to freedom, democracy, and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like James' can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with James.

TRUTH IN TRIALS ACT

Mr. GRASSLEY. Mr. President, the Federal Government has a long-standing obligation to monitor the purity, safety, and effectiveness of the medicines that are available to the public. For this reason, I would like to express my opposition to S. 2989, the Truth in Trials Act. This legislation reverses almost 100 years of progress that we have made by undermining any scientific evidence about medicine and replacing it with popular referendums passed by slick ad campaigns.

There was a time in this country when individuals and businesses could market anything as a medicine and make any claim for its effectiveness. Because of this, a flood of narcotics and stimulants were freely marketed as nostrums sold over the counter and through the mail. Often these ''miracle cures'' were miscellaneous concoctions made from unknown ingredients. In addition, these nostrums were often accompanied by endless testimonials from satisfied customers on how well these products performed.

Thankfully, our grandparents and great-grandparents, who had to deal with these practices, woke up to the fraud that was being perpetrated on the public by these ''snake-oil salesmen.'' These dangerous drugs were creating a major addiction problem, and the unknown ingredients in these cures were actually doing a great deal of harm. In response to demands from the public, truth in labeling was born.

Consumers in the early 1900s took steps to ban dangerous drugs to determine what drugs had medical uses that could be demonstrated to be safe and effective. Based on this experience, the Pure Food, Drug, and Cosmetic Act, FDCA, of 1906 was passed, which required food and medicines be pure, and the contents of medicines be labeled. In 1938, the FDCA was amended to add the requirement that all medicines be safe, and the Food and Drug Administration was created to regulate this. In 1962, the FDCA was further amended by the Harris-Kefauver amendment, which added an additional requirement that any medicine must also be effective, and further required the FDA to establish efficacy standards.

Furthermore, a variety of laws were passed to deal with the distribution of dangerous drugs. The first of these was the Harrison Narcotics Control Act of 1914. The next major piece of legislation on drug control was the Marijuana Tax Act of 1937. These and other laws covering various types of drugs were replaced in 1970 when the Controlled Substances Act was signed into law. This Act further defined the process that a substance had to go through to become an acceptable medicine. In addition, a five-tier scheduling system for all pharmacological substances was established, allowing for the categorizing of all medicines and other pharmacological substances based on their abuse potential and accepted use as a medicine.

Unfortunately, this does not mean that we will no longer have unscrupulous business enterprises that promise salvation through snake-oil products. Over the past 60 years, the FDA has developed a careful, proven method for testing and approving drugs. This process is the standard by which the rest of the world measures the safety and effectiveness of their drug approval system.

Americans today have the world's safest, most effective system of medical practice, built on a process of scientific research, testing, and oversight that is unequaled. Every drug prescribed as medicine in this country must be tested according to scientifically rigorous protocols to ensure that it is safe and effective before it can be sold.

To this date, over 15,000 scientific, peer-reviewed studies into the medicinal value of marijuana have been published, and not one demonstrates that smoking marijuana has any medicinal value for any condition. In fact, there is medical evidence to suggest that marijuana may actually aggravate some of the conditions it is supposed treat.

On top of all that, there are legal, effective medicines that are already currently available and meet all of the guidelines that have been established by the FDA. This includes Marinol, which is a legally available, FDA-approved form of a marijuana extract that is currently being used as a treatment for nausea and AIDS wasting syndrome. In addition, there are many other medicines that have been developed and received FDA approval that do not have the hallucinogenic side effects that come with smoking marijuana. These are medicines that meet scientific standards and do not rely on anecdotes and testimony for validation.

Certainly, we all want to provide relief for people who are sick and dying, but smoking marijuana has not been scientifically proven to have any medicinal value. By allowing patients and caregivers to use and provide marijuana through the political process, we clearly bypass the safeguards established by the FDA to protect the public from dangerous or ineffective drugs.

I urge my colleagues to join me in opposing this bill and other efforts to legalize marijuana.

JUSTICE FOR ALL ACT

Mr. LEAHY. Mr. President, last month, the House and Senate overwhelmingly approved H.R. 5107, the Justice for All Act of 2004. This important criminal justice package includes the Innocence Protection Act, a modest and practical set of reforms aimed at reducing the risk of error in capital cases. I first introduced the IPA in February 2000, and as time passed, the bipartisan coalition in support of this pioneering bill grew. Capping these years of effort, the President has now signed the bill into law.

As enacted, the Innocence Protection Act contains several key reforms. First, it ensures access to post-conviction DNA testing for those serving time in prison or on death row for crimes they did not commit. Second, it establishes a grant program to help defray the costs of post-conviction DNA testing. This program is named in honor of Kirk Bloodsworth, the first death row inmate exonerated as a result of DNA testing. Third, the IPA establishes rules for preserving biological evidence secured in the investigation or prosecution of a Federal offense. Fourth, it authorizes grants to States to improve the quality of legal representation in capital cases. Finally, it substantially increases the maximum compensation that may be awarded in Federal cases of wrongful conviction.

