prisoners nationwide, including 12 awaiting execution. Last year the Justice Department cancelled plans to spend \$750,000 on a post-conviction DNA testing initiative, and diverted the money to another program. It is heartening that the Department at last has recognized the importance of ensuring that the power of modern science, in the form of DNA testing, is available to help prosecutors and defendants alike establish the truth about guilt and innocence.

Clearly, DNA testing is critical to the effective administration of justice

in 21st Century America. But like every forensic tool, DNA testing is only as accurate as the labs and technicians that process the evidence. When we shortchange our labs, we shortchange the whole criminal justice system. The appalling situation in Houston, Texas, is only the most recent example.

Last December, a state audit conducted by a team of forensic scientists uncovered widespread problems at the Houston Police Department's crime laboratory. These problems included poorly trained technicians, shoddy recordkeeping, and holes in the roof that allowed rain to possibly contaminate samples. A Houston councilwoman who toured the lab last June described trash buckets and water buckets throughout the facility: "They were having to move tables around, because some of the leaks were near and sometimes above where the analysis was occurring."

Elizabeth Johnson, a DNA expert familiar with the Houston police lab, has pointed to serious problems beyond holes in the ceiling problems that suggest widespread incompetence or even corruption. Dr. Johnson has testified that lab technicians often vastly exaggerated the probability of a defendant's guilt, while mischaracterizing evidence that exonerated a defendant as "inconclusive." In many cases, she found, lab technicians' reports, which were used to make critical decisions throughout the criminal justice system, asserted conclusions that were entirely unsupported by their data: not technical errors; not misjudgments; but flat-out fabrications.

I have spoken before about the disastrous consequences of sloppy lab work. Two years ago, an FBI investigation found that a police chemist in Oklahoma City was routinely exaggerating her results. At least one man who was convicted on the basis of the chemist's so-called "expert" testimony was later exonerated and released from prison. He had already served 15 years of a 65-year sentence.

There are many other cases in which people have been wrongly convicted because forensic specialists were incompetent, or because they fabricated or overstated test results to support the prosecution's theory of the case. In 1997, we learned about major problems at the FBI's crime labs, ranging from unqualified forensic scientists to contamination of evidence and the doctoring of laboratory reports. Before that, there were similar problems in various state crime labs. Police in Baltimore are currently reviewing 480 cases worked on by a former police chemist who testified at a 1983 rape trial against a defendant who was later exonerated.

While the situation in Houston is not unprecedented, it is particularly alarming. That is because Houston is in Harris County, the execution capital of the United States. Harris County sends more people to death row in a

year than many states do in a decade. More defendants from Harris County have been executed than from any other county in the country.

Harris County prosecutors are now busily reviewing their closed cases to determine whether they involved evidence processed by the Houston police lab. They have already ordered new DNA testing in more than 20 cases, including 7 cases in which the defendant was sentenced to death. Ultimately, several hundred cases will need to be retested.

Retesting has already cleared one man, Josiah Sutton. Sutton was only a teenager when he was convicted and sentenced to 25 years for rape, based largely on a bogus DNA match by the Houston police lab. It now appears that he spent the last 4½ years in prison for nothing.

How many Josiah Sutton's has Harris County wrongfully convicted? Probably quite a few. Hundreds of people have been convicted using DNA evidence processed by the Houston police lab. The fact that the very first batch of cases to be retested has exposed a wrongful conviction suggests that Sutton may be just the tip of the iceberg.

How many more people will be cleared through retesting? That is a trickier question. According to the state audit, the Houston police lab routinely consumed most if not all of the evidence available for testing, with little or no regard for the importance of conserving samples. This practice will greatly limit the possibility for retesting in the hundreds of cases now under review.

DNA testing is an extraordinary tool for uncovering the truth, whatever the truth may be. It can show us conclusively, even years after a conviction, where mistakes have been made. But it cannot show us anything if there is no evidence to test. By needlessly consuming entire DNA samples, the Houston police lab may have destroyed the only key to freedom for more than one wrongly convicted person.

The failure to preserve DNA evidence is a problem in many parts of the country, but it seems to be an official policy in Harris County. In 1997, DNA testing exonerated Harris County defendant Kevin Byrd only because, by pure luck, the 12-year rape kit had not been destroyed pursuant to bureaucratic routine. The very week that Byrd was freed, however, Harris County officials systematically destroyed the rape kits from 50 other old cases, citing a lack of storage space.

