they be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. HELMS. Mr. President, for the Committee on Foreign Relations, I report favorably nomination lists which were printed in the RECORDS of the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Foreign Service nominations beginning Craig B. Allen and ending Daniel E. Harris, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 7, 2000.

Foreign Service nominations beginning C. Franklin Foster, Jr. and ending Michael Patrick Glover, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on April 7, 2000.

Foreign Service nominations beginning Leslie O'Connor and ending David P. Lambert, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on May 11, 2000.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. LEVIN (for himself, Mr. ASHCROFT, and Mr. ABRAHAM):

S. 2685. A bill to amend the Internal Revenue Code of 1986 to provide incentives for the production, sale, and use of highly-efficient, advanced technology motor vehicles and to amend the Energy Policy Act of 1992 to undertake an assessment of the relative effectiveness of current and potential methods to further encourage the development of the most fuel efficient vehicles for use in interstate commerce in the United States; to the Committee on Finance.

By Mr. COCHRAN (for himself and Mr. AKAKA):

S. 2686. A bill to amend chapter 36 of title 39, United States Code, to modify rates relating to reduced rate mail matter, and for other purposes; to the Committee on Governmental Affairs.

By. Mr. SMITH of New Hampshire:

S. 2687. A bill regarding the sale and transfer of Moskit anti-ship missiles by the Russian Federation; to the Committee on Foreign Relations.

By Mr. INOUYE (for himself, Mr. AKAKA, Mr. COCHRAN, Mr. DODD, Mr. KENNEDY, Mrs. MURRAY, and Mr. SCHUMER):

S. 2688. A bill to amend the Native American Languages Act to provide for the support of Native American Language Survival Schools, and for other purposes; to the Committee on Indian Affairs.

By. Ms. LANDRIEU:

S. 2689. A bill to authorize the President to award a gold medal on behalf of Congress to Andrew Jackson Higgins (posthumously), and to the D-day Museum in recognition of the contributions of Higgins Industries and the more than 30,000 employees of Higgins Industries to the Nation and to world peace during World War II; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEAHY (for himself, Mr. SMITH of Oregon, Ms. COLLINS, Mr. LEVIN, Mr. JEFFORDS, Mr. FEINGOLD, Mr. MOYNIHAN, Mr. AKAKA, Mr. KERREY, and Mr. WELLSTONE.

S. 2690. A bill to reduce the risk that innocent persons may be executed, and for other purposes; to the Committee on the Judiciary.

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 2691. A bill to provide further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, Oregon, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. MIKULSKI (for herself, Mr. KENNEDY, and Mr. DURBIN):

S. 2692. A bill to amend the Federal Food, Drug, and Cosmetic Act to improve the safety of imported products, and for other purposes; to the Committee on Health Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By. Ms. LANDRIEU:

S. Res. 317. A resolution expressing the sense of the Senate to congratulate and thank the members of the United States Armed Forces who participated in the June 6, 1944, D-Day invasion of Europe for forever changing the course of history by helping bring an end to World War II; to the Committee Armed Services.

By Ms. SNOWE (for herself, Mr. SMITH of New Hampshire, Mr. GREGG, Ms. COLLINS, Mr. WARNER, Mr. ROBB, Mr. SESSIONS, Mr. LEVIN, and Mr. KENNEDY):

S. Res. 318. A resolution honoring the 129 sailors and civilians lost aboard the U.S.S. Thresher (SSN 593) on April 10, 1963; extending the gratitude of the Nation for their last, full measure of devotion; and acknowledging the contributions of the Naval Submarine Service and the Portsmouth Naval Shipyard to the defense of the Nation; considered and agreed to.

By Mr. ROBB (for himself, Mr. REID, and Mr. KENNEDY):

S. Con. Res. 120. A concurrent resolution to express the sense of Congress regarding the need to pass legislation to increase penalties on perpetrators of hate crimes; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COCHRAN (for himself and Mr. AKAKA):

S. 2686. A bill to amend chapter 36 of title 39, United States Code, to modify rates relating to reduced rate mail matter, and for other purposes; to the Committee on Governmental Affairs.

LEGISLATION TO IMPROVE THE PROCESS FOR ESTABLISHING NONPROFIT POSTAGE RATES

Mr. COCHRAN. Mr. President, today I am introducing a bill to improve the process used by the United States Postal Service to establish postage rates for nonprofit and other reduced-rate mailers.

Under the current rate setting procedure, nonprofit postage rates have changed significantly, often rising more than corresponding commercial rates. In fact, in some cases, nonprofit mail rates have increased so much that the nonprofit rates are higher than similar commercial rates. According to the Postal Service, the unpredictable rate changes experienced by nonprofit mailers stem from difficulties the Service has had with gathering accurate cost data for small subclasses of mail.

By establishing a structured relationship between nonprofit and commercial postage rates, this legislation would protect all categories of nonprofit mail from unpredictable rate swings in the future. The bill would set nonprofit and classroom Periodical rates at 95 percent of the commercial counterpart rates (excluding the advertising portion), set nonprofit Standard A rates at 60 percent of the commercial Standard A rates, and set Library and Educational Matter rates at 95 percent of the rates for the special subclass of commercial Standard B mail.

The Postal Service recently proposed to increase postage rates for all classes of mail, and this proposal is now pending before the Postal Rate Commission. As part of its request, the Postal Service asked for nonprofit postage rates that are premised on the enactment of this, or similar, legislation to change the process for setting nonprofit mail rates. Without this legislation, nonprofit mailers will face potential double-digit rate hikes.

This bill achieves an appropriate balance between nonprofit and commercial postage rates, and provides nonprofit mailers with much needed rate predictability. It is a compromise solution that is supported by the United States Postal Service and several major commercial and nonprofit mailer associations, including: the Alliance of Nonprofit Mailers, the National Federation of Nonprofits, the Direct Marketing Association, the Magazine Publishers of America, and the Association of Postal Commerce.

I invite my colleagues to support this effort to protect nonprofit mailers by improving the method for establishing nonprofit postage rates.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2686

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

SECTION 1. SPECIAL RATEMAKING PROVISIONS.

(a) ESTABLISHMENT OF REGULAR RATES FOR MAIL CLASSES WITH CERTAIN PREFERRED SUBCLASSES.—Section 3622 of title 39, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) Regular rates for each class or subclass of mail that includes 1 or more special rate categories for mail under former section 4358(d) or (e), 4452(b) or (c), or 4554(b) or (c) of

this title shall be established by applying the policies of this title, including the factors of section 3622(b) of this title, to the costs attributable to the regular rate mail in each class or subclass combined with the mail in the corresponding special rate categories authorized by former section 4358(d) or (e), 4452(b) or (c), or 4554(b) or (c) of this title.''.

(b) RESIDUAL RULE FOR PREFERRED PERIODICAL MAIL.—Section 3626(a)(3)(A) of title 39, United States Code, is amended to read as follows:

''(3)(A) Except as provided in paragraph (4) or (5), rates of postage for a class of mail or kind of mailer under former section 4358 of this title shall be established in a manner such that the estimated revenues to be received by the Postal Service from such class of mail or kind of mailer shall be equal to the sum of—

''(i) the estimated costs attributable to such class of mail or kind of mailer; and

''(ii) the product derived by multiplying the estimated costs referred to in clause (i) by the applicable percentage under subparagraph (B).''.

(c) SPECIAL RULE FOR NONPROFIT AND CLASSROOM PERIODICALS.—Section 3626(a)(4) of title 39, United States Code, is amended to read as follows:

''(4)(A) Except as specified in subparagraph (B), rates of postage for a class of mail or kind of mailer under former section 4358(d) or (e) of this title shall be established so that postage on each mailing of such mail shall be as nearly as practicable 5 percent lower than the postage for a corresponding regular-rate category mailing.

''(B) With respect to the postage for the advertising pound portion of any mail matter under former section 4358(d) or (e) of this title, the 5-percent discount specified in subparagraph (A) shall not apply if the advertising portion exceeds 10 percent of the publication involved.''.

(d) SPECIAL RULE FOR NONPROFIT STANDARD (A) MAIL.—Section 3626(a) of title 39, United States Code, is amended by adding at the end the following:

''(6) The rates for mail matter under former sections 4452(b) and (c) of this title shall be established as follows:

''(A) The estimated average revenue per piece to be received by the Postal Service from each subclass of mail under former sections 4452(b) and (c) of this title shall be equal, as nearly as practicable, to 60 percent of the estimated average revenue per piece to be received from the most closely corresponding regular-rate subclass of mail.

''(B) For purposes of subparagraph (A), the estimated average revenue per piece of each regular-rate subclass shall be calculated on the basis of expected volumes and mix of mail for such subclass at current rates in the test year of the proceeding.

''(C) Rate differentials within each subclass of mail matter under former sections 4452(b) and (c) shall reflect the policies of this title, including the factors set forth in section 3622(b) of this title.''.

(e) SPECIAL RULE FOR LIBRARY AND EDUCATIONAL MATTER.—Section 3626(a) of title 39, United States Code, as amended by subsection (d) of this section, is amended by adding at the end the following:

''(7) The rates for mail matter under former sections 4554(b) and (c) of this title shall be established so that postage on each mailing of such mail shall be as nearly as practicable 5 percent lower than the postage for a corresponding regular-rate mailing.''.

SEC. 2. TRANSITIONAL AND TECHNICAL PROVISIONS.

(a) TRANSITIONAL PROVISION FOR NONPROFIT STANDARD (A) MAIL.—In any proceeding in which rates are to be established under chapter 36 of title 39, United States Code, for mail matter under former sections 4452(b) and (c) of that title, pending as of the date of enactment of section 1 of this Act, the estimated reduction in postal revenue from such mail matter caused by the enactment of section 3626(a)(6)(A) of that title, if any, shall be treated as a reasonably assignable cost of the Postal Service under section 3622(b)(3) of that title.

(b) TECHNICAL AMENDMENT.—Section 3626(a)(1) of title 39, United States Code, is amended by striking ''4454(b), or 4454(c)'' and inserting ''4554(b), or 4554(c)''.

By Mr. INOUYE (for himself, Mr. AKAKA, Mr. COCHRAN, Mr. DODD, Mr. KENNEDY, Mrs. MURRAY, and Mr. SCHUMER):

S. 2688. A bill to amend the Native American Languages Act to provide for the support of Native American Language Survival Schools, and for other purposes.

NATIVE AMERICAN LANGUAGES ACT AMENDMENTS ACT OF 2000

● Mr. INOUYE. Mr. President, I rise today to introduce a bill to amend the Native American Languages Act to provide authority for the establishment of Native American Language Survival Schools. I am joined in cosponsorship by Senators AKAKA, COCHRAN, DODD, KENNEDY, MURRAY and SCHUMER.

Mr. President, for hundreds of years, beginning with the arrival of European settlers on America's shores, the native peoples of America have had to fight for the survival of their cultures. History has shown that the ability to maintain and preserve the culture and traditions of a people is directly tied to the perpetuation of native languages. Like others, the traditional languages of Native American people are an integral part of their culture and identity. They provide the means for passing down to each new generation the stories, customs, religion, history and traditional ways of life. To lose the diversity and vibrant history of many Indian nations, is to lose a vital part of the history of this country.

Mr. President, Native American languages are near extinction in the United States. Studies suggest that at one time several thousand distinct Indian languages existed in what is now America. Today that number has dwindled to approximately 155 Indian languages. Of these 155 languages remaining, 45 are only spoken by elders, 60 are spoken only by middle-aged adults or older adults, 30 are spoken by all adults but not children, and only 20 Native languages are spoken by most of the children. With so many Native communities facing the loss of their languages as elderly native speakers pass on before the language can be taught to younger generations, it is little wonder that this tragedy is growing exponentially, day by day.

In the 1880s, as part of the United States' forced assimilation policies towards Native Americans, a system of off-reservation boarding schools was initiated. Native American children were forcibly taken from their families, transported hundreds of miles to schools where their hair was cut notwithstanding the religious importance of hair length in most native cultures, their clothes replaced with military-style uniforms, and they were forbidden to speak their native languages or practice their religion. Although this effort to eradicate Indian culture was not successful, it did separate several generations of Native Americans from their native languages.

The Native American Languages Act of 1990 officially repudiated the policies of the past and declared that ''it is the policy of the United States to preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages.'' The Act was amended in 1992 to provide financial support to Native American language projects.

Mr. President, this bill would bring the nation one step closer to assuring the preservation and revitalization of Native American languages by supporting the development of Native American Language Survival Schools. These schools would provide a complete education through the use of both Native American languages and English. The bill also provides support for Native American Language Nests, which are Native American language immersion programs for children aged six and under. In addition, the bill provides authority for the following activities: curriculum development, teacher, staff and community resource development, rental, lease, purchase, construction, maintenance or repair of educational facilities, and the establishment of two Native American Language School support centers at the Native Language College of the University of Hawaii at Hilo, and the Alaska Native Language Center of the University of Alaska at Fairbanks.

Mr. President, I urge my colleagues to support this legislation to assist the Native people of America in their efforts to reverse the effects of past Federal policies by reintroducing today's children to their Native languages and preserving Native languages for the generations to come.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2688

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Native American Languages Act Amendments Act of 2000''.

SEC. 2. PURPOSE.

The purposes of this Act are to—

(1) encourage and support the development of Native American Language Survival Schools as innovative means of addressing the effects of past discrimination against Native American language speakers and to support the revitalization of such languages

through education in Native American languages and through instruction in other academic subjects using Native American languages as an instructional medium, consistent with United States' policy as expressed in the Native American Languages Act (25 U.S.C. 2901 et seq.);

(2) encourage and support the involvement of families in the educational and cultural survival efforts of Native American Language Survival Schools;

(3) encourage communication, cooperation, and educational exchange among Native American Language Survival Schools and their administrators;

(4) provide support for Native American Language Survival School facilities and endowments;

(5) provide support for Native American Language Nests either as part of Native American Language Survival Schools or as separate programs that will be developed into more comprehensive Native American Language Survival Schools;

(6) support the development of local and national models that can be disseminated to the public and made available to other schools as exemplary methods of teaching Native American students; and

(7) develop a support center system for Native American Survival Schools at the university level.

SEC. 3. DEFINITIONS.

Section 103 of Public Law 101–477 (25 U.S.C. 2902) is amended to read as follows:

''DEFINITIONS

''In this Act:

''(1) INDIAN.—The term 'Indian' has the meaning given that term in section 9161 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7881).

''(2) INDIAN TRIBAL GOVERNMENT.—The term 'Indian tribal government' has the meaning given that term in section 502 of Public Law 95–134 (42 U.S.C. 4368b).

''(3) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(4) INDIAN RESERVATION.—The term 'Indian reservation' has the meaning given the term 'reservation' in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

''(5) NATIVE AMERICAN.—The term 'Native American' means an Indian, Native Hawaiian, or Native American Pacific Islander.

''(6) NATIVE AMERICAN LANGUAGE.—The term 'Native American language' means the historical, traditional languages spoken by Native Americans.

''(7) NATIVE AMERICAN LANGUAGE COLLEGE.—The term 'Native American Language College' means—

''(A) a tribally-controlled community college or university (as defined in section 2 of the Tribally-Controlled Community College or University Assistance Act of 1978 (25 U.S.C. 1801));

''(B) Ka Haka 'Ula 0 Ke'elikolani College; or

''(C) a college applying for a Native American Language Survival School in a Native American language which that college regularly offers as part of its curriculum and which has the support of an Indian tribal government traditionally affiliated with that Native American language.

''(8) NATIVE AMERICAN LANGUAGE EDUCATIONAL ORGANIZATION.—The term 'Native American Language Educational Organization' means an organization that—

''(A) is governed by a board consisting of speakers of 1 or more Native American languages;

''(B) is currently providing instruction through the use of a Native American language for not less than 10 students for at least 700 hours of instruction per year; and

''(C) has provided such instruction for at least 10 students annually through a Native American language for at least 700 hours per year for not less than 3 years prior to applying for a grant under this Act.

''(9) NATIVE AMERICAN LANGUAGE NEST.—The term 'Native American Language Nest' means a site-based educational program enrolling families with children aged 6 and under which is conducted through a Native American language for not less than 20 hours per week and not less than 35 weeks per year with the specific goal of strengthening, revitalizing, or re-establishing a Native American language and culture as a living language and culture of daily life.

''(10) NATIVE AMERICAN LANGUAGE SURVIVAL SCHOOL.—The term 'Native American Language Survival School' means a Native American language dominant site-based educational program which expands from a Native American Language Nest, either as a separate entity or inclusive of a Native American Language Nest, to enroll families with children eligible for elementary or secondary education and which provides a complete education through a Native American language with the specific goal of strengthening, revitalizing, or reestablishing a Native American language and culture as a living language and culture of daily life.