Three weeks before the Senate approved H.R. 5107, the Senate Judiciary Committee wrapped up weeks of work on the Senate version of the bill, S. 1700, the Advancing Justice Through DNA Technology Act of 2003. The Committee voted to approve S. 1700 by a bipartisan vote of 11 to 7, but given time constraints and continuing negotiations, the Committee did not issue a report. Nor was there a conference report on the final legislation, as the Senate's acceptance of H.R. 5107 in substantially the form that it passed the House made a House-Senate conference unnecessary.

The upshot of all of this is that there is a substantial gap in the legislative history of this landmark legislation. As the principal author of the Innocence Protection Act, I offer the following remarks to fill that gap and guide those who will be implementing and enforcing these important provisions in the future.

I introduced S. 1700 on October 1, 2003, together with the Chairman of the Judiciary Committee, Senator ORRIN HATCH, and 16 additional co-sponsors. On the same day, the Chairman of the House Judiciary Committee, Representative JAMES SENSENBRENNER, and 99 cosponsors introduced an identical measure, H.R. 3214.

The bill moved swiftly through the House. On October 16, 2003, the House Judiciary Committee reported an amended version of the bill by a vote of 28 to 1. The few changes to the bill were largely technical, clarifying, or stylistic in nature, and are described in the report accompanying the bill to the

full House. None of these changes affected title III of the bill, which contained the Innocence Protection Act. On November 5, 2003, the House passed a further amended version of the bill by a vote of 357 to 67. This version did include a significant change to the counsel provisions in title III, which I will address shortly.

In the Senate, the bill progressed more slowly. The Senate Judiciary Committee met in executive session on three occasions to consider S. 1700. At the first of these meetings, on July 22, 2004, the committee adopted an amendment in the nature of a substitute which replaced the text of S. 1700 with a modified version of H.R. 3214, as passed by the House.

The committee continued its mark-up of S. 1700 on September 9, 2004. The only amendment offered during this session sought to expand on a title I provision regarding the national DNA database, and did not affect any provision of the Innocence Protection Act. The committee rejected this amendment after lengthy debate and then adjourned.

The committee completed its consideration of S. 1700 on September 21, 2004. During this session, the committee rejected a total 21 amendments, 17 of which pertained to the Innocence Protection Act.

Senator CORNYN offered two of the IPA-related amendments. The first proposed to replace the text of S. 1700 with that of S. 1828—a pared down version of S. 1700 that stripped out the Innocence Protection Act in its entirety. The second Cornyn amendment proposed to strike an entire subtitle of S. 1700 dealing with competent counsel and substituting a different program that failed to require any accountability on the part of States accepting Federal money. The committee rejected both of these amendments by votes of 7 to 11.

Senator KYL offered nine amendments to the IPA provisions regarding post-conviction DNA testing. Six of the amendments sought to restrict access to post-conviction DNA testing in the Federal system, as by requiring that any motions for such testing be filed within 5 years of the bill's enactment. One amendment proposed to raise the standard for obtaining a new Federal trial based on exculpatory DNA evidence—instead of proving that a new trial would probably result in an acquittal, a defendant would be put to the virtually impossible burden of proving that he did not commit the offense. Two of the amendments would have reduced the incentive for States to adopt post-conviction DNA testing procedures comparable to the Federal procedures. The committee rejected all nine amendments by a vote of 7 to 10 or 7 to 11.

The other six IPA amendments, also offered by Senator KYL, pertained to the IPA's requirement that Federal authorities preserve any biological evidence secured in the investigation or prosecution of a Federal offense for as long as a defendant remained incarcerated for that offense, subject to a number of practical and straightforward exceptions. All six amendments would have relaxed this requirement to some degree, allowing for the premature destruction of biological evidence that could clear the innocent and identify the guilty. The committee rejected all six amendments, most by a vote of 7 to 11.

Having voted down all amendments to the substitute amendment, the committee approved the bill by a final vote of 11 to 7. Those voting in the affirmative were myself, Chairman HATCH, and Senators SPECTER, DEWINE, KENNEDY, BIDEN, KOHL, FEINSTEIN, FEINGOLD, SCHUMER, and DURBIN. Those voting in the negative were Senators GRASSLEY, KYL, SESSIONS, GRAHAM, CRAIG, CHAMBLISS, and CORNYN.

The committee vote on September 21, 2004, was the last action taken on S. 1700. As I discussed in a floor statement on October 7, 2004, no sooner had the bill been reported favorably to the full Senate than it was blocked by the same Senators who had held it up in Committee, buttressed by opposition from President Bush and Attorney General John Ashcroft. As a result, the full Senate was never afforded an opportunity to consider S. 1700 as a free-standing bill.