No doubt many of the rape kits that Harris County destroyed that week and over the years were analyzed under the leaky ceilings of the Houston police lab. But even with the best of intentions, Harris County prosecutors will not be able to resurrect that evidence for retesting. There may well have been another Josiah Sutton or two among those cases—defendants who were wrongfully convicted based on bad lab work—but without the evidence to prove it, we will probably never know.

The essence of law enforcement is seeking the truth, not hiding from it or destroying evidence in a fit of pique or to save face. The disdain for science, truth, and justice we have seen in Houston, at the heart of the nation's capital punishment system, is an utter disgrace.

All of which is to say that I hope my colleagues will join me in supporting the Administration's new DNA initiative. One billion dollars will give States the help they desperately need to improve the quality and credibility of their crime labs, and to eliminate the backlog of untested DNA evidence. Five million dollars a year will go a long way toward ensuring that no deserving inmate is denied post-conviction DNA testing because he or she cannot afford to pay for it.

In his remarks announcing the DNA Initiative, Attorney General Ashcroft said he "looked forward to working with the Chairmen of the House and Senate Judiciary Committees to develop legislation that provides appropriate post-conviction DNA testing to federal inmates."

I welcome that, but I have a better idea. With Chairman HATCH's agreement, I would like to issue a bipartisan invitation to Attorney General Ashcroft to come to talk to us in open committee about a legislative proposal that is already written, has already been refined and debated, and has already received overwhelming bipartisan support.

I refer to the Innocence Protection Act, a modest and practical package of reforms that aims at reducing the risk of error in capital cases. The reforms proposed by the IPA are designed to create a fairer system of justice, where the problems that have sent innocent people to death row would not occur, and where victims and their families could be more certain of the accuracy, and finality, of the results.

More specifically, the Innocence Protection Act would ensure that post-conviction DNA testing is available in appropriate cases, where it can help expose wrongful convictions, and that DNA evidence is adequately preserved throughout the country. The bill also addresses one of the root causes of wrongful convictions—inadequate defense representation at trial.

Last year, the IPA won the support of a bipartisan majority of the Senate Judiciary Committee, and more than half the entire House of Representatives. Together with other lead sponsors—Senator GORDON SMITH, Senator SUSAN COLLINS, Representative BILL DELAHUNT, and Representative RAY LAHOOD—I am committed to reintroducing the IPA this year and getting it signed into law.

The path to prompt reform is through legislation that is already written and fine-tuned. The path to consensus is through legislation that has already received broad bipartisan support. And the path to addressing the fundamental problems in our criminal

justice system is through legislation that addresses the most common cause of wrongful convictions—inadequate defense counsel—as well as their most conspicuous solution—DNA testing. The path, in each case, is the Innocence Protection Act.

I look forward to continuing to work with my colleagues on both sides of the aisle to pass the Innocence Protection Act this year.

I ask unanimous consent to have printed in the RECORD 2 articles, one from the Washington Post, the other from the New York Times, which describe the ongoing investigation into the Houston police lab.

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

[From the New York Times, Mar. 11, 2003]

REVIEW OF DNA CLEARS MAN CONVICTED OF RAPE

(By Adam Liptak)

When Josiah Sutton went on trial for rape in 1999, prosecutors in Houston had little to build a case on. The victim was the only witness, and her recollection was faulty. But they did have the rapist's DNA, and technicians from the Houston police crime laboratory told the jury that it was a solid match.

That was enough to persuade the jurors to convict Mr. Sutton and send him to prison for 25 years.

But new testing has conclusively demonstrated that the DNA was not Mr. Sutton's, the Houston Police Department said yesterday.

The retesting is part of a review of the laboratory that began after a scathing state audit of its work led to a suspension of genetic testing in January. Mr. Sutton's apparent exoneration is the first to result from the review.

Legal experts say the laboratory is the worst in the country, but troubles there are also seen in other crime laboratories. Standards are often lax or nonexistent, technicians are poorly trained and defense lawyers often have no money to hire their own experts. Questions about the work of laboratories and their technicians in Oklahoma City, Montana and Washington State and elsewhere have led to similar reviews. But the possible problems in Houston are much greater. More defendants from Harris County, of which Houston is a part, have been executed than from any other county in the country.

"This is an earthquake," Mr. Sutton's lawyer, Bob Wicoff, said. "The ramifications of this for other cases, for death penalty cases, is staggering. Thousands of cases were prosecuted on the basis of this lab's work."