''(11) NATIVE AMERICAN PACIFIC ISLANDER.—The term 'Native American Pacific Islander' means any descendant of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States.

''(12) NATIVE HAWAIIAN.—The term 'Native Hawaiian' has the meaning given that term in section 9212 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7912).

''(13) SECRETARY.—The term 'Secretary' means the Secretary of the Department of Education.

''(14) TRADITIONAL LEADERS.—The term 'traditional leaders' includes Native Americans who have special expertise in Native American culture and Native American languages.

''(15) TRIBAL ORGANIZATION.—The term 'tribal organization' has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).''.

SEC. 4. NATIVE AMERICAN LANGUAGE SURVIVAL SCHOOLS.

Title I of Public Law 101–477 (25 U.S.C. 2901 et seq.) is amended by adding at the end the following new sections:

''GENERAL AUTHORITY

''SEC. 108. (a) IN GENERAL.—The Secretary is authorized to provide funds, through grant or contract, to Native American Language Educational Organizations, Native American Language Colleges, Indian tribal governments, or a consortia of such organizations, colleges, or tribal governments to operate, expand, and increase Native American Language Survival Schools throughout the United States and its territories for Native American children and Native American language-speaking children.

''(b) ELIGIBILITY.—As a condition of receiving funds under subsection (a), a Native American Language Educational Organization, a Native American Language College, an Indian tribal government, or a consortia of such organizations, colleges, or tribal governments—

''(1) shall—

''(A) have at least 3 years experience in operating and administering a Native American Language Survival School, a Native American Language Nest, or other educational programs in which instruction is conducted in a Native American language; and

''(B) include students who are subject to State compulsory education laws; and

''(2) may include students from infancy through grade 12, as well as their families.

''(c) USE OF FUNDS.—

''(1) REQUIRED USES.—A Native American Language Survival School receiving funds under this section shall—

''(A) consist of not less than 700 hours of instruction conducted annually through a Native American language or languages for at least 15 students who do not regularly attend another school;

''(B) provide direct educational services and school support services that may also include—

''(i) support services for children with special needs;

''(ii) transportation;

''(iii) boarding;

''(iv) food service;

''(v) teacher and staff housing;

''(vi) purchase of basic materials;

''(vii) adaptation of teaching materials;

''(viii) translation and development; or

''(ix) other appropriate services;

''(C) provide direct or indirect educational and support services for the families of enrolled students on site, through colleges, or through other means to increase their knowledge and use of the Native American language and culture, and may impose a requirement of family participation as a condition of student enrollment; and

''(D) ensure that students who are not Native American language speakers achieve fluency in a Native American language within 3 years of enrollment.

''(2) PERMISSIBLE USES.—A Native American Language Survival School receiving funds under this section may—

''(A) include Native American Language Nests and other educational programs for students who are not Native American language speakers but who seek to establish fluency through instruction in a Native American language or to re-establish fluency as descendants of Native American language speakers;

''(B) include a program of concurrent and summer college or university education course enrollment for secondary school students enrolled in Native American Language Survival Schools, as appropriate; and

''(C) provide special support for Native American languages for which there are very few or no remaining Native American language speakers.

''(d) CURRICULUM DEVELOPMENT AND COMMUNITY LANGUAGE USE DEVELOPMENT.—The Secretary is authorized to provide funds, through grant or contract, to Native American Language Educational Organizations, Native American Language Colleges, Indian tribal governments, or a consortia of such organizations, colleges, or tribal governments, for the purpose of developing—

''(1) comprehensive curricula in Native American language instruction and instruction through Native American languages; and

''(2) community Native American language use in communities served by Native American Language Survival Schools.

''(e) TEACHER, STAFF, AND COMMUNITY RESOURCE DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary is authorized to provide funds, through grant or contract, to Native American Language Educational Organizations, Native American Language Colleges, Indian tribal governments, or a consortia of such organizations, colleges, or tribal governments for the purpose of providing programs in pre-service and in-service teacher training, staff training, personnel development programs, programs

to upgrade teacher and staff skills, and community resource development training, that shall include a program component which has as its objective increased Native American language speaking proficiency for teachers and staff employed in Native American Language Survival Schools and Native American Language Nests.

''(2) PROGRAM SCOPE.—Programs funded under this subsection may include—

''(A) visits or exchanges among Native American Language Survival Schools and Native American Language Nests of school or nest teachers, staff, students, or families of students;

''(B) participation in conference or special non-degree programs focusing on the use of a Native American language or languages for the education of students, teachers, staff, students, or families of students;

''(C) full or partial scholarships and fellowships to colleges or universities for the professional development of faculty and staff, and to meet requirements for the involvement of the family or the community of Native American Language Survival School students in Native American Language Survival Schools;

''(D) training in the language and culture associated with a Native American Language Survival School either under community or academic experts in programs which may include credit courses;

''(E) structuring of personnel operations to support Native American language and cultural fluency and program effectiveness;

''(F) Native American language planning, documentation, reference material and archives development; and

''(G) recruitment for participation in teacher, staff, student, and community development.

''(3) CONDITIONS OF FELLOWSHIPS OR SCHOLARSHIPS.—A recipient of a fellowship or scholarship awarded under the authority of this subsection who is enrolled in a program leading to a degree or certificate shall—

''(A) be trained in the Native American language of the Native American Language Survival School, if such program is available through that Native American language;

''(B) complete a minimum annual number of hours in Native American language study or training during the period of the fellowship or scholarship; and

''(C) enter into a contract which obligates the recipient to provide his or her professional services, either during the fellowship or scholarship period or upon completion of a degree or certificate, in Native American language instruction in the Native American language associated with the Native American Language Survival School in which the service obligation is to be fulfilled.

''(f) ENDOWMENT AND FACILITIES.—The Secretary is authorized to provide funds, through grant or contract, for endowment funds and the rental, lease, purchase, construction, maintenance, or repair of facilities for Native American Language Survival Schools, to Native American Language Educational Organizations, Native American Language Colleges, and Indian tribal governments, or a consortia of such organizations, colleges, or tribal governments that have demonstrated excellence in the capacity to operate and administer a Native American Language Survival School and to ensure the academic achievement of Native American Language Survival School students.

''NATIVE AMERICAN LANGUAGE NESTS

''SEC. 109. (a) IN GENERAL.—The Secretary is authorized to provide funds, through grant or contract, to Native American Language Educational Organizations, Native American Language Colleges, Indian tribal governments, and nonprofit organizations that demonstrate the potential to become Native American Language Educational Organizations, for the purpose of establishing Native American Language Nest programs for students from infancy to age 6 and their families.

''(b) REQUIREMENTS.—A Native American Language Nest program receiving funds under this section shall—

''(1) provide instruction and child care through the use of a Native American language or a combination of the English language and a Native American language for at least 10 children for at least 700 hours per year;

''(2) provide compulsory classes for parents of students enrolled in a Native American Language Nest in a Native American language, including Native American language-speaking parents;

''(3) provide compulsory monthly meetings for parents and other family members of students enrolled in a Native American Language Nest;

''(4) provide a preference in enrollment for students and families who are fluent in a Native American language; and

''(5) receive at least 5 percent of its funding from another source, which may included Federally-funded programs, such as a Head Start program funded under the Head Start Act (42 U.S.C. 9801 et seq.).

''DEMONSTRATION PROGRAMS REGARDING LINGUISTICS ASSISTANCE

''SEC. 110. (a) DEMONSTRATION PROGRAMS.—The Secretary shall provide funds, through grant or contract, for the establishment of 2 demonstration programs that will provide assistance to Native American Language Survival Schools and Native American Language Nests. Such demonstration programs shall be established at—

''(1) Ka Haka 'Ula 0 Ke'elikolani College of the University of Hawaii at Hilo, in consortium with the 'Aha Punana Leo, Inc., and with other entities if deemed appropriate by such College, to—

''(A) conduct a demonstration program in the development of the various components of a Native American Language Survival School program, including the early childhood education features of a Native American Nest component; and

''(B) provide assistance in the establishment, operation, and administration of Native American Language Nests and Native American Language Survival Schools by such means as training, hosting informational visits to demonstration sites, and providing relevant information, outreach courses, conferences, and other means; and

''(2) the Alaska Native Language Center of the University of Alaska at Fairbanks, in consortium with other entities as deemed appropriate by such Center, to conduct a demonstration program, training, outreach, conferences, visitation programs, and other assistance in developing orthographies, resource materials, language documentation, language preservation, material archiving, and community support development.

''(b) USE OF TECHNOLOGY.—The demonstration programs authorized to be established under this section may employ synchronic and asynchronic telecommunications and other appropriate means to maintain coordination and cooperation with one another and with participating Native American Language Survival Schools and Native American Language Nests.

''(c) DIRECTION TO THE SECRETARY.—The demonstration programs authorized to be established under this section shall provide direction to the Secretary in developing a site visit evaluation of Native American Language Survival Schools and Native American Language Nests.

''(d) ENDOWMENTS AND FACILITIES.—The demonstration programs authorized to be established under this section may establish endowments for the purpose of furthering their activities relative to the study and preservation of Native American languages, and may use funds to provide for the rental, lease, purchase, construction, maintenance, and repair of facilities.

''AUTHORIZATION OF APPROPRIATIONS

''SEC. 111. There are authorized to be appropriated such sums as may be necessary to carry out the activities authorized by this Act for fiscal years 2001 through 2006.''.●

By Ms. LANDRIEU:

S. 2689. A bill to authorize the President to award a gold medal on behalf of Congress to Andrew Jackson Higgins (posthumously), and to the D-day Museum in recognition of the contributions of Higgins Industries and the more than 30,000 employees of Higgins Industries to the Nation and to world peace during World War II; to the Committee on Banking, Housing, and Urban Affairs.

ANDREW JACKSON HIGGINS

● Ms. LANDRIEU. Mr. President, I speak today to honor an innovative and patriotic American—the logger-turned-boatbuilder, who single-handedly transformed the concept of amphibious ship design when our nation and her Allies needed it most. Despite a series of bureaucratic obstacles set up by America's World War II war-machine, Higgins skillfully engineered Marine Corps landing craft, and eventually won contracts to build 92 percent of the Navy's war-time fleet. The story of Andrew Jackson Higgins exemplifies the American Dream, and merits full recognition of this body for his ingenuity, assiduous work, and devotion to our country.

In the late 1930's, Higgins was operating a small New Orleans work-boat company, with less than seventy-five employees.He quickly earned a reputation for fast, dependable work, turning out specialized vessels for the oil industry, Coast Guard, Army Corps of Engineers, and U.S. Biological Survey. But when he presented his plans for swift amphibious landing crafts, he met hard resistance. The U.S. Navy had overestimated French and British abilities to secure France's ports from German encroachment, and had thus overruled decisions to create landing boat crafts. As the U.S. Marine Corps discerned the need for mass production of amphibious vessels for both the Pacific and European theaters, top brass began to lobby the Navy to abandon its internal contracting, and procure ships from Higgins Industries, which boasted high performance quality, and unprecedented speed for turning out boats. In 1941, the Navy finally asked Higgins to begin designing a landing draft to carry tanks. Instead of a design, Higgins delivered an entire working boat. It had only taken 61 hours to design and construct his first Landing Craft, Mechanized (LCM). Quickly, the Higgins firm grew to seven plants, eventually turning out 700 boats a month—

more than all other shipyards in the nation combined. By the war's end, Higgins had turned out 20,000 boats, ranging from the 46-foot LCVP (Landing Craft, Vehicle & Personnel) to the fast-moving PT boats, the rocket-firing landing craft support boats, the 56-foot tank landing craft, the 170 foot freight supply ships and the 27-foot airborne lifeboats that could be dropped from B–17 bombers.

Able to conceive various ship designs and mass-produce vessels quickly at affordable prices, Higgins not only transformed wartime ship building acquisition, but sustained the universal faith American invention and global power projection. Higgins landing craft crashed on the shores of Normandy on June 6, 1944, launching the greatest amphibious assault in world history, and commencing a eastward drive to liberate Europe from Nazi Germany. In addition to his contributions to Allied war efforts abroad, Higgins' manufacturing further changed the face of my own city of New Orleans, home to most of the firm's business. I urge my colleagues to support provisions to award Andrew Jackson Higgins the Gold Medal of Honor, in the tradition of our great institution.

Mr. President, in 1964, President Dwight D. Eisenhower was reflecting on the success of the 1944 Normandy invasion to his biographer, Steven Ambrose. Andrew Jackson Higgins ''is the man who won the war for us,'' he said. ''If Higgins had not developed and produced those landing craft, we never could have gone in over an open beach. We would have had to change the entire strategy of the war.'' to me, Mr. Higgins and his 20,000-member workforce embody American creativity, persistence, and patriotism; they deserve to be distinguished for their critical place in history.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 2689

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Andrew Jackson Higgins Gold Medal Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Andrew Jackson Higgins was born on August 28, 1886, in Columbus, Nebraska, moved to New Orleans in 1910, and formed Higgins Industries on September 26, 1930.

(2) Andrew Jackson Higgins designed, engineered, and produced the ''Eureka'', a unique shallow draft boat the design of which evolved during World War II into 2 basic classes of military craft: high speed PT boats, and types of Higgins landing craft (LCPs, LCPLs, LCVPs, LCMs and LCSs).

(3) Andrew Jackson Higgins designed, engineered, and constructed 4 major assembly line plants in New Orleans for mass production of Higgins landing craft and other vessels vital to the Allied Forces' conduct of World War II.

(4) Andrew Jackson Higgins bought the entire 1940 Philippine mahogany crop and other material purely at risk without a government contract, anticipating that America would join World War II and that Higgins Industries would need the wood to build landing craft. Higgins also bought steel, engines, and other material necessary to construct landing craft.

(5) Andrew Jackson Higgins, through Higgins Industries, employed a fully integrated assembly line work force, black and white, male and female, of up to 30,000 during World War II, with equal pay for equal work.

(6) In 1939, the United States Navy had a total of 18 landing craft in the fleet.

(7) From November 18, 1940, when Higgins Industries was awarded its first contract for Higgins landing craft until the conclusion of the war, the employees of Higgins Industries produced 12,300 Landing Craft Vehicle Personnel (LCVP's) and nearly 8,000 other landing craft of all types.

(8) During World War II, Higgins Industries employees produced 20,094 boats, including landing craft and Patrol Torpedo boats, and trained 30,000 Navy, Marine, and Coast Guard personnel on the safe operation of landing craft at the Higgins' Boat Operators School.

(9) On Thanksgiving Day 1944, General Dwight D. Eisenhower stated in an address to the Nation: ''Let us thank God for Higgins Industries, management, and labor which has given us the landing boats with which to conduct our campaign.''.

(10) Higgins landing craft, constructed of wood and steel, transported fully armed troops, light tanks, field artillery, and other mechanized equipment essential to amphibious operations.

(11) Higgins landing craft made the amphibious assault on D-day and the landings at Leyte, North Africa, Guadalcanal, Sicily, Iwo Jima, Tarawa, Guam, and thousands of less well-known assaults possible.

(12) Captain R.R.M. Emmett, a commander at the North Africa amphibious landing, and later commandant of the Great Lakes Training Station, wrote during the war: ''When the history of this war is finally written by historians, far enough removed from its present turmoil and clamor to be cool and impartial, I predict that they will place Mr. (Andrew Jackson) Higgins very high on the list of those who deserve the commendation and gratitude of all citizens.''.

(13) In 1964, President Dwight D. Eisenhower told historian Steven Ambrose: ''He (Higgins) is the man who won the war for us. If Higgins had not developed and produced those landing craft, we never could have gone in over an open beach. We would have had to change the entire strategy of the war.''.

SEC. 3. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—

(1) IN GENERAL.—The President is authorized, on behalf of Congress, to award a gold medal of appropriate design to—

(A) the family of Andrew Jackson Higgins, honoring Andrew Jackson Higgins (posthumously) for his contributions to the Nation and world peace; and

(B) the D-day Museum in New Orleans, Louisiana, for public display, honoring Andrew Jackson Higgins (posthumously) and the employees of Higgins Industries for their contributions to the Nation and world peace.

(2) MODALITIES.—The modalities of presentation of the medals under this Act shall be determined by the President after consultation with the Speaker of the House of Representatives, the Majority Leader of the Senate, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives.

(b) DESIGN AND STRIKING.—For purposes of the presentation referred to in subsection (a), the Secretary of the Treasury (in this Act referred to as the ''Secretary'') shall strike 2 gold medals with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 4. DUPLICATE MEDALS.