With time running out before the congressional adjournment, the House acted again. On September 22, 2004, the House Judiciary Committee approved the text of S. 1700 as part of H.R. 5107, a larger criminal justice package known as the Justice For All Act of 2004. There followed several weeks of intense negotiations involving House and Senate sponsors of the legislation, the handful of hold-out Senators, and the Department of Justice. While no agreement was reached, and the Department continued to oppose the bill, the House made a number of changes to the legislation to address concerns that had been raised. On October 6, 2004, the House passed a modified version of H.R. 5107 by a vote of 393 to 14 and sent it to the Senate. The Senate passed the bill three days later by voice vote, the House made a number of enrollment corrections the same day, and on October 30, 2004, President Bush signed the bill into law.

The Justice For All Act of 2004 enhances protections for victims of Federal crimes, increases Federal resources available to State and local governments to combat crimes with DNA technology, and provides safeguards to prevent wrongful convictions and executions.

Title I of the bill is the Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act. The provisions of this title establish enhanced and enforceable rights for crime victims in the Federal criminal justice system, and authorize grants to help States implement and enforce their own victims' rights laws.

Titles II and III of the bill establish the Debbie Smith DNA Backlog Grant Program, which authorizes $755 million over five years to address the DNA backlog crisis in the nation's crime labs, and also creates other new grant programs to reduce forensic science backlogs, train criminal justice and medical personnel in the use of DNA evidence, and promote the use of DNA technology to identify missing persons.

Title IV of the bill, the Innocence Protection Act, increases access to post-conviction DNA testing that may prove innocence; establishes the Kirk Bloodsworth program to help defray the cost of post-conviction DNA testing; sets rules for preserving biological evidence secured in Federal criminal cases; authorizes grants to improve the quality of legal representation in State capital cases; and increases compensation in Federal cases of wrongful conviction.

The Innocence Protection Act reflects years of work and intense negotiation. I will now discuss its key provisions in greater detail.

Subtitle A of title IV enacts a new chapter in the Federal Criminal Code dealing with DNA testing. In little over a decade, some 153 people across the country have been exonerated by this remarkable technology. That number includes more than a dozen individuals who had been sentenced to death, some of whom came within days of being executed.

Post-conviction DNA testing does not merely exonerate the innocent it can also solve crimes and lead to the incarceration of very dangerous criminals. In case after case, DNA testing that exculpates a wrongfully convicted individual also inculpates the real criminal. Just this year, for example, the exoneration of Arthur Lee Whitfield in Virginia led to the identification of another inmate, already serving a life sentence, as the true perpetrator of two rapes for which Whitfield had served 22 years in prison. Last year, DNA evidence in the case of Kirk Bloodsworth was matched to another man, a convicted sex offender who has now pleaded guilty to the horrendous rape-murder that sent Mr. Bloodsworth to Maryland's death row.

There are still numerous prisoners throughout the country whose trials preceded modern DNA testing, or who did not receive pretrial testing for other reasons. If history is any guide, some of these individuals are innocent of any crime.

The new chapter 228A of title 18 is designed to ensure that Federal prisoners with real claims of innocence can get DNA testing of evidence that could support such claims. It does this by establishing rules for when a court shall order post-conviction DNA testing—to be codified at 18 U.S.C. § 3600—and rules for when the government may dispose of biological evidence—to be codified at 18 U.S.C. § 3600A.

Under section 3600, a court shall order DNA testing if it may produce

new material evidence that would raise a reasonable probability that the applicant did not commit the offense. This standard was the subject of intense negotiations, as members recognized that setting the standard too low could invite frivolous applications, while setting it too high could defeat the purpose of the legislation and result in grave injustice. I argued that in balancing these concerns, Congress should be guided by the principle that the criminal justice system should err on the side of permitting testing, in light of the low cost of DNA testing and the high cost of keeping the wrong person locked up. I am pleased that this view ultimately prevailed.

During the final round of negotiations on H.R. 5107—after the House Judiciary Committee reported the bill, and before final passage by the full House—the standard for ordering a DNA test was modified in two respects. First, as introduced in both the House and the Senate, section 3600(a)(8) appeared to impose on applicants the virtually impossible burden of showing that a DNA test ''would'' produce new material evidence of innocence. Under section 3600(a)(8) as enacted, applicants need only show that a test ''may'' produce such evidence.

Second, the same provision was stripped of unnecessary language to the effect that courts must ''assume the DNA test result excludes the applicant'' when considering whether DNA testing would raise a reasonable probability that the applicant did not commit the offense. Such an assumption is already implicit, since a court could not reasonably assess the probability that a convicted offender was wrongly convicted without weighing some new evidence of innocence, such as a DNA exclusion. With or without the assumption language, the question for a court boils down to this: Would a DNA exclusion make it more likely than not that the applicant was innocent? If so, the court should order DNA testing, provided that the various technical requirements set forth in section 3600(a) are met.