The audit of the Houston laboratory, completed in December, found that technicians had misinterpreted data, were poorly trained and kept shoddy records. In most cases, they used up all available evidence, barring defense experts from refuting or verifying their results. Even the laboratory's building was a mess, with a leaky roof having contaminated evidence.

The police and prosecutors vowed to retest DNA evidence in every case where it was used to obtain a conviction. But they remained confident that the laboratory's problems were primarily matters of documentation and testimony that was not conservative enough.

The Sutton case has changed that.

"It's a comedy of errors, except it's not funny," said State Representative Kevin Bailey, a Houston Democrat who is chairman of

a committee of the Texas Legislature investigating the laboratory. "You don't need to be a scientist to know that you have to wear surgical gloves. You have to tag evidence. You need to not have a leaky roof contaminating evidence."

The Houston police have turned over some 525 case files involving DNA testing to the Harris County district attorney's office, which has said that at least 25 cases warrant retesting, including those of seven people on death row. Both numbers will grow significantly as more files are collected and analyzed, Marie Munier, the assistant district attorney supervising the project, said.

Mr. Bailey said he was troubled that the retesting was being conducted under the supervision of Harris County prosecutors.

"I have lost confidence in the Police Department and the district attorney's office to handle this," Mr. Bailey said. "I'm really bothered by the fact that the review is being done by the same people who allowed the errors to go on and prosecuted these cases and so have a stake in the outcomes of the review."

Joseph Owmbly, who prosecuted Mr. Sutton, said his office had not received a formal report from Identigene Inc. of Houston, the outside laboratory his office hired to perform the retesting.

"If he has been exonerated," Mr. Owmbly said, "we also have an eyewitness identification, and we will have to work through that. If he was exonerated, it certainly doesn't make me feel any better."

Mr. Owmbly said his confidence in the police laboratory's work had been shattered. "We're not scientists," he said. "We were presenting evidence that was presented to us. There is a big problem. We are treating it as a big problem."

Houston police officials issued a statement yesterday confirming Mr. Sutton's exclusion, but noted that they had not received a formal report from Identigene.

At a hearing on Thursday, Chief C. O. Bradford said his department had shut down its DNA laboratory and begun an internal affairs department investigation on whether there was criminal or other wrongdoing. Chief Bradford added that there should be a "cease and desist" on executions in the relevant cases until the retesting is complete.

"There certainly is a fear that people were wrongly accused, wrongly convicted or received longer sentences than they should have," he said last week in an interview in Austin.

William C. Thompson, a professor of criminology at the University of California at Irvine who has studied the Houston police laboratory's work, said, "The likelihood that there are more innocent people convicted because of bad lab work is almost certain."

Elizabeth A. Johnson, a DNA expert retained by Mr. Sutton's lawyers, has appeared as a defense witness in about 15 cases involving the crime laboratory and is perhaps its most vocal critic.

In one rape case, Dr. Johnson said, a technician testified that a swab of the victim found semen, even though initial laboratory reports said there was no semen present. In other cases evidence that technicians said was inconclusive actually exonerated the defendant. Often, she said, technicians would vastly exaggerated the probability of a defendant's guilt.

There was, she said, "an overall lack of understanding of how this work is done and what it means."

She said the laboratory was particularly weak where the sample involved a mixture of DNA from two people.

"They can't do a sperm sample separation to save their lives," Dr. Johnson said. "If you put a gun to their heads and said you

have to do this or you will die, you'd just have to kill them."

There is plenty of blame to go around in the Sutton case, legal experts said, and it suggests a need for an independent investigation and systemic reform.

"The criminal justice system in Houston is completely dysfunctional," Professor Thompson said. He examined eight DNA cases processed by the Houston police at the request of KHOU-TV, the television station that first called attention to the laboratory's problems in several reports in November.

In Mr. Sutton's case, there happened to be a small amount of evidence available for retesting. That is seldom the case in Houston, according to the state's audit.

Mr. Sutton's mother, Carol Batie, said her son's main concern on hearing there would be retesting was that so little evidence remained available.

"We were concerned it would come back inconclusive," Mr. Batie said.

Mr. Bailey, the state representative, said the Sutton case should change the usual presumptions in cases where retesting is impossible. "Unless there is other strong corroborative evidence," he said, "those people at the very least deserve retrials."

The victim in the Sutton case identified him, but her testimony has been questioned. She said she was raped by two men. Both were around 5 feet 7 inches tall, she said; one weighed 135 pounds, the other weighed 120.