The Secretary may strike and sell duplicates in bronze of the gold medals struck under this Act, under such regulations as the Secretary may prescribe, and at a price sufficient to cover the costs thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

SEC. 5. STATUS AS NATIONAL MEDALS.

The medals struck under this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS; PROCEEDS OF SALE.

(a) AUTHORITY TO USE FUND AMOUNTS.—There is authorized to be charged against the United States Mint Public Enterprise Fund an amount not to exceed $60,000 to pay for the cost of the medals authorized by this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 4 shall be deposited in the United States Mint Public Enterprise Fund.●

By Mr. LEAHY (for himself, Mr. SMITH of Oregon, Ms. COLLINS, Mr. LEVIN, Mr. JEFFORDS, Mr. FEINGOLD, Mr. MOYNIHAN, Mr. AKAKA, Mr. KERREY, and Mr. WELLSTONE):

S. 2690. A bill to reduce the risk that innocent persons may be executed, and for other purposes; to the Committee on the Judiciary.

THE INNOCENCE PROTECTION ACT OF 2000

● Mr. LEAHY. Mr. President, a few months ago, I came to this floor to draw attention to a growing national crisis in the administration of capital punishment and to suggest some solutions. You will recall some of the shocking facts I described:

For every 7 people executed, 1 death row inmate is shown some time after conviction to be innocent of the crime.

Many of those exonerated have come within hours of being executed, and many have spent a decade or more in jail before they were given a fair opportunity to establish their innocence.

Capital defendants are frequently represented by lawyers who lack the funds or the competence to do the job, or who have been disbarred or suspended for misconduct, and, from time to time, by lawyers who sleep through the trial, but the courts turn a blind eye.

Inexpensive and practically foolproof means of proving innocence are often denied to defendants.

The saddest fact of all, to me, is that the society facing this crisis is not a medieval one; it is America, today, in the 21st Century. As the Governor of Illinois told us when he placed a moratorium on the death penalty in his State earlier this year, something urgently needs to be done to remedy this situation. That is why I have been talking with Senators on both sides of the aisle and all sides of the capital punishment debate. That is why I have been searching for ways to reduce the risk of mistaken executions.

That is why I am so pleased that today, with my good friend, the junior

Senator from Oregon (Senator GORDON SMITH), we are introducing the bipartisan Innocence Protection Act of 2000. This bill is a carefully crafted package of criminal justice reforms designed to protect the innocent and to ensure that if the death penalty is imposed, it is the result of informed and reasoned deliberation, not politics, luck, bias or guesswork.

Every American child is taught that justice is blind. It is important to remember what justice is supposed to be blind to. Justice should never be blind to the truth, it should never be blind to the evidence, and it should never be blind to the teachings of modern science. What justice should be blind to is ideology, politics, race and money.

Too often in this chamber, we find ourselves dividing along party or ideological lines. The bill that Senator SMITH and I are introducing today is not about that, and it is not about whether in the abstract, you favor or disfavor the death penalty. It is about what kind of society we want America to be in the 21st Century.

I am optimistic about America's future. I have become all the more optimistic in the past few months as I have seen an outpouring of support across the political spectrum and across the country for common-sense measures to reduce the risk of executing the innocent.

Today, Senator SMITH and I are joined by Senators from both sides of the aisle, by some who support capital punishment and by others who oppose it. On the Republican side, I want to thank my friend Senator SUSAN COLLINS of Maine and my fellow Vermonter, Senator JIM JEFFORDS. On the Democratic side, Senators LEVIN, FEINGOLD, MOYNIHAN, AKAKA, KERREY, and WELLSTONE. I also want to thank our House sponsors WILLIAM DELAHUNT and RAY LAHOOD, along with their 39 cosponsors, both Democratic and Republican. Here on Capitol Hill it is our job to represent Americans. The scores of legislators who have sponsored this legislation clearly do represent Americans, both in their diversity and in their readiness to work together for common-sense solutions.

The outpouring of bipartisan support we have seen in Congress reflects an emerging public consensus. Opinion polls show Americans divided on the death penalty in the abstract. But they show overwhelmingly that Americans will not tolerate the execution of innocent people, and that Americans expect their justice system to provide everyone with a fair trial and a competent lawyer. A recent Gallup Poll found that 92 percent of Americans believe that people convicted before modern advances in DNA technology should be given the opportunity to obtain DNA testing if such tests might show their innocence.

I am also encouraged by the growing chorus of calls for reform of our capital punishment system by criminal justice experts and respected opinion leaders nationwide. George Will wrote in a April 6th column that ''skepticism is in order'' when it comes to capital punishment. Another conservative columnist, Bruce Fein, wrote in The Washington Times on April 25th:

> A decent respect for life . . . demands scrupulous concern for the reliability of verdicts in capital punishment trials. Otherwise, the death penalty game is not worth the gamble of executing the innocent—a shameful stain on any system of justice—and life sentences (perhaps in solitary confinement) should be the maximum.
>
> Mr. Fein writes as one who served as a senior Justice Department official in the Reagan Administration.

More recently, on May 11th, the Constitution Project at Georgetown University Law Center established a blue-ribbon National Committee to Prevent Wrongful Executions, comprised of supporters and opponents of the death penalty, Democrats and Republicans, including six former State and Federal judges, a former U.S. Attorney, two former State Attorneys General, and a former Director of the FBI. According to its mission statement, this Committee is ''united in [its] profound concern that, in recent years, and around the country, procedural safeguards and other assurances of fundamental fairness in the administration of capital punishment have been significantly diminished.'' Many of the concerns that the Committee has raised are addressed in the legislation that Senator SMITH and I are introducing today.

Just yesterday, the editors of The Washington Times noted that ''the increased use of DNA analysis has in fact revealed some serious flaws in the way the justice system exacts the supreme penalty,'' and succinctly expressed the common sense view of nine out of ten Americans and the basic point that underlies our legislation: ''Surely no one could reasonably object to making sure we execute only the guilty.''

I ask unanimous consent that The Washington Times editorial be included in the RECORD at this point, together with the articles by George Will and Bruce Fein, and editorials dated February 19 and 28 from the New York Times and The Washington Post, both praising the Innocence Protection Act.

As I describe some of the major reforms proposed by our legislation, I ask you to consider these issues from the perspective of a capital juror, an ordinary citizen who is asked by his government to do one of the toughest things a citizen can do: sit in judgment on another person's life. You would not want to make the wrong decision. You would want the process to work so that you could make the right decision.

We need to enact real reforms to combat the very real risk in America today that an innocent person is being executed. I will now describe some of the major reforms proposed by our legislation.

More than any other development, improvements in DNA testing have provided the critical evidence to exonerate innocent people. In the last decade, scores of wrongfully convicted people have been released from prison—including many from death row—after DNA testing proved they could not have committed the crime for which they were convicted. In some cases the same DNA testing that vindicated the innocent helped catch the guilty.

As I already mentioned, 92 percent of Americans agree that we need to make DNA testing available in every appropriate case. But this legislation is not about public opinion polls—it is about saving innocent lives.

A few months ago, I met Kirk Bloodsworth, a former Marine who was convicted and sentenced to death in Maryland for a crime that he did not commit. Nine years later, DNA testing conclusively established his innocence.

On the same day, I met Clyde Charles. He spent 9 years pleading with the State of Louisiana for the DNA testing that eventually exonerated him. He missed the childhood of his daughter, he contracted diabetes and tuberculosis while in prison, and both of his parents died before his release.

Just last Wednesday, the Governor of Texas pardoned A.B. Butler, who served 17 years of a 99-year sentence for a sexual assault that he did not commit before he was finally cleared by DNA testing. Butler spent 10 years trying to have DNA testing done in his case.

One day later, the Governor of Virginia ordered new DNA testing for Earl Washington, a retarded man convicted of a rape-murder in 1982.

There are still significant numbers of convicted men and women in prisons throughout the country whose trials preceded modern DNA testing. If history is any guide, then some of these individuals are innocent of any crime.

If DNA testing can help establish innocence, there is no reason to deny testing, and every reason to grant it. This is not about guilty people trying to get off on legal technicalities. This is about innocent people trying to prove their innocence—and being thwarted by legal technicalities. Our bill will allow retroactive tests for people tried before DNA technology was available to them, and eliminate the procedural bars that may prevent the introduction of new, exculpatory DNA evidence. Our bill will also ensure that inmates are notified before a State destroys a rape kit or other biological evidence that may, through DNA testing, prove that an inmate was wrongfully convicted.

What possible reason could there be to deny people access to the evidence—often the only evidence—that could prove their innocence? Now that we have DNA fingerprinting that can prove a person's innocence, why should we as a society be willfully blind to the truth?

The sole argument I have heard advanced against the Leahy-Smith proposal is that it is somehow overly broad. As best I can understand this objection, the point seems to be that in

some cases, DNA evidence will only confirm the jury's guilty verdict. That is the point that Virginia prosecutors have advanced in opposing DNA testing for death row inmate Derek Barnabei. But as the Washington Post pointed out in a March 20th editorial about the Barnabei case, the possibility that DNA testing will confirm an inmate's guilt is no reason to deny testing:

> It is hard to see why a state, before putting someone to death, would be unwilling to demonstrate a jury verdict's consistency with all of the evidence. Indeed, this is precisely the type of case in which the state should have no choice. Under [the Innocence Protection Act], states would be obligated in such circumstances to allow post-conviction DNA testing. Such a law would not merely offer a layer of protection to innocent people but would increase public confidence in the convictions of guilty people.

I am grateful for the Post's endorsement.

As the Post has pointed out, this is a common sense reform. As opinion polls have shown, the idea of ensuring DNA testing is available in appropriate cases enjoys the support of the vast majority of Americans. And as the recent cases that I have discussed make clear, this is a matter of national urgency. I hope we can move forward expeditiously.

Post-conviction DNA testing is an essential safeguard that can save innocent lives when the trial process has failed to uncover the truth. As the Governor of New York has recognized, DNA testing also serves as a window into the systemic flaws of our capital punishment apparatus. In May, Governor Pataki proposed the creation of a panel to investigate the facts behind DNA exonerations and to determine what went wrong.

When DNA uncovers one miscarriage of justice after another, it is neither just nor sensible to stop at making post-conviction DNA testing more available. It is unjust because innocent people should not have to wait for years after trial to be exonerated and freed. It is not sensible because society should not have to wait for years to know the truth. When dozens of innocent people are being sentenced to death, and dozens of guilty people are working free because the State has convicted the wrong person, we must ask ourselves what went wrong in the trial process, and we must take what steps we can to make sure it does not happen again.

There is a recurring theme in wrongful conviction cases—incompetent and grossly underpaid defense counsel. That theme is well illustrated by the case of Federico Macias. He spent nine years on Texas's death row and came within two days of execution because his trial lawyer did almost nothing to prepare for trial. No doubt, being paid less than $12 an hour was a disincentive for the lawyer to conduct a more thorough investigation.

This lawyer failed to call available witnesses who could have refuted the State's case, and based his trial decisions on a fundamental misunderstanding of Texas law. The lawyer also admitted he did no investigation at all for the sentencing phase. His only preparation was to speak to his client and his client's wife during the lunch break of the sentencing proceeding.

Macias was eventually cleared of all charges and released from prison, thanks to volunteer work by a Washington lawyer who intervened just before the scheduled execution. Here is what the Federal Court of Appeals had to say when it overturned Macias's conviction:

> We are left with the firm conviction that Macias was denied his constitutional right to adequate counsel in a capital case in which actual innocence was a close question. The state paid defense counsel $11.84 per hour. Unfortunately, the justice system got only what it paid for.

Federico Macias's case was not unique. In the Texas criminal justice system, there is a whole category of capital cases known as the sleeping lawyer cases, to which the majority of the Texas Court of Criminal Appeals has responded with apathy. This attitude was chillingly conveyed by one Texas judge who reasoned that, while the Constitution requires a defendant to be represented by a lawyer, it ''doesn't say the lawyer has to be awake.''

But this is not just a Texas problem, this is a nationwide problem. In case after case across the country, capital defendants have found their lives placed in the hands of lawyers who are hopelessly incompetent—lawyers who were drunk during the trial; lawyers who never bothered to investigate the case or even meet with their client before trial; and lawyers who were suspended or disbarred.

Oklahoma spent all of $3,200 on the defense of Ronald Keith Williamson; it got what it paid for when Williamson's lawyer failed to investigate and present to the jury a simple fact—the fact that another man had confessed to the murder. Both Williamson and his codefendant were eventually cleared of any crime.

In Illinois, Dennis Williams was defended by a lawyer who was simultaneously defending himself in disbarment proceedings. Williams was eventually exonerated in 1996, after 18 years on death row, with the help of three journalism students from Northwestern University.

That is not how the American adversarial system of criminal justice is meant to work. Americans on trial for their lives should not be condemned to rely on sleeping lawyers, drunk lawyers, disbarred lawyers, or lawyers who do not have the resources to do the job. In our society, lawyers and journalists both serve important fact-finding functions. But, as one of the Northwestern University journalism students so aptly said after proving the innocence of yet another death row inmate, Anthony Porter, ''Twenty-one-year-olds are not supposed to be responsible for finding the innocent people on death row.''

The need for competent and adequately funded lawyers to make our adversarial system work is not a novel insight, and the lack of such lawyers and funding is not a novel discovery. In 1991, Retired Chief Justice Harold Clarke of Georgia told the Georgia State Bar that:

> Providing lawyers for poor people accused of crimes is a state obligation. The Constitution teaches us that. But more important, common sense and human decency tell us that. Yet we haven't listened to those voices.

In repeated resolutions dating back to the 1980s, the Conference of Chief Justices has urged States to do more to ensure that capital defendants are provided quality representation. In 1995, for example, the Chief Justices resolved that each State should ''establish standards and a process that will assure the timely appointment of competent counsel, with adequate resources, to represent defendants in capital cases at each stage of such proceedings.''

As we enter the 21st century, a few States have heeded this advice. But many are still not listening to the voices of the people who know first hand what a mockery incompetent and underfunded defense lawyers can make of our criminal justice system. I have described two cases, from Texas and Oklahoma, in which the State grossly underfunded appointed counsel and got what it paid for. There are many more examples, including an Alabama case within the past year in which the court, after a full trial, limited the fee for investigating and defending against a charge of capital murder to about $4,000. After paying his investigator and paralegal, the lawyer pocketed $1,212, which worked out to $5.05 an hour—less than the minimum wage.

We should not sit back and rely on 21-year-old journalism students to save innocent people from execution. And a quarter of a century of experience with the death penalty since the Supreme Court restored it in 1976 teaches us that we cannot sit back and rely on the States to provide adequate counsel to those whom they seek to execute.

We in Congress can never guarantee that the innocent will not be convicted. But we have a responsibility, at a minimum, to ensure that when people in this country are on trial for their lives, they will be defended by lawyers who meet reasonable minimum standards of competence and who have sufficient funds to investigate the facts and prepare thoroughly for trial. That goal can be achieved by cooperation between the States and the Federal Government whereby we give the States money to fund their criminal justice systems conditioned on their meeting a floor of minimum standards, and leave the States free to improve on those standards if they are so inclined. That is what our bill seeks to achieve.

What do we owe to the innocent people who are able to win their release

from prison? How do we compensate them for all the years they spent behind bars, sometimes on death row, for all the lost wages, for all the pain and suffering. In most cases, there is no compensation, or at least not much. Federal law provides a miserly $5,000 in cases of unjust imprisonment, regardless of the time served. In the case of Clyde Charles, who spent 18 years in Louisiana's Angola prison, that would come out to about 75 cents a day. Is that what society owes to Clyde Charles, for the walls placed between him and his family for 18 years, for missing his daughter's childhood, and for the diabetes and tuberculosis he contracted in prison? Does that seem about right—75 cents a day?

How about nothing at all? In 36 States, people who have been unjustly convicted and incarcerated for crimes they did not commit are barred from recovering any damages against the State. Louisiana, which destroyed the life of Clyde Charles, has no compensation statute. The States that have compensation statutes generally put a cap on payments, although none sets the cap as low as the current Federal cap of $5,000.

Let us step back and put this situation in perspective. A few years ago, a Maryland jury found that three young men had been falsely imprisoned by a security guard at an Eddie Bauer clothing store. The guard detained these men for about 10 minutes on suspicion of shoplifting, and forced one of them to remove his shirt. How much did the jury award for those 10 minutes of false imprisonment? $1 million.

Now compare what happened to Walter McMillian. In 1986, in a small town in Alabama, an 18-year-old white woman was shot to death. Walter McMillian was a black man who lived in the next town. From the day of his arrest, McMillian was placed on death row. No physical evidence linked him to the crime, and several people testified at the trial that he could not have committed the murder because he was with them all day. All three witnesses who connected McMillian with the murder later recanted their testimony. The one supposed ''eyewitness'' said that prosecutors had pressured him to implicate McMillian in the crime.