These requirements are simply stated. First, the applicant must assert his or her innocence under penalty of perjury. Second, the evidence to be tested must have been secured in relation to the investigation or prosecution of the offense. Third, the evidence must not have been previously subjected to DNA testing or, if it was, the applicant must be requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing. If the evidence was not previously tested, the applicant must also show that he did not waive the right to request DNA testing of that evidence in a court proceeding after the date of enactment of the IPA, or knowingly fail to request DNA testing of that evidence in a prior motion for post-conviction DNA testing. A waiver of the right to request DNA testing must be knowing and voluntary, and will ideally be made on the record and inquired into by the court before it is accepted.

Fourth, the evidence to be tested must be in the possession of the Government, subject to a chain of custody, and retained under conditions sufficient to ensure that it was not substituted, contaminated, tampered with, replaced, or altered in any material respect. Fifth, the proposed DNA testing must be reasonable in scope, use scientifically sound methods, and be consistent with accepted forensic practices. Sixth, the applicant must identify a theory of defense that is not inconsistent with an affirmative defense presented at trial, and that would establish the applicant's innocence. Seventh, the applicant must certify that he will provide a DNA sample for purposes of comparison.

Eighth, if the applicant was convicted following a trial, the identity of the perpetrator must have been at issue in the trial. If the applicant was convicted following a guilty plea, this requirement does not apply. Congress rightly rejected the Justice Department's position that inmates who pleaded guilty should be ineligible for DNA testing in light of the many documented cases in which defendants pleaded guilty to crimes they did not commit. Indeed, the Senate Judiciary Committee report in the 107th Congress on the Innocence Protection Act of 2002 describes four cases in which defendants pleaded guilty to crimes they did not commit and were later exonerated by DNA tests.

The final requirement established by section 3600 is that motions for post-conviction DNA testing be made ''in a timely fashion.'' Motions are entitled to a rebuttable presumption of timeliness if filed within five years of enactment of the IPA, or three years after the applicant's conviction, whichever is later. Thereafter, it is presumed that a motion is untimely, except upon good cause shown. As I explained in an earlier floor statement, the Justice Department has complained that the ''good cause'' exception is so broad you could drive a truck through it, and its stubborn opposition to the IPA turned in large part on the inclusion of this language. But while I agree that the language is broad, it is intentionally so; I would not agree to a presumption of untimeliness that could not be rebutted in most cases. At the same time, this provision should allow courts to deal summarily with the Department's hypothetical bogeyman—the guilty prisoner who ''games the system'' by waiting until the witnesses against him are dead and retrial is no longer possible, and only then seeking DNA testing.

As may be apparent from the awkwardness of the legislative language, the rebuttable presumption language in section 3600 was a late and hastily-drafted addition to the legislation. It replaced a relatively generic requirement that motions be filed for the purpose of demonstrating innocence, and not to delay the execution of the sentence of the administration of justice. The intention was to provide courts with more specific guidance on how to weed out frivolous motions.

Significantly, this provision is far from the rigid three-year time limit urged by the Justice Department. In rejecting a time limit, Congress recognized that the need for a DNA testing law is not temporary. That need will likely diminish over time as pre-trial DNA testing becomes more prevalent, but there will always be cases that fall through the cracks due to a defense lawyer's incompetence, a defendant's mental illness or mental retardation, or other reasons that we in Congress cannot and should not attempt to anticipate. Many of the individuals who have been exonerated by post-conviction DNA testing did not win freedom until many years after they were convicted and could still be in prison, or executed, if an arbitrary limitations period had been applied to their requests for DNA testing.

In addition to the requirements I have just described, section 3600 provides additional disincentives to filing false claims or trying to ''game the system''. Test results must be disclosed simultaneously to the applicant and the government. DNA submitted by the applicant will be run through the national DNA database, which could conceivably produce a match linking the applicant to an unsolved crime. Penalties are established in the event that testing inculpates the applicant. Further, because an applicant's assertion of innocence must be made under penalty of perjury, an applicant may be subject to prosecution for perjury, as well as for making a false statement, if his assertion is later disproved. If convicted, the applicant is subject to a 3-year prison sentence, which shall run consecutively to any other term of imprisonment he is serving.

Section 3600 also establishes procedures to be followed when DNA testing exculpates the applicant. A court shall grant relief if the test results, when considered with all the other evidence in the case, establish by compelling evidence that a new trial would result in an acquittal. The ''compelling evidence'' standard was another late addition; earlier versions of the IPA set the applicant's burden at ''a preponderance of the evidence.'' The point of the change, which I proposed, was to require courts to focus on the quality of the evidence supporting an applicant's new trial motion rather than trying to calculate the odds of a different verdict.