Five days later, she saw several men on the street and identified two of them as her attackers. DNA evidence excluded one man at the time, meaning one of her two identifications was demonstrably mistaken from the start. Mr. Sutton, moreover, is 5 foot 10 and weighs more than 200 pounds.

The Sutton case, said David Dow, a University of Houston law professor who represents death row inmates in capital appeals, "is probably the tip of the iceberg."

"There were two different problems in the crime lab—scientific incompetence and corruption," Professor Dow said. "That's a deadly combination. Once you have corruption, there is no reason to think that this is limited to DNA cases or cases where there is scientific evidence of any sort."

"If this were a death penalty case," he added, "Sutton may well have been executed by now."

[From the Washington Post, Mar. 1, 2003]

TEX. LAWMAKERS PROBE LAB OVER REPORTS OF TAINTED DNA EVIDENCE

(By Karin Brulliard)

AUSTIN, Feb. 28.—The Texas Legislature has launched an inquiry into the operations of the Houston Police crime lab after reports that the lab's shoddy facilities and faulty practices may have led to contamination of DNA evidence in hundreds of cases.

An independent audit by the state in December uncovered the problems. In January, police officials suspended DNA testing at the lab, and the Harris County District Attorney's office began a review of all cases that involved evidence processed there.

So far, the DNA from at least 14 convictions will be retested because of information secured during the reviews, said District Attorney Charles A. Rosenthal Jr. At least three involve death row cases.

Houston is in Harris County, which has sent more people to death row than any other county in Texas.

"It's a serious, serious problem," said state Rep. Kevin Bailey, a Democrat from Houston who is chairman of the House General Investigating Committee, which will hold hearings on the lab next week. "The public has a right to expect a fair and accurate analysis

by a metropolitan crime lab. When we find out that we've not had that, it causes people to question the whole criminal justice system."

In the December audit, a team of forensic scientists detailed problems that included inadequate recordkeeping, poor maintenance of equipment and a leaky roof that it said could lead to contamination of DNA samples.

City Councilwoman Carol Alvarado, who toured the facility June 11 after receiving complaints from lab employees, said the roof was in poor shape.

"These were not just leaks; these were holes," she said. "There were trash buckets and water buckets throughout the lab. They were having to move tables around, because some of the leaks were near and sometimes above where the analysis was occurring."

Alvarado said she reported her findings to the council June 19, but funding issues prevented the council from awarding a contract for roof repair until January.

Houston Police Department spokesman Robert Hurst refused to comment on the lab.

Elizabeth Johnson, who directed the Harris County DNA lab until 1996, said water from a leak could taint samples. But she also said the city police lab's problems run deeper than a leaky roof.

"Every single case I ever reviewed of theirs had at least one serious error and sometimes more than one error," she said. "I'm not talking about a typo. I'm talking about things like controls being missing. Most common were that their reports would say one thing, and their data didn't support that at all."

Rosenthal said any DNA retests that reveal errors will lead to new trials.

Bailey said the use of DNA evidence from a flawed lab reveals the "win and get a conviction at all costs" attitude of the district attorney's office. He wants hearings to determine whether an external review is necessary.

"No innocent people should be convicted because of faulty analysis," he said. "At this point, I'm skeptical as to whether the Houston lab can analyze their own mistakes."

[From the Washington Post, Mar. 13, 2003]

TEX. EXECUTION STAYED AT LAST MINUTE—
SUPREME COURT CONSIDERS REVIEW

(By Charles Lane)

The Supreme Court granted a last-minute stay of execution last night to a Texas death-row inmate who says he is innocent of the murder of which he was convicted 23 years ago, setting the stage for another high-profile debate at the court over alleged flaws in the U.S. capital punishment system.

In a brief order issued about 10 minutes before officials were to administer a lethal injection to Delma Banks Jr., the justices said that he should be kept alive at least long enough for them to consider his request for a full-scale hearing on claims that his 1980 trial in Bowie County, Tex., was marred by prosecutorial misconduct, ineffective defense counsel and racially discriminatory jury selection.

Banks, an African American, was convicted of killing a white teenager by an all-white jury. If his execution had proceeded last night, he would have been the 300th person put to death in Texas since the state resumed executions in 1982.

It was unclear when the court might meet to consider Banks' petition. Its next scheduled closed-door conference is March 21. However, the stay may be a favorable sign for Banks because it required the votes of at least five justices, and a decision to hear his case could be made with the assent of just four justices.