The jury in the trial recommended a life sentence, but the judge overruled this recommendation and sentenced McMillian to death. His case went through four rounds of appeal, all of which were denied. New attorneys, not paid by the State of Alabama, voluntarily took over the case and eventually found that the prosecutors had illegally withheld exculpatory evidence. A story about the case appeared on 60 Minutes in November 1992. Finally, the State agreed to investigate its earlier handling of the case and admitted that a grave mistake had been made. McMillian was freed into the welcoming arms of his family and friends on March 3, 1993.

Despite many years of litigation, McMillian has never been given any recompense for the years he was unjustly held on death row. His attorney has taken the issue of just compensation all the way to the U.S. Supreme Court, but to no avail.

Let us take another example in another State. In Oklahoma, 4 inmates have been exonerated by DNA testing over the past few years. When you add it up, they spent about 40 years in prison. Two of them were on death row. One came within 5 days of execution. None has received compensation—not a dime.

Putting one's life back together after such an experience is difficult enough, even with financial support. Without such support, a wrongly convicted person might never be able to establish roots that would allow him to contribute to society.

We need to do more to help repair the lives that are shattered by wrongful convictions. The Innocence Protection Act does this by raising the Federal cap on compensation, and by pushing the States to provide meaningful compensation to any person who is unjustly convicted and sentenced to death.

Money damages will never compensate for the mental anguish of being falsely convicted, for the lost years, or for the day-to-day brutality and deprivations of prison. But we must do what we can. Society owes a moral debt to the wrongfully imprisoned; that debt should be paid.

Finally, we as a Nation need to go back to first principles when it comes to deciding who is eligible for the death penalty. The United States stands alongside Iran, Nigeria, Pakistan, and Saudi Arabia as the only nations still executing people for crimes committed as juveniles. Is this the company that we want to keep?

The execution of juvenile offenders is also barred by several major human rights treaties, including the U.N. Convention on the Rights of the Child, the American Convention on Human Rights, and the International Covenant on Civil and Political Rights—perhaps the most important human rights documents in the world today. As a leader in the human rights community, it would be fitting if the United States agreed to respect the precepts of international humans rights law and comply with the terms of these treaties.

This country should also stop executing the mentally retarded. People with mental retardation have a diminished capacity to understand right from wrong. They are more prone to confess to crimes they did not commit simply to please their interrogators, and they are often unable to assist their lawyer in preparing a defense. Executing them is wrong; it is immoral. In addition, the execution of the mentally retarded, like the execution of juvenile offenders, severely damages U.S. standing in the international community.

Today, 13 States with capital punishment forbid the execution of defendants with mental retardation. The State Senator who sponsored the Nebraska bill in 1998 later said that it should not have been necessary because ''no civilized, mature society would ever entertain the possibility of executing anybody who was mentally retarded.''

The legislation that I introduce today proposes that the United States Congress speak as the conscience of the Nation in condemning the continued execution of juvenile offenders and the mentally retarded.

There can be no longer be any question that our capital punishment system is in crisis. The Innocence Protection Act is the absolute minimum we must do to prevent and catch these mistakes and to restore the public's confidence in our criminal justice system.

I ask unanimous consent that the bill, a summary of the bill, and additional material be included in the RECORD.

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

S. 2690

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Innocence Protection Act of 2000''.

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

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Over the past decade, deoxyribonucleic acid testing (referred to in this section as ''DNA testing'') has emerged as the most reliable forensic technique for identifying

criminals when biological material is left at a crime scene.

(2) Because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact.

(3) While DNA testing is increasingly commonplace in pretrial investigations today, it was not widely available in cases tried prior to 1994. Moreover, new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce. Consequently, in some cases convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results.

(4) Since DNA testing is often feasible on relevant biological material that is decades old, it can, in some circumstances, prove that a conviction that predated the development of DNA testing was based upon incorrect factual findings. Uniquely, DNA evidence showing innocence, produced decades after a conviction, provides a more reliable basis for establishing a correct verdict than any evidence proffered at the original trial. DNA testing, therefore, can and has resulted in the post-conviction exoneration of innocent men and women.

(5) In the past decade, there have been more than 65 post-conviction exonerations in the United States and Canada based upon DNA testing. At least 8 individuals sentenced to death have been exonerated through post-conviction DNA testing, some of whom came within days of being executed.

(6) The 2 States that have established statutory processes for post-conviction DNA testing, Illinois and New York, have the most post-conviction DNA exonerations, 14 and 7, respectively.

(7) The advent of DNA testing raises serious concerns regarding the prevalence of wrongful convictions, especially wrongful convictions arising out of mistaken eyewitness identification testimony. According to a 1996 Department of Justice study entitled ''Convicted by Juries, Exonerated by Science: Case Studies of Post-Conviction DNA Exonerations'', in approximately 20 to 30 percent of the cases referred for DNA testing, the results excluded the primary suspect. Without DNA testing, many of these individuals might have been wrongfully convicted.

(8) Laws in more than 30 States require that a motion for a new trial based on newly discovered evidence of innocence be filed within 6 months or less. These laws are premised on the belief—inapplicable to DNA testing—that evidence becomes less reliable over time. Such time limits have been used to deny inmates access to DNA testing, even when guilt or innocence could be conclusively established by such testing. For example, in Dedge v. Florida, 723 So.2d 322 (Fla. Dist. Ct. App. 1998), the court without opinion affirmed the denial of a motion to release trial evidence for the purpose of DNA testing. The trial court denied the motion as procedurally barred under the 2-year limitation on claims of newly discovered evidence established by the State of Florida, which has since adopted a 6-month limitation on such claims.

(9) Even when DNA testing has been done and has persuasively demonstrated the actual innocence of an inmate, States have sometimes relied on time limits and other procedural barriers to deny release.

(10) The National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has issued a report entitled ''Recommendations For Handling Post-Conviction DNA Applications'' that urges post-conviction DNA testing in 2 carefully defined categories of cases, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of the inmate to pay for the testing.

(11) The number of cases in which post-conviction DNA testing is appropriate is relatively small and will decrease as pretrial testing becomes more common and accessible.

(12) The cost of DNA testing has also decreased in recent years. The typical case, involving the analysis of 8 samples, currently costs between $2,400 and $5,000, depending upon jurisdictional differences in personnel costs.

(13) In 1994, Congress authorized funding to improve the quality and availability of DNA analysis for law enforcement identification purposes. Since then, States have been awarded over $50,000,000 in DNA-related grants.

(14) Although the Supreme Court has never announced a standard for addressing constitutional claims of innocence, in Herrera v. Collins, 506 U.S. 390 (1993), a majority of the Court expressed the view that, ''a truly persuasive demonstration of 'actual innocence'' made after trial would render imposition of punishment by a State unconstitutional.

(15) If biological material is not subjected to DNA testing in appropriate cases, there is a significant risk that persuasive evidence of innocence will not be detected and, accordingly, that innocent persons will be unconstitutionally incarcerated or executed.

(16) To prevent violations of the Constitution of the United States that the Supreme Court anticipated in Herrera v. Collins, it is necessary and proper to enact national legislation that ensures that the Federal Government and the States will permit DNA testing in appropriate cases.

(17) There is also a compelling need to ensure the preservation of biological material for post-conviction DNA testing. Since 1992, the Innocence Project at the Benjamin N. Cardozo School of Law has received thousands of letters from inmates who claim that DNA testing could prove them innocent. In over 70 percent of those cases in which DNA testing could have been dispositive of guilt or innocence if the biological material were available, the material had been destroyed or lost. In two-thirds of the cases in which the evidence was found, and DNA testing conducted, the results have exonerated the inmate.

(18) In at least 14 cases, post-conviction DNA testing that has exonerated a wrongly convicted person has also provided evidence leading to the apprehension of the actual perpetrator, thereby enhancing public safety. This would not have been possible if the biological evidence had been destroyed.

(b) PURPOSES.—The purposes of this title are to—

(1) substantially implement the Recommendations of the National Commission on the Future of DNA Evidence in the Federal criminal justice system, by ensuring the availability of DNA testing in appropriate cases;

(2) prevent the imposition of unconstitutional punishments through the exercise of power granted by clause 1 of section 8 and clause 2 of section 9 of article I of the Constitution of the United States and section 5 of the 14th amendment to the Constitution of the United States; and

(3) ensure that wrongfully convicted persons have an opportunity to establish their innocence through DNA testing, by requiring the preservation of DNA evidence for a limited period.

SEC. 102. DNA TESTING IN FEDERAL CRIMINAL JUSTICE SYSTEM.

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by inserting after chapter 155 the following:

''CHAPTER 156—DNA TESTING

''Sec.
''2291. DNA testing.
''2292. Preservation of biological material.

''§ 2291. DNA testing

''(a) APPLICATION.—Notwithstanding any other provision of law, a person in custody pursuant to the judgment of a court established by an Act of Congress may, at any time after conviction, apply to the court that entered the judgment for forensic DNA testing of any biological material that—

''(1) is related to the investigation or prosecution that resulted in the judgment;

''(2) is in the actual or constructive possession of the Government; and

''(3) was not previously subjected to DNA testing, or can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

''(b) NOTICE TO GOVERNMENT.—

''(1) IN GENERAL.—The court shall notify the Government of an application made under subsection (a) and shall afford the Government an opportunity to respond.

''(2) PRESERVATION OF REMAINING BIOLOGICAL MATERIAL.—Upon receiving notice of an application made under subsection (a), the Government shall take such steps as are necessary to ensure that any remaining biological material that was secured in connection with the case is preserved pending the completion of proceedings under this section.

''(c) ORDER.—The court shall order DNA testing pursuant to an application made under subsection (a) upon a determination that testing may produce noncumulative, exculpatory evidence relevant to the claim of the applicant that the applicant was wrongfully convicted or sentenced.

''(d) COST.—The cost of DNA testing ordered under subsection (c) shall be borne by the Government or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the means to pay.

''(e) COUNSEL.—The court may at any time appoint counsel for an indigent applicant under this section.

''(f) POST-TESTING PROCEDURES.—

''(1) PROCEDURES FOLLOWING RESULTS UNFAVORABLE TO APPLICANT.—If the results of DNA testing conducted under this section are unfavorable to the applicant, the court—

''(A) shall dismiss the application; and

''(B) in the case of an applicant who is not indigent, may assess the applicant for the cost of such testing.

''(2) PROCEDURES FOLLOWING RESULTS FAVORABLE TO APPLICANT.—If the results of DNA testing conducted under this section are favorable to the applicant, the court shall—

''(A) order a hearing, notwithstanding any provision of law that would bar such a hearing; and

''(B) enter any order that serves the interests of justice, including an order—

''(i) vacating and setting aside the judgment;

''(ii) discharging the applicant if the applicant is in custody;

''(iii) resentencing the applicant; or

''(iv) granting a new trial.

''(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the

circumstances under which a person may obtain DNA testing or other post-conviction relief under any other provision of law.

''§ 2292. Preservation of biological material

''(a) IN GENERAL.—Notwithstanding any other provision of law and subject to subsection (b), the Government shall preserve any biological material secured in connection with a criminal case for such period of time as any person remains incarcerated in connection with that case.

''(b) EXCEPTION.—The Government may destroy biological material before the expiration of the period of time described in subsection (a) if—

''(1) the Government notifies any person who remains incarcerated in connection with the case, and any counsel of record or public defender organization for the judicial district in which the judgment of conviction for such person was entered, of—

''(A) the intention of the Government to destroy the material; and

''(B) the provisions of this chapter;

''(2) no person makes an application under section 2291(a) within 90 days of receiving notice under paragraph (1) of this subsection; and

''(3) no other provision of law requires that such biological material be preserved.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for part VI of title 28, United States Code, is amended by inserting after the item relating to chapter 155 the following:

''156. DNA Testing ..... 2291''.

SEC. 103. DNA TESTING IN STATE CRIMINAL JUSTICE SYSTEMS.

(a) DNA IDENTIFICATION GRANT PROGRAM.—Section 2403 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796kk–2) is amended—

(1) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking ''shall'' and inserting ''will'';

(B) in subparagraph (C), by striking ''is charged'' and inserting ''was charged or convicted''; and

(C) in subparagraph (D), by striking ''and'' at the end;

(2) in paragraph (3)—

(A) by striking ''shall'' and inserting ''will''; and

(B) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(4) the State will—

''(A) preserve all biological material secured in connection with a State criminal case for not less than the period of time that biological material is required to be preserved under section 2292 of title 28, United States Code, in the case of a person incarcerated in connection with a Federal criminal case; and

''(B) make DNA testing available to any person convicted in State court to the same extent, and under the same conditions, that DNA testing is available under section 2291 of title 28, United States Code, to any person convicted in a court established by an Act of Congress.''.

(b) DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM.—Section 503(a)(12) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)(12)) is amended—

(1) in subparagraph (B)—

(A) in clause (iii), by striking ''is charged'' and inserting ''was charged or convicted''; and

(B) in clause (iv), by striking ''and'' at the end;

(2) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(D) the State will—

''(i) preserve all biological material secured in connection with a State criminal case for not less than the period of time that biological material is required to be preserved under section 2292 of title 28, United States Code, in the case of a person incarcerated in connection with a Federal criminal case; and

''(ii) make DNA testing available to a person convicted in State court to the same extent, and under the same conditions, that DNA testing is available under section 2291 of title 28, United States Code, to a person convicted in a court established by an Act of Congress.''.

(c) PUBLIC SAFETY AND COMMUNITY POLICING GRANT PROGRAM.—Section 1702(c) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd–1(c)) is amended—

(1) in paragraph (10), by striking ''and'' at the end;

(2) in paragraph (11), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(12) if any part of funds received from a grant made under this subchapter is to be used to develop or improve a DNA analysis capability in a forensic laboratory, or to obtain or analyze DNA samples for inclusion in the Combined DNA Index System (CODIS), certify that—

''(A) DNA analyses performed at such laboratory will satisfy or exceed the current standards for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 210303 of the DNA Identification Act of 1994 (42 U.S.C. 14131);

''(B) DNA samples and analyses obtained and performed by such laboratory will be accessible only—

''(i) to criminal justice agencies for law enforcement purposes;

''(ii) in judicial proceedings, if otherwise admissible under applicable statutes and rules;

''(iii) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which the defendant was charged or convicted; or

''(iv) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes;

''(C) the laboratory and each analyst performing DNA analyses at the laboratory will undergo, at regular intervals not exceeding 180 days, external proficiency testing by a DNA proficiency testing program that meets the standards issued under section 210303 of the DNA Identification Act of 1994 (42 U.S.C. 14131); and

''(D) the State will—

''(i) preserve all biological material secured in connection with a State criminal case for not less than the period of time that biological material is required to be preserved under section 2292 of title 28, United States Code, in the case of a person incarcerated in connection with a Federal criminal case; and

''(ii) make DNA testing available to any person convicted in State court to the same extent, and under the same conditions, that DNA testing is available under section 2291 of title 28, United States Code, to a person convicted in a court established by an Act of Congress.''.

SEC. 104. PROHIBITION PURSUANT TO SECTION 5 OF THE 14TH AMENDMENT.

(a) REQUEST FOR DNA TESTING.—

(1) IN GENERAL.—No State shall deny a request, made by a person in custody resulting from a State court judgment, for DNA testing of biological material that—

(A) is related to the investigation or prosecution that resulted in the conviction of the person or the sentence imposed on the person;

(B) is in the actual or constructive possession of the State; and

(C) was not previously subjected to DNA testing, or can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(2) EXCEPTION.—A State may deny a request under paragraph (1) upon a judicial determination that testing could not produce noncumulative evidence establishing a reasonable probability that the person was wrongfully convicted or sentenced.

(b) OPPORTUNITY TO PRESENT RESULTS OF DNA TESTING.—No State shall rely upon a time limit or procedural default rule to deny a person an opportunity to present noncumulative, exculpatory DNA results in court, or in an executive or administrative forum in which a decision is made in accordance with procedural due process.

(c) REMEDY.—A person may enforce subsections (a) and (b) in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a district court of the United States, naming either the State or an executive or judicial officer of the State as defendant. No State or State executive or judicial officer shall have immunity from actions under this subsection.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

SEC. 201. AMENDMENTS TO BYRNE GRANT PROGRAMS.