In setting the new trial standard in section 3600, Congress rejected the Justice Department's proposal, under which an applicant would have to prove, by clear and convincing evidence, that he did not commit the crime. That standard is substantially more demanding than the standard established for second or successive motions filed under 28 U.S.C. § 2255 based

on newly discovered evidence—a remedy that is already open to Federal inmates with new evidence of a DNA exclusion. It would have made no sense for Congress to establish a more demanding new trial standard for cases involving a new DNA test result than for other cases involving newly discovered evidence. To the contrary, because DNA testing conducted years and even decades after a conviction can provide a more reliable basis for establishing a correct verdict than any evidence proffered at the original trial, the standard should be and has appropriately been set a notch lower. This is consistent with Congress' decision, in section 204 of the Justice For All Act, to toll the statute of limitations in cases involving DNA evidence; both provisions recognize the unique ability of DNA testing to produce scientifically precise and highly probative evidence long after a crime has been committed.

Let me turn now to the new evidence-retention rules enacted by the IPA. As a general matter, section 3600A requires the preservation of all biological evidence secured in relation to a Federal criminal case for as long as any person remains incarcerated in connection with that case. But biological evidence may be destroyed—assuming that no other law requires its preservation—under certain limited circumstances, including, first, if a previous motion by the defendant for testing pursuant to section 3600 was denied and no appeal is pending; second, if the defendant knowingly and voluntarily waived the right to request DNA testing of the evidence in a court proceeding conducted after the date of enactment of the IPA; and third, if the evidence has already been tested pursuant to section 3600 and the results included the defendant as the source. If the evidence is unusually large or bulky, or if it must be returned to its rightful owner, the government may remove and retain representative portions of the evidence sufficient to preserve the defendant's rights under section 3600.

Biological evidence may also be destroyed if the government notifies everyone who remains incarcerated in the case that the evidence may be destroyed and no one requests DNA testing within 180 days of receiving such notice. It bears emphasis that this is a limited exception to the general rule favoring preservation of biological evidence. It is not anticipated, nor is it anyone's intention, that prosecutors simply hand out standardized notices pursuant to section 3600A every time a defendant is convicted. Indeed, one of the final changes made to H.R. 5107 clarified that the defendant's conviction must be final, and the defendant must have exhausted all opportunities for direct review of the conviction, before a section 3600A notice may be served. Even then, the better practice would be for the government to wait a number of years, until the destruction of the evidence is truly imminent, before providing notice.

In this regard, it should be noted that section 3600A does not preempt or supersede any law that may require evidence, including biological evidence, to be preserved. Thus, if another law requires evidence to be retained for 10 years after conviction, the government should wait at least that long before notifying the defendant that the evidence may be destroyed.

If the notice exception becomes the rule—if notices are routinely served as soon as convictions become final, and evidence is routinely destroyed six months later—Congress will need to revisit section 3600A. Having rejected any time limit on motions for post-conviction DNA testing, Congress should not allow the government to impose a de facto time limit of six months by rushing to destroy any evidence that could be the subject of a motion for post-conviction DNA testing. In implementing section 3600A, the government should never lose sight of its intended purpose, which is to ensure that biological evidence is available to permit future DNA testing that may help clear the innocent and catch the guilty.

The provisions I have discussed to this point will be codified in the Federal Criminal Code and will have direct application to Federal cases and Federal defendants only. Earlier versions of the IPA recognized a constitutional right of State prisoners to access biological evidence held by the State for the purpose of DNA testing; as enacted, however, the IPA contains no such provision. This is regrettable. As Fourth Circuit Judge Michael Luttig concluded in a 2002 opinion, ''A right of access to evidence for tests which could prove beyond any doubt that the individual in fact did not commit the crime, is constitutionally required as a matter of basic fairness.'' An inmate's interest in pursuing his freedom—and possibly saving his life—is surely sufficient to outweigh any governmental interest in withholding access to potentially exculpatory evidence.

While taking no position on the constitutional question addressed by Judge Luttig, the IPA does encourage States that have not already done so to enact provisions similar to sections 3600 and 3600A. It does this in section 413 of subtitle A of title IV, by reserving the total amount of funds appropriated to carry out certain grant programs authorized in the Act for States that have adopted reasonable procedures for providing post-conviction DNA testing and preserving biological evidence.