Consistent with growing public concern over the possibility of wrongful death sen-

tences, the court has shown interest recently in the issues raised by Banks' appeal, though its rulings have not always come out the way death penalty opponents would have liked.

The court ordered a lower court review of another Texas man's death sentence last month, ruling that a case could be made that jury selection at his trial was racially biased; last year, it abolished capital punishment for the mentally retarded. But also last year, the court rebuffed an effort to seek abolition of the death penalty for juveniles and let Virginia proceed with the execution of a murderer who had been represented at trial by the murder victim's former lawyer.

"Delma Banks Jr., who has maintained his innocence from the beginning, found justice in the courts today, and we are hopeful that this delay will allow a meaningful review of the serious claims in his case," Banks' lawyer, George Kendall of the NAACP Legal Defense and Education Fund, said in a prepared statement. "The court's decision to stay the execution in order to potentially hear the significant claims put before it demonstrates that our tribunals will not turn a blind eye to egregious miscarriages of justice."

Bobby Lockhart, district attorney of Bowie County, said, "Factually, [Banks] was guilty, and legally the jury found him guilty. As to the death penalty, that's up to the Supreme Court. I think that the Supreme court will review the case and find that he was guilty, and I think there's no way the stay [of execution] will be extended beyond 30 days."

Banks' case has attracted attention in part because of the supporters who have rallied to his cause, including former FBI director William S. Sessions and two former federal appeals court judges.

In a brief submitted to the Supreme Court in support of Banks' request for a stay, Sessions and his colleagues said that the Banks case is tainted by "uncured constitutional errors" that are "typical of those that have undermined public confidence in the fairness of our capital punishment system."

Banks, then 21, was convicted in 1980 of shooting his co-worker Richard Wayne Whitehead, 16, to death with a .25-caliber handgun.

Banks' lawyers argue that prosecutors wrongfully suppressed evidence that one of their key witnesses, who has since recanted, lied on the stand. Banks' attorneys also argue that his inexperienced defense lawyers offered little evidence to counter prosecutors' claims that Banks deserved the death penalty, even though he had no previous criminal record.

Prosecutors kept African Americans off the jury, they contend, producing the all-white panel that convicted Banks and sentenced him to death in the course of two days of legal proceedings.

No physical evidence linked Banks to the crime. But Banks was the last person seen with Whitehead, and prosecutors said their case against him is strong. Last week, the New Orleans-based U.S. Court of Appeals for the 5th Circuit, reversing a federal district judge's ruling in favor of Banks, permitted his execution to proceed, on the grounds that the alleged flaws in his trial were not substantial enough to have changed the outcome.

The Texas Court of Criminal Appeals this week refused to block Banks' execution, and the Texas Board of Pardons and Paroles would not hear his plea because it was filed too late.

Because of the prolonged appeals process in his case, Banks has been on death row while Texas conducted 299 executions, the most of any state since the Supreme Court permitted states to resume capital punishment in 1976.

RULES OF THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MCCAIN. Mr. President, the Committee on Commerce, Science, and Transportation has adopted rules governing its procedures for the 108th Congress. Pursuant to rule XXVI, paragraph 2, of the Standing Rules of the Senate, on behalf of myself and Senator HOLLINGS, I ask unanimous consent that a copy of the Committee Rules be printed in the RECORD.

RULES OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

I. MEETINGS OF THE COMMITTEE

1. The regular meeting dates of the Committee shall be the first and third Tuesdays of each month. Additional meetings may be called by the Chairman as he may deem necessary or pursuant to the provisions of paragraph 3 of rule XXVI of the Standing Rules of the Senate.

2. Meetings of the Committee, or any Subcommittee, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the Committee, or any Subcommittee, on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in subparagraphs (A) through (F) would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the members of the Committee, or any Subcommittee, when it is determined that the matter to be discussed or the testimony to be taken at such meeting or meetings—

(A) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) will relate solely to matters of Committee staff personnel or internal staff management or procedure;

(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(D) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(E) will disclose information relating to the trade secrets of, or financial or commercial information pertaining specifically to, a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(F) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

3. Each witness who is to appear before the Committee or any Subcommittee shall file with the Committee, at least 24 hours in advance of the hearing, a written statement of his testimony in as many copies as the Chairman of the Committee or Subcommittee prescribes.

4. Field hearings of the full Committee, and any Subcommittee thereof, shall be