(a) CERTIFICATION REQUIREMENT; FORMULA GRANTS.—Section 503 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753) is amended—

(1) in subsection (a), by adding at the end the following:

''(13) If the State prescribes, authorizes, or permits the penalty of death for any offense, a certification that the State has established and maintains an effective system for providing competent legal services to indigents at every phase of a State criminal prosecution in which a death sentence is sought or has been imposed, up to and including direct appellate review and post-conviction review in State court.''; and

(2) in subsection (b)—

(A) by striking ''(b) Within 30 days after the date of enactment of this part, the'' and inserting the following:

''(b) REGULATIONS.—

''(1) IN GENERAL.—The''; and

(B) by adding at the end the following:

''(2) CERTIFICATION REGULATIONS.—The Director of the Administrative Office of the United States Courts, after notice and an opportunity for comment, shall promulgate regulations specifying the elements of an effective system within the meaning of subsection (a)(13), which elements shall include—

''(A) a centralized and independent appointing authority, which shall have authority and responsibility to—

''(i) recruit attorneys who are qualified to represent indigents in the capital proceedings specified in subsection (a)(13);

''(ii) draft and annually publish a roster of qualified attorneys;

''(iii) draft and annually publish qualifications and performance standards that attorneys must satisfy to be listed on the roster and procedures by which qualified attorneys are identified;

''(iv) periodically review the roster, monitor the performance of all attorneys appointed, provide a mechanism by which members of the Bar may comment on the

performance of their peers, and delete the name of any attorney who fails to complete regular training programs on the representation of clients in capital cases, fails to meet performance standards in a case to which the attorney is appointed, or otherwise fails to demonstrate continuing competence to represent clients in capital cases;

''(v) conduct or sponsor specialized training programs for attorneys representing clients in capital cases;

''(vi) appoint lead counsel and co-counsel from the roster to represent a defendant in a capital case promptly upon receiving notice of the need for an appointment from the relevant State court; and

''(vii) report the appointment, or the failure of the defendant to accept such appointment, to the court requesting the appointment;

''(B) compensation of private attorneys 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;

''(C) reimbursement of private attorneys and public defender organizations for attorney expenses reasonably incurred in the representation of a client in a capital case, computed on an hourly basis reflecting the local market for such services; and

''(D) reimbursement of private attorneys and public defender organizations for the reasonable costs of law clerks, paralegals, investigators, experts, scientific tests, and other support services necessary in the representation of a defendant in a capital case, computed on an hourly basis reflecting the local market for such services.''.

(b) CERTIFICATION REQUIREMENT; DISCRETIONARY GRANTS.—Section 517(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3763(a)) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(5) satisfies the certification requirement established by section 503(a)(13).''.

(c) DIRECTOR'S REPORTS TO CONGRESS.—Section 522(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3766b(b)) is amended—

(1) in paragraph (4), by striking ''and'' at the end;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) descriptions and a comparative analysis of the systems established by each State in order to satisfy the certification requirement established by section 503(a)(13), except that the descriptions and the comparative analysis shall include—

''(A) the qualifications and performance standards established pursuant to section 503(b)(2)(A)(iii);

''(B) the rates of compensation paid under section 503(b)(2)(B); and

''(C) the rates of reimbursement paid under subparagraphs (C) and (D) of section 503(b)(2); and''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section shall apply with respect to any application submitted on or after the date that is 1 year after the date of enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not take effect until the amount made available for a fiscal year to carry out part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 equals or exceeds an amount that is $50,000,000 greater than the amount made available to carry out that part for fiscal year 2000.

(e) REGULATIONS.—The Director of the Administrative Office of the United States Courts shall issue all regulations necessary to carry out the amendments made by this section not later than 180 days before the effective date of those regulations.

SEC. 202. EFFECT ON PROCEDURAL DEFAULT RULES.

Section 2254(e) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking ''In a proceeding'' and inserting ''Except as provided in paragraph (3), in a proceeding''; and

(2) by adding at the end the following:

''(3) In a proceeding instituted by an indigent applicant under sentence of death, the court shall neither presume a finding of fact made by a State court to be correct nor decline to consider a claim on the ground that the applicant failed to raise such claim in State court at the time and in the manner prescribed by State law, unless—

''(A) the State provided the applicant with legal services at the stage of the State proceedings at which the State court made the finding of fact or the applicant failed to raise the claim; and

''(B) the legal services the State provided satisfied the regulations promulgated by the Director of the Administrative Office of the United States Courts pursuant to section 503(b)(2) of title I of the Omnibus Crime Control and Safe Streets Act of 1968.''.

SEC. 203. CAPITAL REPRESENTATION GRANTS.

Section 3006A of title 18, United States Code, is amended—

(1) by redesignating subsections (i), (j), and (k) as subsections (j), (k), and (l), respectively; and

(2) by inserting after subsection (h) the following:

''(i) CAPITAL REPRESENTATION GRANTS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'capital case'—

''(i) means any criminal case in which a defendant prosecuted in a State court is subject to a sentence of death or in which a death sentence has been imposed; and

''(ii) includes all proceedings filed in connection with the case, including trial, appellate, and Federal and State post-conviction proceedings;

''(B) the term 'defense services' includes—

''(i) recruitment of counsel;

''(ii) training of counsel;

''(iii) legal and administrative support and assistance to counsel;

''(iv) direct representation of defendants, if the availability of other qualified counsel is inadequate to meet the need in the jurisdiction served by the grant recipient; and

''(v) investigative, expert, or other services necessary for adequate representation; and

''(C) the term 'Director' means the Director of the Administrative Office of the United States Courts.

''(2) GRANT AWARD AND CONTRACT AUTHORITY.—Notwithstanding subsection (g), the Director shall award grants to, or enter into contracts with, public agencies or private nonprofit organizations for the purpose of providing defense services in capital cases.

''(3) PURPOSES.—Grants and contracts awarded under this subsection shall be used in connection with capital cases in the jurisdiction of the grant recipient for 1 or more of the following purposes:

''(A) Enhancing the availability, competence, and prompt assignment of counsel.

''(B) Encouraging continuity of representation between Federal and State proceedings.

''(C) Decreasing the cost of providing qualified counsel.

''(D) Increasing the efficiency with which such cases are resolved.

''(4) GUIDELINES.—The Director, in consultation with the Judicial Conference of the United States, shall develop guidelines to ensure that defense services provided by recipients of grants and contracts awarded under this subsection are consistent with applicable legal and ethical proscriptions governing the duties of counsel in capital cases.

''(5) CONSULTATION.—In awarding grants and contracts under this subsection, the Director shall consult with representatives of the highest State court, the organized bar, and the defense bar of the jurisdiction to be served by the recipient of the grant or contract.''.

TITLE III—COMPENSATING THE UNJUSTLY CONDEMNED

SEC. 301. INCREASED COMPENSATION IN FEDERAL CASES.

Section 2513 of title 28, United States Code, is amended by striking subsection (e) and inserting the following:

''(e) DAMAGES.—

''(1) IN GENERAL.—The amount of damages awarded in an action described in subsection (a) shall not exceed $50,000 for each 12-month period of incarceration, except that a plaintiff who was unjustly sentenced to death may be awarded not more than $100,000 for each 12-month period of incarceration.

''(2) FACTORS FOR CONSIDERATION IN ASSESSING DAMAGES.—In assessing damages in an action described in subsection (a), the court shall consider—

''(A) the circumstances surrounding the unjust conviction of the plaintiff, including any misconduct by officers or employees of the Federal Government;

''(B) the length and conditions of the unjust incarceration of the plaintiff; and

''(C) the family circumstances, loss of wages, and pain and suffering of the plaintiff.''.

SEC. 302. COMPENSATION IN STATE DEATH PENALTY CASES.

(a) CRIMINAL JUSTICE FACILITY CONSTRUCTION GRANT PROGRAM.—Section 603(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3769b(a)) is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(7) reasonable assurance that the applicant, or the State in which the applicant is located—

''(A) does not prescribe, authorize, or permit the penalty of death for any offense; or

''(B)(i) has established and maintains an effective procedure by which any person unjustly convicted of an offense against the State and sentenced to death may be awarded reasonable damages upon substantial proof that the person did not commit any of the acts with which the person was charged; and

''(ii)(I) the conviction of that person was reversed or set aside on the ground that the person was not guilty of the offense or offenses of which the person was convicted;

''(II) the person was found not guilty of such offense or offenses on new trial or rehearing; or

''(III) the person was pardoned upon the stated ground of innocence and unjust conviction.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any application submitted on or after the date that is 1 year after the date of enactment of this Act.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. ACCOMMODATION OF STATE INTERESTS IN FEDERAL DEATH PENALTY PROSECUTIONS.

(a) RECOGNITION OF STATE INTERESTS.—Chapter 228 of title 18, United States Code, is amended by adding at the end the following:

''§ 3599. Accommodation of State interests; certification requirement

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Government shall not seek the death penalty in any case initially brought before a district court of the United States that sits in a State that does not prescribe, authorize, or permit the imposition of such penalty for the alleged conduct, except upon the certification in writing of the Attorney General or the designee of the Attorney General that—

''(1) the State does not have jurisdiction or refuses to assume jurisdiction over the defendant with respect to the alleged conduct;

''(2) the State has requested that the Federal Government assume jurisdiction; or

''(3) the offense charged is an offense described in section 32, 229, 351, 794, 1091, 1114, 1118, 1203, 1751, 1992, 2340A, or 2381, or chapter 113B.

''(b) ''STATE DEFINED.—In this section, the term 'State' means each of the several States of the United States, the District of Columbia, and the territories and possessions of the United States.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 228 of title 18, United States Code, is amended by adding at the end the following:

''3599. Accommodation of State interests; certification requirement.''.

SEC. 402. ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE.

Section 408(l) of the Controlled Substances Act (21 U.S.C. 848(l)), is amended by striking the first 2 sentences and inserting the following: ''Upon a recommendation under subsection (k) that the defendant should be sentenced to death or life imprisonment without possibility of release, the court shall sentence the defendant accordingly. Otherwise, the court shall impose any lesser sentence that is authorized by law.''.

SEC. 403. RIGHT TO AN INFORMED JURY.

(a) ADDITIONAL REQUIREMENTS.—Section 20105 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705) is amended by striking subsection (b) and inserting the following:

''(b) ADDITIONAL REQUIREMENTS.—To be eligible to receive a grant under section 20103 or 20104, a State shall provide assurances to the Attorney General that—

''(1) the State has implemented policies that provide for the recognition of the rights and needs of crime victims; and

''(2) in any capital case in which the jury has a role in determining the sentence imposed on the defendant, the court, at the request of the defendant, shall inform the jury of all statutorily authorized sentencing options in the particular case, including applicable parole eligibility rules and terms.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any application for a grant under section 20103 or 20104 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13703; 13704) that is submitted on or after the date that is 1 year after the date of enactment of this Act.

SEC. 404. ANNUAL REPORTS.

(a) REPORT.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Attorney General shall prepare and transmit to Congress a report concerning the administration of capital punishment laws by the Federal Government and the States.

(b) REPORT ELEMENTS.—The report required under subsection (a) shall include substantially the same categories of information as are included in the Bureau of Justice Statistics Bulletin entitled ''Capital Punishment 1998'' (December 1999, NCJ 179012), and the following additional categories of information:

(1) The percentage of death-eligible cases in which a death sentence is sought, and the percentage in which it is imposed.

(2) The race of the defendants in death-eligible cases, including death-eligible cases in which a death sentence is not sought, and the race of the victims.

(3) An analysis of the effect of Witherspoon v. Illinois, 391 U.S. 510 (1968), and its progeny, on the composition of juries in capital cases, including the racial composition of such juries, and on the exclusion of otherwise eligible and available jurors from such cases.

(4) An analysis of the effect of peremptory challenges, by the prosecution and defense respectively, on the composition of juries in capital cases, including the racial composition of such juries, and on the exclusion of otherwise eligible and available jurors from such cases.

(5) The percentage of capital cases in which life without parole is available as an alternative to a death sentence, and the sentences imposed in such cases.

(6) The percentage of capital cases in which life without parole is not available as an alternative to a death sentence, and the sentences imposed in such cases.

(7) The percentage of capital cases in which counsel is retained by the defendant, and the percentage in which counsel is appointed by the court.

(8) A comparative analysis of systems for appointing counsel in capital cases in different States.

(9) A State-by-State analysis of the rates of compensation paid in capital cases to appointed counsel and their support staffs.

(10) The percentage of cases in which a death sentence or a conviction underlying a death sentence is vacated, reversed, or set aside, and the reasons therefore.

(c) PUBLIC DISCLOSURE.—The Attorney General or the Director of the Bureau of Justice Assistance, as appropriate, shall ensure that the reports referred to in subsection (a) are—

(1) distributed to national print and broadcast media; and

(2) posted on an Internet website maintained by the Department of Justice.

SEC. 405. DISCRETIONARY APPELLATE REVIEW.

Section 2254(c) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(c)''; and

(2) by adding at the end the following:

''(2) For purposes of paragraph (1), if the highest court of a State has discretion to decline appellate review of a case or a claim, a petition asking that court to entertain a case or a claim is not an available State court procedure.''.

SEC. 406. SENSE OF CONGRESS REGARDING THE EXECUTION OF JUVENILE OFFENDERS AND THE MENTALLY RETARDED.

It is the sense of Congress that the death penalty is disproportionate and offends contemporary standards of decency when applied to a person who is mentally retarded or who had not attained the age of 18 years at the time of the offense.

INNOCENCE PROTECTION ACT OF 2000—SECTION-BY-SECTION SUMMARY

OVERVIEW

The Innocence Protection Act of 2000 is a comprehensive package of criminal justice reforms aimed at reducing the risk that innocent persons may be executed. Most urgently, the bill would (1) ensure that convicted offenders are afforded an opportunity to prove their innocence through DNA testing; (2) help States to provide competent legal services at every stage of a death penalty prosecution; (3) enable those who can prove their innocence to recover some measure of compensation for their unjust incarceration; and (4) provide the public with more reliable and detailed information regarding the administration of the nation's capital punishment laws.

TITLE I—EXONERATING THE INNOCENT THROUGH FEDERAL POST-CONVICTION REVIEW

Sec. 101. Findings and purposes. Legislative findings and purposes in support of this title.

Sec. 102. DNA testing in Federal criminal justice system. Establishes rules and procedures governing applications for DNA testing by convicted offenders in the Federal system. An applicant must allege that evidence to be tested (1) is related to the investigation or prosecution that resulted in the applicant's conviction; (2) is in the government's actual or constructive possession; and (3) was not previously subjected to DNA testing, or to the form of DNA testing now requested. The court may, in its discretion, appoint counsel for an indigent applicant.

Because access to DNA testing is of no value unless evidence containing DNA has been preserved, this section also prohibits the government from destroying any biological material in a criminal case while any person remains incarcerated in connection with that case, unless such person is notified of the government's intent to destroy the material, and afforded at least 90 days to request DNA testing under this title.

Sec. 103. DNA testing in State criminal justice system. Conditions receipt of Federal grants for DNA-related programs on an assurance that the State will adopt adequate procedures for preserving biological material and making DNA testing available to its inmates.

Sec. 104. Prohibition pursuant to section 5 of the 14th amendment. Prohibits States from (1) denying requests for DNA testing that could produce new exculpatory evidence or (2) denying inmates a meaningful opportunity to prove their innocence using the results of DNA testing. Creates an authority to sue for declaratory or injunctive relief to enforce these prohibitions.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

Sec. 201. Amendments to Byrne grant programs. Conditions Federal funding under the Byrne grant programs—when such funding equals or exceeds an amount that is $50 million greater than the amount appropriated for such programs in FY 2000—on certification that the State has established and maintains an ''effective system'' for providing competent legal services to indigent defendants at every stage of death penalty prosecution, from pre-trial proceedings through post-conviction review. The Director of the Administrative Office of the United States Courts is charged with specifying the elements of an ''effective system,'' which must include a centralized and independent authority for appointing attorneys in capital cases, and adequate compensation and reimbursement of such attorneys.

Sec. 202. Effect on procedural default rules. Provides that certain procedural barriers to Federal habeas corpus review shall not apply if the State failed to provide the petitioner with adequate legal services.

Sec. 203. Capital representation grants. Amends the Criminal Justice Act, 18 U.S.C. §3006A, to make more Federal funding available to public agencies and private non-profit organizations for purposes of enhancing

the availability and competence of counsel in capital cases, encouraging the continuity of representation in such cases, decreasing the cost of providing qualified death penalty counsel, and increasing the efficiency with which capital cases are resolved.

TITLE III—COMPENSATING THE UNJUSTLY CONDEMNED

Sec. 301. Increased compensation in Federal cases. Raises the total amount of damages that may be awarded against the United States in cases of unjust imprisonment from $5,000 to $50,000 a year in a non-death penalty case, or $100,000 a year in a death penalty case. Identifies factors for court to consider in assessing damages.