It is never easy to attach strings to money that our States so desperately need, but it is necessary in this instance. Ten years after New York passed the nation's first post-conviction DNA testing statute, many States have yet to establish a right to post-conviction DNA testing, and others have erected unjustifiably high procedural hurdles to testing. For example, some States provide for post-conviction DNA testing only if the inmate is under sentence of death, and some rely on arbitrary and unnecessary time limits. To quote New York Attorney General Eliot Spitzer, who testified in support of the Innocence Protection Act in June 2000, ''DNA testing is too important to allow some States to offer no remedy to those incarcerated who may be innocent of the crimes for which they were convicted.''

The IPA affords States that accept the conditioned Federal funding some flexibility in crafting their DNA laws. State procedures for providing post-conviction DNA testing and preserving biological evidence need only be ''comparable,'' not identical, to the Federal procedures in sections 3600 and 3600A. This means that the procedures adopted by a State must, at a minimum, incorporate the core elements of the Federal procedures. For example, a State post-conviction DNA statute that covers only death row inmates and not inmates serving terms of incarceration would not be comparable to the Federal procedures. Similarly, a State statute that included a time limit or any other provision that would systematically deny testing to whole categories of prisoners who would receive testing under the Federal procedures would not be comparable to those procedures and, so, would not satisfy the Act.

When I first introduced the Innocence Protection Act in February 2000, only a handful of States had enacted post-conviction DNA testing laws. Today, a sizeable majority of States have enacted such laws, although as I already noted, the scope of these laws varies considerably. States that have already established a meaningful right to post-conviction DNA testing and reasonable rules for preserving biological evidence should not be required to change their laws as a condition of receiving Federal funds, and the IPA does not require this. Section 413 includes a ''grandfather clause'' that should cover many of the States that enacted DNA laws before enactment of the IPA, making them immediately eligible for the conditioned grant money. Not every State DNA law meets the terms of the grandfather clause, however, and the Justice Department should take great care in scrutinizing the laws of any State claiming its protection.

Post-conviction DNA testing is an essential safeguard that can save innocent lives when the trial process has failed to uncover the truth. But it would be neither just nor sensible to enact a law that merely expanded access to DNA testing. It would not be just because innocent people should not have to wait for years after trial to be exonerated and freed. It would not be sensible because society should not have to wait for years to know the truth. When innocent people are convicted and the guilty are permitted to walk free, any meaningful reform effort must consider the root causes of these wrongful convictions and take steps to address them. That is why subtitle B of title IV addresses what all

the statistics and evidence show is the single most frequent cause of wrongful convictions inadequate defense representation at trial.

Subtitle B was enacted against the backdrop of a shameful record of failure by many States to provide competent lawyers to indigent defendants facing the death penalty. Testimony in both the Senate and House Judiciary Committees revealed that of the 38 States that authorize capital punishment, very few have established effective statewide systems for identifying, appointing and compensating competent lawyers in capital cases.

Too often individuals facing the ultimate punishment are represented by lawyers who are drunk, sleeping, soon-to-be disbarred or just plain ineffective. Even the best lawyers in these systems are hampered by inadequate compensation and insufficient resources to investigate and develop a meaningful defense.

The Congress acted to remedy several major problems with the capital counsel appointment process. First, in many States the appointment of indigent counsel in criminal cases is a county-by-county responsibility. Unless a State legislature or court system adopts standards, each county is left to decide who is competent to represent criminal defendants and how much they should be paid. In smaller and less affluent counties where there is not a professional public defender system, the compensation rate for this service can be shockingly low and the quality of lawyers abysmal. This problem afflicts the indigent defense system in general, but is more acute in capital cases which are more complex and time consuming, and where the stakes are higher.

Second, in addition to the fiscal constraints on individual counties there are political pressures that make it difficult for well-meaning administrators to pay appointed lawyers a reasonable rate for their services. Criminal defendants are highly unpopular recipients of government largess, and accused murderers even less so. The Sixth Amendment to the U.S. Constitution requires that defendants be afforded effective representation at State expense, but efforts to invoke the Sixth Amendment to generate systemic change in State indigent defense systems have been largely unavailing.

A third major problem is that in almost all States, the appointment of capital defense lawyers is made by the trial judge rather than by an independent appointing authority. State trial judges, who are often elected officeholders, find themselves under political and administrative pressure to appoint lawyers unlikely to mount a vigorous, time-consuming or expensive defense.

Several States—including North Carolina and New York have—acted in recent years to establish statewide systems to deliver effective representation. North Carolina, for example, has established a centralized, independent appointing authority known as the Indigent Defense Services Commission. The Commission appoints a statewide Capital Defender who is accountable to the Commission but not accountable to the judiciary or to the political branches of government. The Capital Defender compiles and maintains a roster of private lawyers and public defenders who are qualified to try capital cases. The Capital Defender appoints two defense lawyers for each capital defendant. He may appoint himself and his staff, or he may appoint lawyers from the roster. The trial judge has no role whatsoever in the appointment of counsel. Congress viewed the North Carolina system as a national model for establishing an effective capital counsel system.

Section 421 of the new law authorizes a grant program, to be administered by the Attorney General, to improve the quality of legal representation provided to indigent defendants in State capital cases. Grants shall be used to establish, implement, or improve an effective system for providing competent legal representation in capital cases, but may not be used to fund representation in specific cases.

In earlier versions of the Innocence Protection Act, I had proposed to condition certain State defenses in habeas corpus actions on the State's establishment of an effective system for appointing capital counsel. In this manner, all capital States would have a strong incentive to improve their appointment systems, not merely those States that choose to apply for Federal funds. While this more ambitious proposal was not adopted, it is my intention that the grant program be administered in a manner that ensures meaningful improvements in this vital State function. Congress did not create this program to support existing death penalty systems in the States but rather to leverage needed improvements.

Under the new law, an effective system is one in which a public defender program or other entity establishes qualifications for attorneys who may be appointed to represent indigents in capital cases; establishes and maintains a roster of qualified attorneys and assigns attorneys from the roster; trains and monitors the performance of such attorneys; and ensures funding for the full cost of competent legal representation by the defense team and any outside experts.

The Act's definition of an effective system evolved from standards developed by the American Bar Association and adopted by other standard-setting bodies and commissions, such as the Constitution Project's blue-ribbon commission on capital punishment. Ideally, the entity that identifies and appoints defense lawyers will be independent of the political branches of State government, as are the authorities in North Carolina and New York. For example, the Act explicitly states that sitting prosecutors may not serve on the appointing entity. The underlying purpose of the scheme is to help insulate the appointment process from the political pressures that make it difficult for individual trial judges to appoint competent lawyers in individual cases.

In the course of negotiations to pass the bill in the House last year, I and other sponsors of the bill reluctantly agreed to accept an amendment, now section 421(e)(1)(C) of the Act, that has come to be described as ''the Texas carve-out.'' Under this provision, a State may qualify for a capital representation improvement grant if it has adopted and substantially complies with a State statutory procedure enacted before this Act under which the trial judge is required to appoint qualified attorneys from a roster maintained by a State or regional selection committee or similar entity.

In fact, the ''Texas carve-out'' is not a carve-out at all. It simply acknowledges that Texas is in the process of implementing a recent statewide reform law, the Fair Defense Act of 2001, and should be permitted to continue that process. If Texas is awarded a Federal grant it will still be required to improve its capital counsel appointment system, but Federal authorities will measure those improvements against standards in the 2001 Texas law.

Texas is not yet living up to the promise of the Fair Defense Act. A November 2003 report by the Equal Justice Center and the Texas Defender Service demonstrates that many Texas counties have failed to establish effective roster systems for identifying qualified lawyers and fail to provide reasonable compensation to capital counsel. If Texas accepts Federal funds under this new program, it will be required to live up to its own State standards, including the all-important requirement of reasonable compensation. The TDS report should be a guidepost for needed improvements.

It is conceivable that other States will qualify for consideration under section 421(e)(1)(C) but the provision should be strictly interpreted by grant administrators. The State law must have been enacted prior to enactment of the Innocence Protection Act, the trial judge must be required to make appointments from a roster of qualified lawyers, and the roster must be maintained by the State, a regional selection committee or a similar agency that is independent of the trial court. Congress was aware that the trial courts in many States maintain rosters from which lawyers may be chosen, but that is not the sort of rigorous quality control mechanism that section 421(e)(1)(C) requires.

States that establish an effective system under section 421(e)(1)(A) or (B) must compensate lawyers in accordance with section 421(e)(2)(F)(ii). That provision requires, among other things, that public defenders be compensated

according to a salary scale commensurate with the salary scale of the prosecutor's office in the jurisdiction. This requirement parallels the requirement that capital representation improvement grants are to be divided evenly between the defense and prosecution functions. In enacting the IPA, Congress generally approved of the concept of resource parity between the defense and the prosecution, a concept that is essential to ensuring fair trials in our adversarial system of justice.

Another important requirement concerning attorney compensation appears in section 421(e)(2)(F)(ii)(II) which states that appointed attorneys be compensated ''for actual time and service, computed on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases.'' Again, this concept is drawn from the American Bar Association standards, which should be consulted by grant administrators in implementing the program. This new statutory requirement would clearly preclude a participating State from compensating attorneys under a flat fee or capped fee system, because such a system would not compensate the attorney for ''actual time and services, computed on an hourly basis.''

Moreover, the term ''reasonable hourly rate'' must be taken seriously by those who administer the new program. For example, there is general agreement among experts that the Federal compensation rate of $125 per hour is reasonable in most parts of the country.