Sec. 302. Compensation in State death cases. Encourages States to permit any person who was unjustly convicted and sentenced to death to be awarded reasonable damages, upon substantial proof of innocence and formal exoneration, by adding a new condition for Federal funding to assist in construction of correctional facility projects.

TITLE IV—MISCELLANEOUS

Sec. 401. Accommodation of State interests in Federal death-penalty prosecutions. Protects the interests of States (including the District of Columbia and any commonwealth, territory or possession of the United States) by limiting the Federal government's authority to seek the death penalty in States that do not permit the imposition of such penalty. Department of Justice guidelines provide that in cases of concurrent jurisdiction, ''a Federal indictment for an offense subject to the death penalty will be obtained only when the Federal interest in the prosecution is more substantial than the interests of the State or local authorities.'' Section 401 builds on that principle by requiring the Attorney General or her designee to certify that (1) the State does not have jurisdiction or refuses to assume jurisdiction over the defendant; (2) the State has requested that the Federal government assume jurisdiction; or (3) the offense charged involves genocide; terrorism; use of chemical weapons or weapons of mass-destruction; destruction of aircraft, trains, or other instrumentalities or facilities of interstate commerce; hostage taking; torture; espionage; treason; the killing of certain high public officials; or murder by a Federal prisoner.

Sec. 402. Alternative of life imprisonment without possibility of release. Provides juries in Federal death penalty prosecutions brought under the drug kingpin statute, 21 U.S.C. §848(l), the option of recommending life imprisonment without possibility of release. This amendment brings the drug kingpin statute into conformity with the more recently-enacted death penalty procedures in title 18, which govern most Federal death penalty prosecutions. See 18 U.S.C. §3594.

Sec. 403. Right to an informed jury. Conditions Federal truth-in-sentencing grants upon certification that, in any capital case in which the jury has a role in determining the defendant's sentence, the defendant has the right to have the jury informed of all statutorily-authorized sentencing options in the particular case, including applicable parole eligibility rules and terms. The purpose is to give full effect to the due process principles underlying the Supreme Court's decision in *Simmons* v. *South Carolina*, 512 U.S. 154 (1994), which held that a defendant who has been convicted of a capital offense is entitled to an instruction informing the sentencing jury that he is ineligible for parole under State law.

Sec. 404. Annual reports. Directs the Justice Department to prepare an annual report regarding the administration of the nation's capital punishment laws. The report must be submitted to Congress, distributed to the press and posted on the Internet.

Sec. 405. Discretionary appellate review. Respects State procedural rules by allowing Federal habeas corpus petitioners to raise claims that State courts discouraged them from raising when seeking discretionary review in the State's highest court. Responds to the Supreme Court's decision in *O'Sullivan* v. *Boerckel*, 119 S. Ct. 1728 (1999), which held that a State prisoner must present his claims to a State supreme court in a petition for discretionary review in order to satisfy the exhaustion requirement of 28 U.S.C. §2254(b)(1), (c).

Sec. 406. Sense of the Congress regarding the execution of juvenile offenders and the mentally retarded. Expresses the sense of the Congress that the death penalty is disproportionate and offends contemporary standards of decency when applied to juvenile offenders and the mentally retarded.

[From the Washington Times, June 6, 2000]

THOUGHTS ON EXECUTIONS

In his decision to halt Thursday evening's execution of a convicted killer for a period of 30 days, Texas Gov. George W. Bush did what had to be done. Where there is no shadow of a doubt, the death penalty can sometimes be the right course of action. Yet, where doubt, any doubt, remains, the consequences are awesome. In the case of Ricky Nolan McGinn, who was sentenced to death for raping and murdering his 13-year-old stepdaughter in 1993, there seems to be some uncertainty, in which case every means should be used to establish the truth. When you take a man's life, you take everything he's got. There simply is no way to make up for a mistake made in the execution chamber.

Mr. Bush cannot be accused of being soft on criminals. During his five and a half years in office, Mr. Bush has presided over more executions than any other governor in the country: 131, all told. Most famously, Mr. Bush refused to reduce the sentence of Karla Faye Tucker in 1998. She had been convicted of the particularly horrible execution-style murder of two persons during a gas station robbery, and while in prison had become a born-again Christian. Though religious leaders such as Pat Robertson pleaded for her life, Mr. Bush allowed the execution to go forward. The fact that he has chosen to grant a 30-day reprieve in this one case can hardly be said to indicate a change of heart on the death penalty.

Nevertheless, in the partisan heat of a presidential election year, Mr. Bush has been accused of playing politics with the death penalty. If this is the case, he is doing so on the side of giving someone on death row a final chance. This contrasts with Gov. Bill Clinton's decision to proceed with the execution of a severely retarded Arkansas man during the 1992 presidential election campaign, which was meant to establish his tough-on-crime credentials.

But beyond the question of politics, there's science. Mr. Bush is catching a nationwide movement, based on advances that are making DNA testing increasingly sophisticated. The increased use of DNA analysis has in fact revealed serious flaws in the way the justice system exacts the supreme penalty. The trend towards state moratoria on executions has been led by Gov. George Ryan of Illinois, a Republican. In Illinois, during the course of the 23 years since the death penalty was reinstated, a dozen persons have been put to death—but 13 have been cleared of capital murder charges through DNA testing after having been sentenced to death. This is a stunning and sobering fact. Unless Illinois is vastly different from the rest of the United States, that statistic ought to produce second thoughts for everyone. (One of those second thoughts might be that for every innocent man executed, a guilty man is still out there, unpunished.)

We do not suggest here that the United States should stop punishing the guilty to the fullest extent of the law, even if that means death. However, if this country is to have the death penalty, we must be as certain as is humanly possible that executions are restricted to the guilty. States should be encouraged to make sure that is the case. Even if 66 percent of Americans support the death penalty, it is no argument to say (as some conservatives have done) that the death of an innocent person here or there is not enough to reconsider what we are doing. This argument has been put forward by the Rev. Jerry Falwell. Some have even argued that this may be the price of the death penalty's deterrent effect; Rep. Bill McCollum, Florida Republican, suggested as much in an article for the Atlantic Monthly last year.

Perhaps the most cogent argument against the death penalty is that it degrades the sensibilities of otherwise good and reasonable men and women, who have come to believe in it so obsessively that they would impose it on the innocent if that is the only way to keep the death penalty in the law.

During a moratorium, the state would keep its electricity and gas bills paid and its stockpiles of potassium chloride intact against the day when the moratorium ends and executions resume—presumably following improvements in the way convictions are produced. Surely no one could reasonably object to making sure we execute only the guilty.

[From the Washington Post, Apr. 6, 2000]

INNOCENT ON DEATH ROW

(By George F. Will)

''Don't you worry about it,'' said the Oklahoma prosecutor to the defense attorney. ''We're gonna needle your client. You know, lethal injection, the needle. We're going to needle Robert.''

Oklahoma almost did. Robert Miller spent nine years on death row, during six of which the state had DNA test results proving his sperm was not that of the man who raped and killed the 92-year-old woman. The prosecutor said the tests only proved that another man had been with Miller during the crime. Finally, the weight of scientific evidence, wielded by an implacable defense attorney, got Miller released and another man indicted.

You could fill a book with such hair-curling true stories of blighted lives and justice traduced. Three authors have filled one. It should change the argument about capital punishment and other aspects of the criminal justice system. Conservatives, especially, should draw this lesson from the book: Capital punishment, like the rest of the criminal justice system, is a government program, so skepticism is in order.

Horror, too, is a reasonable response to what Barry Scheck, Peter Neufeld and Jim Dwyer demonstrate in ''Actual Innocence: Five Days to Execution and Other Dispatches From the Wrongly Convicted.'' You will not soon read a more frightening book. It is a catalog of appalling miscarriages of justice, some of them nearly lethal. Their cumulative weight compels the conclusion that many innocent people are in prison, and some innocent people have been executed.

Scheck and Neufeld (both members of O.J. Simpson's ''dream team'' of defense attorneys) founded the pro-bono Innocence Project at the Benjamin N. Cardozo School of Law in New York to aid persons who convincingly claim to have been wrongly convicted. Dwyer, winner of two Pulitzer Prizes,

is a columnist for the New York Daily News. Their book is a heartbreaking and infuriating compendium of stories of lives ruined by:

Forensic fraud, such as that by the medical examiner who, in one death report, included the weight of the gallbladder and spleen of a man from whom both organs had been surgically removed long ago.

Mistaken identifications by eyewitnesses or victims, which contributed to 84 percent of the convictions overturned by the Innocence Project's DNA exonerations.

Criminal investigations, especially of the most heinous crimes, that become ''echo chambers'' in which, because of the normal human craving for retribution, the perceptions of prosecutors and jurors are shaped by what they want to be true. (The authors cite evidence that most juries will convict even when admissions have been repudiated by the defendant and contradicted by physical evidence.)

The sinnister culture of jailhouse snitches, who earn reduced sentences by fabricating ''admissions'' by fellow inmates to unsolved crimes.

Incompetent defense representation, such as that by the Kentucky attorney in a capital case who gave his business address as Kelly's Keg tavern.

The list of ways the criminal justice system misfires could be extended, but some numbers tell the most serious story: In the 24 years since the resumption of executions under Supreme Court guidelines, about 620 have occurred, but 87 condemned persons—one for every seven executed—had their convictions vacated by exonerating evidence. In eight of these cases, and in many more exonerations not involving death row inmates, the evidence was from DNA.

One inescapable inference from these numbers is that some of the 620 persons executed were innocent. Which is why, after the exoneration of 13 prisoners on Illinois' death row since 1987, for reasons including exculpatory DNA evidence, Gov. George Ryan, a Republican, has imposed a moratorium on executions.

Scheck, Neufeld and Dwyer note that when a plane crashes, an intensive investigation is undertaken to locate the cause and prevent recurrences. Why is there no comparable urgency about demonstrable, multiplying failures in the criminal justice system? They recommend many reforms, especially pertaining to the use of DNA and the prevention of forensic incompetence and fraud. Sen. Patrick Leahy's Innocence Protection Act would enable inmates to get DNA testing pertinent to a conviction or death sentence, and ensure that courts will hear resulting evidence.

The good news is that science can increasingly serve the defense of innocence. But there is other news.

Two powerful arguments for capital punishment are that it saves lives, if its deterrence effect is not vitiated by sporadic implementation, and it heightens society's valuation of life by expressing proportionate anger at the taking of life. But that valuation is lowered by careless or corrupt administration of capital punishment, which ''Actual Innocence'' powerfully suggests is intolerably common.

[From the Washington Times, Apr. 25, 2000]

DEATH EDICT FOR THE GUILTY ONLY

(By Bruce Fein)

Can reasonable people dispute that the government should confine the death penalty to persons guilty of the crime charged? And can reasonable people deny that the climbing number of exonerations of death row inmates on the ground of actual innocence creates chilling worries on that scores?

Those questions make both urgent and compelling enactment of the cool-headed bill (S. 2071) by Sen. Patrick Leahy, Vermont Democrat, to upgrade the reliability of verdicts in capital cases.

Manifold reasons justify the death penalty (which the U.S. Supreme Court has restricted to crimes of homicide): retribution against offenders whose killings are earmarked by shocking and barbaric wickedness, something akin to the Adolf Eichmann example; to control prison inmates already laboring under life sentences with no parole possibilities; to deter the murder of police or crime witnesses in the hope of escaping punishment of a lesser crime; and encouraging guilty pleas contingent on cooperation with prosecutors in murder conspiracy cases in exchange for a non-capital sentence.

Whether death sentences in general deter crime is hotly disputed. but if they do, their effects would not even begin to dent the crime problem.

A decent respect for life also demands scrupulous concern for the reliability of verdicts in capital punishment trials. Otherwise, the death penalty game is not worth the gamble of executing the innocent—a shameful stain on any system of Justice—and life sentences (perhaps in solitary confinement) without parole should be the maximum.

The Leahy bill laudably aims to preserve the death penalty by slashing the prevailing and highly worrisome risk of executing the innocent through greater DNA testing and competent defense counsel.

Unzip you ears to these facts. Since the Supreme Court in 1976 affirmed the constitutionality of the death penalty for heinous and aggravated murders, 610 death sentences have been implemented. Concurrently, 85 death row prisoners have been released not for technical procedural flukes but because of exculpatory evidence establishing their innocence. In other words, for every seven executions approximately one capital sentence has been levied on an innocent defendant.

Moreover, the detections of these grim injustices has been more haphazard than systematic. The case Randall Dale Adams and Antony Porter are emblematic.

The former was released after attracting the attention of cinematic genius, Earl Morris. His gripping movie, ''The Thin Blue Line,'' discredited the prosecution's case to a nationally awakened audience.

Mr. Porter had lived with the Sword of Damocles for 16 years, and in 1998 his hourglass fell to 48 hours. He was saved from wrongful execution by the plucky work of Northwestern University undergraduate journalism students, who proved Mr. Antony's innocence, a verdict that the State of Illinois conceded.

Quirks and citizen altruism, however, are woefully inadequate safeguards against executing the innocent. While nothing in life is absolutely certain but death and taxes, the Leahy bill would add two muscular measures to make the truth-finding process in capital cases as reliable as is reasonably feasible.

First, post-conviction DNA testing of biological material would be available to an inmate through court order upon a demonstration that the test could provide noncumulative exculpatory evidence; that the material is actually or constructively possessed by the government; and that no previous DNA test had been conducted or that new DNA techniques might reasonably yield more accurate and probative evidence. Jurisdictions also would be directed to preserve biological material gathered in the course of an investigation during the period of the criminal's incarceration for the purpose of possible DNA testing.

Of vastly greater importance to reliable death penalty verdicts, however, is securing competent defense counsel in lieu of incompetence or worse. The U.S. Supreme Court has repeatedly celebrated the indispensability of reasonably skilled lawyers to reliable verdicts. In the infamous Scottsboro, Ala., criminal justice farce, Powell vs. Alabama (1932), Justice George Sutherland, speaking for a unanimous court, lectured: ''Left without the aid of counsel [the accused] may be put on trial without a proper charge, and convicted on incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step of the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.''

Capital cases generally feature indigent defendants. And their court-appointed lawyers are frequently deficient because of austere rates of reimbursement or plain laziness.

For instance, the lawyer appointed to represent Ronald Keith Williamson was uncurious about the fact that another had confessed to the crime. He neglected to raise the exculpatory confession at trial, Williamson was convicted, and was later proven innocent through DNA testing after a 1997 federal appeals court decision overturned the trial verdict because of inert or anemic lawyering.

The Leahy legislation would end this blight in death penalty prosecutions by instructing the director of the Administrative Office of the United States Courts to creating a scheme for credentialing attorneys and providing reasonable pay in capital prosecutions against indigent defendants.

Aren't executions too definitive to be left to chancy discoveries of innocence? If the government does not want to pay the price of turning square corners in capital cases, shouldn't the prosecution accept a lesser maximum punishment?

[From the Washington Post, Feb. 28, 2000]

INNOCENT ON DEATH ROW

Sen. Patrick Leahy (D–Vt.) has introduced a bill that seeks to strengthen safeguards against wrongful executions. Those who support capital punishment should be as determined as its opponents to ensure that innocent people are not executed. By that logic, this legislation should enjoy wide support.

The bill would require both state and federal courts to permit post-conviction DNA testing in cases in which there is a significant question of innocence. It also would encourage states to retain biological evidence, thereby ensuring that there is a material to test when innocence questions arise. Perhaps more important, the bill would make federal criminal justice funds to the states contingent on their improving legal representation for the accused in all stages of death-penalty litigation.

This is a critical reform, as the absence of competent counsel is a pervasive theme in wrongful convictions. The bill would raise the insultingly low limit for damages against the federal government—$5,000 per year in jail—for those wrongly convicted of federal crimes. And it would encourage states to offer reasonable compensation as well.

These are common-sense improvements to the basic infrastructure of the death penalty. For those who favor the abolition of capital punishment, they may seem inadequate. But by focusing only on protecting the innocent—not on a broader agenda of halting all executions—Mr. Leahy places the spotlight on what should be bedrock principle for all

who believe in due process. To support these reforms, one need only believe that people accused of capital crimes should have reasonably able counsel and that—when substantial questions arise about the rightness of their convictions—they should have the ability to prove their innocence.

[From the New York Times, Feb. 19, 2000]

NEW LOOKS AT THE DEATH PENALTY

America is at last beginning to grapple honestly with the profound flaws of the death penalty system. Late last month Gov. George Ryan of Illinois, a Republican, became the first governor in a death penalty state to declare a moratorium on executions, citing well-founded concerns about his state's ''shameful record of convicting innocent people and putting them on death row.'' That has now been followed by moves in Congress and the executive branch to review death penalty policies from a national perspective.

Senator Russell Feingold of Wisconsin has urged President Clinton to suspend all federal executions pending a review of death penalty procedures similar to the one Governor Ryan has initiated in Illinois. Problems of inadequate legal representation, lack of access to DNA testing, police misconduct, racial bias and even simple errors are not unique to Illinois, Mr. Feingold noted.

The Justice Department has also initiated its own review to determine whether the federal death penalty system unfairly discriminates against racial minorities. At his news conference this week, Mr. Clinton praised the death penalty moratorium in Illinois, but indicated he thought a federal moratorium was unnecessary. Mr. Feingold has urged him to reconsider. Given his lame-duck status, the president can afford to call a halt without worrying about being falsely labeled soft on crime. Moreover, the fact that a Republican governor was first to announce a moratorium should minimize any concern about Vice President Al Gore being so labeled.

Congress need not wait for the administration to act. Last week Senator Patrick Leahy, Democrat of Vermont, introduced legislation to address ''the growing national crisis'' in how capital punishment is administered. This promising measure, the Innocence Protection Act of 2000, stops short of abolishing the death penalty, the course we hope the nation will eventually follow. But key provisions would lessen the chance of unfairness and deadly error by making DNA testing available to both state and federal inmates, and by setting national standards to ensure that competent lawyers are appointed for capital defendants.

Without such protections, there is a grave possibility of judicial error. Nationally, 612 people have been executed since the Supreme Court reinstated capital punishment in 1976. During the same period, 81 people in 21 states have been found innocent and released from death row—some within hours of being executed. That suggests that many who were executed might also have been innocent.

Neither the states nor the courts are providing adequate protection against awful miscarriages of justice. In Texas, the nation's leader in executions, courts have upheld death sentences in cases where defense lawyers slept during big portions of the trial. Lately, Congress and the Supreme Court have exacerbated the danger of mistaken executions by curtailing appeal and habeas corpus rights. They have also ignored the festering problem of inadequate legal representation that caused the American Bar Association to call for a death penalty moratorium three years ago. Even death penalty supporters have to be troubled by a system shown to have a high risk of executing the innocent.

[From the Washington Post, Mar. 20, 2000]

ON VIRGINIA'S DEATH ROW

Derek Barnabei evokes no sympathy. He is on death row in Virginia for the rape and murder of his girlfriend, Sarah Wisnosky, in 1993. The evidence of his guilt seems strong. But that strong probability of guilt makes Virginia's unwillingness to permit DNA testing of potentially key evidence all the more puzzling. Mr. Barnabei has maintained his innocence, and the case has a few troubling aspects. In light of this, it only makes sense to test bloodstained physical evidence retained but never tested by investigators. Yet Virginia balks on the grounds that Mr. Barnabei's guilt is so clear.

The likelihood is that the blood is Ms. Wisnosky's, which would neither bolster nor undermine the jury's verdict in the case. It also could be Mr. Barnabei's, which would reinforce the integrity of the verdict. But the presence of someone else's blood would make Mr. Barnabei's claims more credible.

It is hard to see why a state, before putting someone to death, would be unwilling to demonstrate a jury verdict's consistency with all of the evidence. Indeed, this is precisely the type of case in which the state should have no choice. Under a bill being pushed by Sen. Patrick Leahy (D–Vt.), states would be obligated in such circumstances to allow post-conviction DNA testing. Such a law would not merely offer a lawyer of protection to innocent people but would increase public confidence in the convictions of guilty people.●

Mr. SMITH of Oregon. Mr. President, I am a supporter of the death penalty. I believe there are some times when humankind can act in a manner so odious so heinous, and so depraved that the right to life is forfeited. Notwithstanding this belief—indeed, because of this belief—I rise today to talk about the importance of protecting innocent people in this country from wrongful imprisonment and execution. Today, Senator LEAHY and I are introducing the Innocence Protection Act of 2000 that will use the technological advances of the 21st century to ensure that justice is served swiftly and fairly.

It has been difficult to open a newspaper in recent months without finding discussion of the death penalty and possible miscarriages of justice. You have almost certainly seen or heard reports of inmates being freed from death row based on results of new genetic tests that were unavailable at the time of trial. There have been a number of cases where this has, in fact, occurred.

This is a cause for concern for a number of cases. First and foremost, of course, is the possibility that an innocent person could lose his or her life if wrongfully convicted. In such cases, this also leads to the double tragedy that the true guilty party remains free to roam the country in search of future victims. Clearly, capturing and convicting the true perpetrator of a crime is in everyone's best interests.

The Innocence Protection Act of 2000 would provide a national standard for post-conviction DNA testing of inmates who believe they have been wrongly incarcerated. Although many inmates were convicted before modern methods of genetic fingerprinting were available, not all states routinely allow post-conviction DNA testing.

This does not make sense. If we are to have a system that is just, transparent, and defensible, we must make absolutely certain that every person who is behind bars deserves to be there. One of the best ways to do this is to make the most advanced technology available for cases in which physical evidence could have an influence on the verdict.

Making DNA testing available will result in some convictions being overturned. In such cases, people who have been unjustly incarcerated must be afforded fair compensation for the lost years of their lives. The Leahy-Smith Innocence Protection Act of 2000 has a provision that would do this. Sometimes a person who has been wrongly imprisoned is released from prison with bus fare and the clothes on his or her back. This practice simply heaps one wrong upon another.

While officers of America's courts and law enforcement work extremely hard to ensure that the true perpetrators of heinous crimes are caught and convicted, there have been instances where defendants have been represented by overworked, underpaid, or even unqualified counsel, and this situation cannot be tolerated in a system of criminal justice. The Leahy-Smith Innocence Protection Act of 2000 would ensure that defendants who are put on trial for their lives receive competent legal representation at every stage in their cases.

The Innocence Protection Act of 2000 will allow us, as a nation, to continue our confidence in the American judicial system and in the fair and just application of the death penalty. We must have confidence in the integrity of justice, that it will both protect the innocent and punish the guilty. This legislation will not prevent true criminals from being executed; rather, it will increase support for the death penalty by providing added assurances that American justice is administered fairly across the country.

Therefore, I urge my colleagues on both sides of the aisle, whether you support or oppose capital punishment, to join Senator LEAHY and me in backing the Innocence Protection Act of 2000, which will put the fingerprint of the 21st century on our criminal justice system, ensuring that innocent lives are not unjustly taken in this country.

Ms. COLLINS Mr. President, I am pleased to join as a cosponsor of the ''Innocence Protection Act.''

Since the reinstatement of capital punishment in 1976, 610 people have been executed in our nation. In that same period of time, an astounding 87 people who were sentenced to die have been found innocent and released from death row. Each of these individuals has lived the Kafkaesque nightmare of condemnation and imprisonment for crimes they have not committed. It is

difficult to imagine the despair and betrayal these individuals must have felt as they were accused, tried, convicted and sentenced, all the time knowing they were not guilty. And during all those years they remained in prison, the real perpetrators remained at large.

I am an opponent of the death penalty, and I am proud to be from the State of Maine which outlawed the death penalty in 1887. The legislation we introduce today is, however, not an anti-death penalty measure.

The legislation we introduce today simply requires logical safeguards to be put in place to prevent wrongful convictions. Its two most important provisions compel DNA testing where it can yield evidence of innocence, and puts in place a new process to ensure defendants receive competent counsel in death penalty cases.

The ''Innocence Protection Act'' calls on the federal government and the states to make DNA testing available in circumstances where it could yield new evidence of innocence. The incidents in which DNA testing has exonerated individuals are not isolated—64 people have been released from prison or death row due to DNA testing.

Linus Pauling once said that ''science is the search for truth.'' Through DNA testing, science provides a tool that can uncover the truth, and lend certainty to our moral obligation in a civilized society—proper administration of our criminal justice system.

The legislation we introduce today assists the wrongfully convicted, and will help prevent the miscarriages of justices that have seemed sadly common. It will also serve the interests of justice and protect crime victims. Justice is never served until the true perpetrator of a crime is identified, convicted and punished. We owe it to the victims and their families to pursue every avenue to find and hold accountable the true criminals who have injured them.

Our American ideals and sense of justice simply cannot tolerate the current risk for mistaken executions. The case of Mr. Anthony Porter should shock the conscience of America. Mr. Porter spent over 16 years on death row, and at one point he was only two days short of receiving a lethal injection, having been convicted of two murders. A determined group of journalism students investigated his case and uncovered evidence that exonerated Mr. Porter. It was only through their efforts that the identity of the real murderer was determined, a review of the case compelled, and Mr. Porter ultimately freed. The peculiar good fortune that lead to the release of Mr. Porter undeniably highlights a weakness in our system of justice that cries out for remedy.

Nothing that we can do here today can restore those years to Mr. Porter, or others who have been wrongly convicted, but we can demand safeguards be put in place to protect the innocent from conviction, and protect society from real criminals who may remain loose on our streets. Regardless of one's views about the death penalty, I hope we all can agree to needed safeguards to help ensure that justice is served.

Thank you, Mr. President, I yield the floor.

● Mr. FEINGOLD. Mr. President, I am extremely pleased to join my distinguished colleague from Vermont and ranking member of the Judiciary Committee, Senator LEAHY, as a cosponsor of the Innocence Protection Act of 2000. I commend him for his leadership on this important legislation. The insight and unique experience that he brings to this issue as a former federal prosecutor is invaluable. I have no doubt that because of his leadership and diligence, Americans have recently become more aware of the important role that the certainty of science can have in our criminal justice system. Improvements in DNA testing have allowed us to determine with greater accuracy whether certain offenders committed the crime that sent them to prison, including, very importantly, of course, those who have been condemned to death row.

Since the 1970s, 87 people sentenced to die were later proven innocent. Some of those innocent death row inmates were able to prove their innocence based on modern DNA testing of biological evidence. But, Mr. President, this is not just about ensuring that we not condemn the innocent. DNA testing can also ensure that the guilty person not go free. DNA testing can be a tool for the prosecution to determine whether they have the right person.

Over the last several months, I have spoken often on the floor about the serious flaws in the administration of capital punishment across the nation. I strongly support Senator LEAHY's bill. It is a much over-due package of reforms that goes after some of the worst failings in our nation's administration of capital punishment—those that are unfair, unjust and plain just un-American.

Very simply, Senator LEAHY's bill can help save lives. His bill would make it less likely for an innocent man or woman to be sent to death row, where biological evidence is central to the issue of guilt or innocence. The bill also would make it more likely that a poor person receive adequate defense representation and less likely that a poor person gets stuck with a lawyer that sleeps through trial. Yesterday, I spoke on the floor about specific examples of such cases of egregious failings of defense counsel.

We must ensure the utmost fairness in the administration of this ultimate punishment. I hope our colleagues—both those who support the death penalty in principle and those who oppose it—will join together in fixing this broken system and restoring fairness and justice. All Americans demand and deserve no less.

Mr. President, I think it is very significant that this important bill now has bipartisan support. I want to thank and commend my colleagues, Senators GORDON SMITH, SUSAN COLLINS and JAMES JEFFORDS, for recognizing that flaws exist in our system of justice and acknowledging that something has to be done about it. I hope this is a sign that we can work together with the very real goal of passing this bill this year. Until we do so, the lives of innocent people literally hang in the balance.●

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 2691. A bill to provide further protections for the watershed of the Little Sandy River as part of the Bull Run Watershed Management Unit, Oregon, and for other purposes; to the Committee on Energy and Natural Resources.

THE LITTLE SANDY WATERSHED PROTECTION ACT

Mr. WYDEN. Mr. President, I rise today to introduce the Little Sandy Watershed Protection Act.

I promised Oregonians that my first legislative business when Congress reconvened after the Memorial Day Recess would be the introduction of this bill.

Therefore, joined by my friends Senator GORDON SMITH and Congressman EARL BLUMENAUER, I introduce this legislation to make sure that Portland families can go to their kitchen faucets and get a glass of safe and pure drinking water today, tomorrow, and on, into the 21st century.

The Bull Run has been the primary source of water for Portland since 1895. The Bull Run Watershed Management Unit, Mount Hood National Forest, was protected by Congressional action in 1904, 1977 and then again, most recently, in 1996 (P.L. 95–200, 16, U.S.C. 482b note) because it was recognized as Portland's primary municipal water supply. It still is.

Today I propose to finish the job of the Oregon Resources and Conservation Act of 1996. That law, which I worked on with Senator Mark Hatfield, finally provided full protection to the Bull Run watershed, but only provided temporary protection for the adjacent Little Sandy watershed. I promised in 1996 that I would return to finish the job of protecting Portland's drinking water supply and intend to continue to push this legislation until the job is complete.

The bill I introduce today expands the Bull Run Watershed Management Unit boundary from approximately 95,382 acres to approximately 98,272 acres by adding the southern portion of the Little Sandy River watershed, an increase of approximately 2,890 acres.

The protection this bill offers will not only assure clean drinking water, but also increase the potential for fish recovery. Reclaiming suitable habitat for our region's threatened fish populations must be an all-out effort.

Through the cooperation of Portland General Electric and the City of Portland, the Little Sandy can be an important part of that effort.

My belief is that the children of the 21st century deserve water that is as safe and pure as any that the Oregon pioneers found in the 19th century. This legislation will go a long way toward bringing about that vision.

Mr. SMITH of Oregon. Mr. President, let me begin by saying that I am pleased to be a cosponsor of this legislation aimed at protecting the Little Sandy Watershed for future generations. The Little Sandy lies adjacent to the Bull Run Watershed, which is the primary municipal water supply for the City of Portland, Oregon. The water that filters through these forests and mountainsides to the east of Portland is of the highest quality in the nation and does not require artificial filtration or treatment.

The Bull Run Watershed Management Unit was established by congressional action in 1977, creating a management partnership between the USDA Forest Service and the City of Portland for the review of water quality and quantity. Additional protection was given to the Bull Run by the Northwest Forest Plan in 1993, restricting all timber harvests in sensitive areas. Neither of these actions, however, extended a satisfactory level of protection to the nearby Little Sandy Watershed. Population growth and heightened water quality expectations have brought the preservation of the Little Sandy Watershed to the forefront of the public's interest in recent years.

The legislation that I have cosponsored would expand the boundary of the Bull Run Watershed Management Unit to include the southern portion of the Little Sandy. This would add nearly 3,000 acres to the Management Unit, including a number of acres currently managed by the Bureau of Land Management (BLM). I am aware that questions have just arisen as to whether some of this acreage is currently managed by O & C lands. If so, there are concerns that O & C land would be devalued by a change in management designation. If this is the case, as the bill moves through the legislative process, I will seek the redesignation of other lands outside the preserve in order to maintain the wholeness of O & C land and the timber base.

By Ms. MIKULSKI (for herself, Mr. KENNEDY, and Mr. DURBIN):

S. 2692. A bill to amend the Federal Food, Drug, and Cosmetic Act to improve safety of imported products, and for other purposes; to the Committee on Health Education, Labor, and Pensions.

IMPORTED PRODUCTS SAFETY IMPROVEMENT AND DISEASE PREVENTION ACT OF 2000

Ms. MIKULSKI. Mr. President, I rise today to reintroduce the ''Imported Products Safety Improvement and Disease Prevention Act of 2000.'' I am proud to be the sponsor of this important legislation which guarantees the improved safety of imported foods, and I have high hopes that we will act on it this year.

The health of Americans is not something to take chances with. It is important that we make food safety a top priority. Every person should have the confidence that their food is fit to eat. We should be confident that imported food is as safe as food produced in this country. Cars can't be imported unless they meet U.S. safety requirements. Prescription drugs can't be imported unless they meet FDA standards. You shouldn't be able to import food that isn't up to U.S. standards, either.

We import increasing quantities of fresh fruits and vegetables, seafood, and many other foods. In the past seven years, the amount of food imported into the U.S. has more than doubled. Out of all the produce we eat, 40% of it is imported. Our food supply has gone global, so we need to have global food safety.

The impact of unsafe food is staggering. There have been several frightening examples of food poisoning incidents in the U.S. When Michigan schoolchildren were contaminated with Hepatitis A from imported strawberries in 1997, Americans were put on alert. Thousands of cases of cyclospora infection from imported raspberries—resulting in severe, prolonged diarrhea, weight loss, vomiting, chills and fatigue were also reported that year. Imported cantaloupe eaten in Maryland sickened 25 people. As much as $663 million was spent on food borne illness in Maryland alone. Overall, as many as 33 million people per year become ill and over 9000 die as a result of food borne illness. It is our children and our seniors who suffer the most. Most of the food-related deaths occur in these two populations.