In my view, a State rate comparable to the Federal rate should be considered ''reasonable,'' taking into account differences in the cost of living in various parts of the country. Capital cases are among the most complex, high stakes cases tried in any courthouse, and the lawyers who represent defendants in such cases should be paid at a rate comparable to that earned by other lawyers engaged in similarly important litigation.

One recent modification of section 421 would make clear that sitting prosecutors may not be members of the appointing authority established under section 421(e)(1)(B), although others with expertise in capital cases may participate. I agree that under this new language members of the judiciary may be members of the authority. On the other hand it would be impermissible for the appointing authority to delegate its authority to trial judges or to a group of trial judges. Such a delegation would defeat one of the central goals of the Act, which was to insulate the appointment power from the political and administrative pressures on trial judges.

As part of the same program established in section 421, section 422 authorizes grants to improve the representation of the public in State capital cases. Grants shall be used to design and implement training programs for capital prosecutors; develop, implement, and enforce appropriate standards and qualifications for such prosecutors and assess their performance; establish programs under which prosecutors conduct a systematic review of cases in which a defendant is sentenced to death in order to identify cases in which post-conviction DNA testing is appropriate; and assist the families of murder victims.

A key limitation on these prosecution grants is that they may not be used ''to fund, directly or indirectly, the prosecution of specific capital cases.'' Consistent with the IPA's overarching goal of ensuring that capital punishment is carried out in a fair and reliable manner, these grants should be used to establish and improve systems within prosecutor offices to minimize errors and abuses that may lead to wrongful convictions. They may not be used to hire additional capital prosecutors.

Section 423 establishes requirements for States applying for grants under this subtitle, including a long-term strategy and detailed implementation plan that reflects consultation with the judiciary, the organized bar, and State and local prosecutor and defender organizations, and establishes as a priority improvement in the quality of trial-level representation of indigents charged with capital crimes and trial-level prosecution of capital crimes in order to enhance the reliability of capital trial verdicts.

In the case of a State that relies on a statutory procedure described in section 421(e)(1)(C), the Texas-related provision I have previously discussed, a State officer must certify that the State is in compliance with State law. But such a certification should not be considered dispositive—Federal grant administrators must still assess the State's compliance with State law. Thus, the certification does not obviate the need for the Inspector General to carry out an independent assessment of the State's compliance under section 425(a)(3).

Section 424 requires States receiving funds under this subtitle to submit an annual report to the Attorney General identifying the activities carried out with the funds and explaining how each activity complies with the terms and conditions of the grant.

Section 425 directs the Inspector General of the Department of Justice to submit periodic reports to the Attorney General evaluating the compliance of each State receiving funds under this subtitle with the terms and conditions of the grant. In conducting such evaluations, the Inspector General shall give priority to States at the highest risk of noncompliance. If, after receiving a report from the Inspector General, the Attorney General finds that a State is not in compliance, the Attorney General shall take a series of steps to bring the State into compliance and report to Congress on the results.

Section 425(a)(4) provides an opportunity for public comment during the Inspector General's review. This provision is not intended to preclude a member of the public from seeking any other available legal remedy after the Attorney General has made a final determination of whether a State is in compliance with the requirements of the statute.

A special rule is provided in section 425(f) to ensure that any State relying on the Texas-related provision in section 421 is, in fact, complying with its own State law. Under the special rule, if the Inspector General determines that the State is not in compliance, Federal funds that would have otherwise been available to the prosecution function shall be used solely for the defense function. A separate determination by the Attorney General is not required to trigger this special rule.

Section 426 authorizes $75 million a year for 5years to carry out this subtitle. States receiving grants under this subtitle shall allocate the funds equally between the programs established in sections 421 and 422, subject to the special rule in section 425(f) that I just described.

The Justice For All Act is the most significant step we have taken in many years to improve the quality of justice in this country. The reforms it enacts will create a fairer system of justice, where the problems that have sent innocent people to death row are less likely to occur, where the American people can be more certain that violent criminals are caught and convicted instead of the innocent people who have been wrongly put behind bars for their crimes, and where victims and their families can be more certain of the accuracy, and finality, of the results. Once again, I thank my colleagues in both bodies who worked hard to resolve conflicts and congratulate them on this legislative achievement.

MORTGAGE INTEREST DEDUCTION

Mr. SMITH. Mr. President, I rise today to address a topic we have all been contemplating lately, one important to the American people, and one that I hope we will address in the 109th Congress, tax simplification and reform.

As we begin to put our ideas together to simplify Federal income taxes for American individuals, families and small businesses, we should be careful not to remove incentives for investment. While many investment opportunities exist today, perhaps none provides more benefits for individuals, families and communities than the purchase of a home. That is why we must continue to allow taxpayers to deduct the interest paid on home loans from their Federal income taxes.

The mortgage interest deduction is a vital component of our Tax Code. After State taxes, it is the most common deduction. The tax savings individuals