These incidents have scared us and have jump-started the efforts to do more to protect our nation's food supply. Now, I believe in free trade, but I also believe in fair trade. FDA's current system of testing import samples at ports of entry does not protect Americans. It is ineffective and resource-intensive. Less than 2 percent of imported food is being inspected under the current system. At the same time, the quantity of the imported foods continues to increase.

What this law does is simple: It improves food safety and aims at preventing food borne illness of all imported foods regulated by the FDA. This bill takes a long overdue, big first step.

First, it requires that FDA make equivalence determinations on imported food. This was developed with the FDA by Senator KENNEDY and myself in consultation with the consumer groups.

Today, FDA has no authority to protect Americans against imported food that is unsafe until it is too late. According to the GAO, the FDA lacks the authority to require that food coming into the U.S. is produced, prepared, packed or held under conditions that provide the same level of food safety protection as those in the U.S. This means that currently, food offered for import to the U.S., can be imported under any conditions, even if those conditions are unsanitary. The Imported Products Safety Improvement and Disease Prevention Act of 2000 will allow FDA to look at the production at its source. This means that FDA will be able to take preventive measures. FDA will be able to be proactive, rather than just reactive.

That means that when you pack your childrens' lunches for school or sit down at the dinner table, you can rest assured that your food will be safe. Whether your strawberries were grown in a foreign country or on the Eastern Shore, in Maryland, those strawberries will be held to the same standard. You won't have to worry or wonder where your food is coming from. You won't have to worry that your children or families are going to get sick. You will know that the food coming into this country will be subject to equivalent standards.

Second, this bill contains strong enforcement measures. Last year, the Permanent Subcommittee on Investigations, under the leadership of Senator SUE COLLINS, held numerous hearings on the safety of imported food. These enforcement measures are largely a product of those facts uncovered during those hearings.

Finally, this bill covers emergency situations by allowing FDA to ban imported food that has been connected to outbreaks of food borne illness. When our children, parents and communities are getting seriously sick, the Secretary of Health and Human Services can immediately issue an emergency ban. We don't have to wait till someone else gets seriously sick or dies. We no longer have to go through the current bureaucratic mechanism that is inefficient and resource intensive. We can stop the food today, to protect our citizens.

My goal is to strengthen the food supply, whatever the source of the food may be. This bill won't create trade barriers. It just calls for free trade of safe food. It calls for international concern and consensus on guaranteeing standards for public health.

This bill is important because it will save lives and makes for a safer world. Everyone should have security in knowing that the food they eat is fit to eat. I look forward to working on a bipartisan basis to enact this legislation. I pledge my commitment to fight for ways to make America's food supply safer. This bill is an important step in that direction.

Mr. President, I ask unanimous consent that the text of the bill and a summary be added to the RECORD.

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

S. 2692

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Imported Products Safety Improvement and Disease Prevention Act of 2000''.

TITLE I—IMPROVEMENTS TO THE PRODUCT SAFETY IMPORT SYSTEM

SEC. 101. EQUIVALENCE AUTHORITY TO PROTECT THE PUBLIC HEALTH FROM CONTAMINATED IMPORTED PRODUCTS.

(a) EQUIVALENCE DETERMINATIONS, AND MEASURES, SYSTEMS, AND CONDITIONS TO ACHIEVE PUBLIC HEALTH PROTECTION.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (f), (g), and (h), respectively; and

(2) by inserting after subsection (c) the following:

''(d)(1) Subject to paragraphs (2) and (3), any covered product offered for import into the United States shall be prepared (including produced), packed, and held under a system or conditions, or subject to measures, that meet the requirements of this Act or that have been determined by the Secretary to be equivalent to a system, conditions, or measures for such covered product in the United States and to achieve the level of public health protection for such covered product prepared, packed, and held in the United States. Consistent with section 492 of the Trade Agreements Act of 1979 (19 U.S.C. 2578a), the Secretary shall make, where appropriate, equivalence determinations described in that section relating to sanitary or phytosanitary measures (including systems and conditions) that apply to the preparation, packing, and holding of covered products offered for import into the United States.

''(2) In carrying out this subsection, the Secretary shall conduct systematic evaluations of the systems, conditions, and measures in foreign countries that apply to the preparation, packing, and holding of covered products offered for import into the United States.

''(3) The Secretary shall develop a plan for the implementation of the authority under this subsection within 2 years after the date of enactment of the Imported Products Safety Improvement and Disease Prevention Act of 2000. In developing the plan, the Secretary shall provide an opportunity for, and take into consideration, public comment on a proposed plan.''.

(b) GENERAL AUTHORITY.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381), as amended in subsection (a), is further amended by inserting after subsection (d) the following:

''(e)(1)(A) The Secretary shall establish a system, for use by the Secretary of the Treasury, to deny the entry of any covered product offered for import into the United States if the Secretary of Health and Human Services makes and publishes—

''(i) a written determination that the covered product—

''(I) has been associated with repeated and separate outbreaks of disease borne in a covered product or has been repeatedly determined by the Secretary to be adulterated within the meaning of section 402;

''(II) presents a reasonable probability of causing significant adverse health consequences or death; and

''(III) is likely, without systemic intervention or changes, to cause disease or be adulterated again; or

''(ii) an emergency written determination that the covered product has been strongly associated with a single outbreak of disease borne in a covered product that has caused serious adverse health consequences or death.

''(B)(i) The Secretary shall make a determination described in subparagraph (A) with respect to—

''(I) a covered product from a specific producer, manufacturer, or shipper; or

''(II) a covered product from a specific growing area or country;

that meets the criteria described in subparagraph (A).

''(ii) Only the covered product from the specific producer, manufacturer, shipper, growing area, or country for which the Secretary makes the determination shall be subject to denial of entry under this subsection.

''(C) The denial of entry of any covered product under this paragraph shall be done in a manner consistent with bilateral, regional, and multilateral trade agreements and the rights and obligations of the United States under the agreements.

''(D)(i) Before making any written determination under subparagraph (A)(i), the Secretary shall consider written comments, on a proposed determination, made by any party affected by the proposed determination and any remedial actions taken to address the findings made in the proposed determination. In making the written determination, the Secretary may modify or rescind the proposed determination in accordance with such comments.

''(ii)(I) The Secretary may immediately issue an emergency written determination under subparagraph (A)(ii) without first considering comments on a proposed determination.

''(II) Within 30 days after the issuance of the emergency determination, the Secretary shall consider written comments on the determination that are made by a party described in clause (i) and received within the 30-day period. The Secretary may affirm, modify, or rescind the emergency determination in accordance with the comments.

''(III) The emergency determination shall be in effect—

''(aa) for the 30-day period; or

''(bb) if the Secretary affirms or modifies the determination, until the Secretary rescinds the determination.

''(2)(A) The covered product initially denied entry under paragraph (1) may be imported into the United States if the Secretary finds that—

''(i) the written determination made under paragraph (1) no longer justifies the denial of entry of the covered product; or

''(ii) evidence of remedial action submitted from the producer, manufacturer, shipper, specific growing area, or country for which the Secretary made the written determination under paragraph (1) addresses the determination.

''(B)(i) The Secretary shall take action on evidence submitted under subparagraph (A)(ii) within 90 days after the date of the submission of the evidence.

''(ii) The Secretary's action may include—

''(I) lifting the denial of entry of the covered product; or

''(II) continuing to deny entry of the covered product while requesting additional information or specific remedial action from the producer, manufacturer, shipper, specific growing area, or country.

''(iii) If the Secretary does not take action on evidence submitted under subparagraph (A)(ii) within 90 days after the date of submission, effective on the 91st day after the date of submission, the covered product initially denied entry under paragraph (1) may be imported into the United States.

''(3) The Secretary shall by regulation establish criteria and procedures for the system described in paragraph (1). The Secretary may by regulation modify those criteria and procedures, as the Secretary determines appropriate.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 351(h) of the Public Health Service Act (42 U.S.C. 262(h)) is amended by striking ''section 801(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(e))'' and inserting ''section 801(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(g)(1))''.

(2) Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended—

(A) in paragraph (t), by striking ''section 801(d)(1)'' and inserting ''section 801(f)(1)''; and

(B) in paragraph (w)—

(i) by striking ''sections 801(d)(3)(A) and 801(d)(3)(B)'' and inserting ''subparagraphs (A) and (B) of section 801(f)(3)'';

(ii) except as provided in clause (i), by striking ''section 801(d)(3)'' each place it appears and inserting ''section 801(f)(3)''; and

(iii) by striking ''section 801(e)'' and inserting ''section 801(g)''.

(3) Section 303(b)(1)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(b)(1)(A)) is amended by striking ''section 801(d)(1)'' and inserting ''section 801(f)(1)''.

(4) Section 304(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334(d)(1)) is amended—

(A) by striking ''section 801(e)(1)'' and inserting ''section 801(g)(1)''; and

(B) except as provided in subparagraph (A), by striking ''section 801(e)'' each place it appears and inserting ''section 801(g)''.

(5) Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended—

(A) in subsection (a), in the third sentence, by striking ''subsection (b) of this section'' and inserting ''subsection (b) or subsection (e)(2)(A) (in the case of a covered product described in that subsection)'';

(B) in paragraph (3)(A) of subsection (f), as redesignated in subsection (a), by striking ''section 801(e) or 802'' and inserting ''subsection (g), section 802,''; and

(C) in paragraph (1) of subsection (h), as redesignated in subsection (a), by striking ''subsection (e)'' and inserting ''subsection (g)''.

(6) Section 802 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 382) is amended—

(A) in subsection (a)(2)(C), by striking ''section 801(e)(2)'' and inserting ''section 801(g)(2)'';

(B) in subsection (f)(3), by striking ''section 801(e)(1)'' and inserting ''section 801(g)(1)''; and

(C) in subsection (i), by striking ''section 801(e)(1)'' and inserting ''section 801(g)(1)''.

SEC. 102. PROHIBITION AGAINST THE DISTRIBUTION OF CERTAIN PRODUCTS.

(a) ADULTERATED PRODUCTS.—Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended by adding at the end the following:

''(h)(1) If—

''(A) it is a covered product being imported or offered for import into the United States;

''(B) the covered product has been designated by the Secretary for sampling, examination, or review for the purpose of determining whether the covered product is in compliance with this Act;

''(C) the Secretary requires, under section 801(a)(2)(B), that the covered product not be distributed until the Secretary authorizes the distribution of the covered product; and

''(D) the covered product is distributed before the Secretary authorizes the distribution.

''(2) In this paragraph, the term 'distributed', used with respect to a covered product, means—

''(A) moved for the purpose of selling the covered product, offering the covered product for sale, or delivering the covered product for the purpose of selling the covered product or offering the covered product for sale; or

''(B) delivered contrary to any bond requirement.''.

(b) PROHIBITION.—Section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) is amended—

(1) in the third sentence, by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(2) by striking ''(a) The'' and inserting ''(a)(1) The'';

(3) in the last sentence, by striking ''Clause (2)'' and inserting ''Subparagraph (B)'';

(4) by moving the fourth sentence to the end;

(5) in the sentence so moved, by striking ''The Secretary'' and inserting the following: ''(2)(A) The Secretary''; and

(6) by adding at the end the following:

''(B) The Secretary of Health and Human Services may require that a covered product being imported or offered for import into the United States not be distributed until the Secretary authorizes distribution of the covered product.''.

SEC. 103. REQUIREMENT OF SECURE STORAGE OF CERTAIN IMPORTED PRODUCTS.

(a) ADULTERATED PRODUCTS.—Section 402 of the Federal Food, Drug, and Cosmetic Act, as amended in section 102(a), is further amended by adding at the end the following:

''(i) If—

''(1) it is a covered product being imported or offered for import into the United States;

''(2) the Secretary requires, under section 801(a)(2)(C), that the covered product be held in a secure storage facility until the Secretary authorizes distribution of the covered product; and

''(3) the covered product is not held in a secure storage facility as described in section 801(a)(2)(C) until the Secretary authorizes the distribution.''.

(b) REQUIREMENT.—Section 801(a)(2) of the Federal Food, Drug, and Cosmetic Act, as amended in section 102(b), is further amended by adding at the end the following:

''(C)(i) The Secretary of Health and Human Services may require that a covered product that is being imported or offered for import into the United States be held, at the expense of the owner or consignee of the covered product, in a secure storage facility until the Secretary authorizes distribution of the covered product, if the Secretary makes the determination that the covered product is—

''(I) being imported or offered for import into the United States by a person described in clause (ii); or

''(II) owned by or consigned to a person described in clause (ii).

''(ii) An importer, owner, or consignee referred to in subclause (I) or (II) of clause (i) is a person against whom the Secretary of the Treasury has assessed liquidated damages not less than twice under subsection (b) for failure to redeliver, at the request of the Secretary of the Treasury, a covered product subject to a bond under subsection (b).''.

SEC. 104. REQUIREMENT OF ADMINISTRATIVE DESTRUCTION OF CERTAIN IMPORTED PRODUCTS.

(a) ADULTERATED PRODUCTS.—Section 402 of the Federal Food, Drug, and Cosmetic Act, as amended in section 103(a), is further amended by adding at the end the following:

''(j) Notwithstanding subsections (a)(2)(A) and (b) of section 801, if—

''(1) it is a covered product being imported or offered for import into the United States;

''(2) the covered product presents a reasonable probability of causing significant adverse health consequences or death;

''(3) the Secretary, after the covered product has been refused admission under section 801(a), requires under section 801(a)(2)(D) that the covered product be destroyed; and

''(4) the owner or consignee of the covered product fails to comply with that destruction requirement.''.

(b) REQUIREMENT.—Section 801(a)(2) of the Federal Food, Drug, and Cosmetic Act, as amended in section 103(b), is further amended by adding at the end the following:

''(D) The Secretary of Health and Human Services may require destruction, at the expense of the owner or consignee, of a covered product imported or offered for import into the United States that presents a reasonable probability of causing significant adverse health consequences or death.''.

SEC. 105. PROHIBITION AGAINST PORT SHOPPING.

Section 402 of the Federal Food, Drug, and Cosmetic Act, as amended in section 104(a), is further amended by adding at the end the following:

''(k) If it is a covered product being imported or offered for import into the United States, and the covered product previously has been refused admission under section 801(a), unless the person reoffering the article affirmatively establishes, at the expense of the owner or consignee of the article, that the article complies with the applicable requirements of this Act, as determined by the Secretary.''.

SEC. 106. PROHIBITION OF IMPORTS BY DEBARRED PERSONS.

Section 402 of the Federal Food, Drug, and Cosmetic Act, as amended in section 105, is further amended by adding at the end the following:

''(l) If it is a covered product being imported or offered for import into the United States by a person debarred under section 306(b)(4).''.

SEC. 107. AUTHORITY TO MARK REFUSED ARTICLES.

(a) MISBRANDED PRODUCTS.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

''(t) If—

''(1) it has been refused admission under section 801(a);

''(2) the covered product has not been required to be destroyed under subparagraph (A) or (B) of section 801(a)(2); and

''(3) the packaging of the covered product does not bear a label or labeling described in section 801(a)(2)(E).''.

(b) REQUIREMENT.—Section 801(a)(2) of the Federal Food, Drug, and Cosmetic Act, as amended in section 104(b), is further amended by adding at the end the following:

''(E) The Secretary of Health and Human Services may require the owner or consignee of a covered product that has been refused admission under paragraph (1), and has not been required to be destroyed under subparagraph (A) or (B), to affix to the packaging of the covered product a label or labeling that—

''(i) clearly and conspicuously bears the following statement: 'United States: Refused Entry.';

''(ii) is affixed to the packaging until the covered product is brought into compliance with this Act; and

''(iii) has been provided at the expense of the owner or consignee of the covered product.''.

SEC. 108. EXPORT OF REFUSED ARTICLES.

Paragraph (2)(A) of section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)), as designated in section 102(b), is amended by striking ''ninety days'' and inserting ''30 days''.

SEC. 109. COLLECTION AND ANALYSIS OF SAMPLES OF PRODUCT IMPORTS.

Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381), as amended in section 101(a), is further amended by adding at the end the following:

''(i) The Secretary may issue regulations or guidance as necessary to govern the collection and analysis by entities other than the Food and Drug Administration of samples of a covered product imported or offered for import into the United States to ensure the integrity of the samples collected and the validity of the analytical results.''.

SEC. 110. DEFINITION.

Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(kk) The term 'covered product' means an article that is described in subparagraph (1), (2), or (3) of paragraph (f) and that is not a dietary supplement. The term shall not include an article to the extent that the Secretary of Agriculture exercises inspection authority over the article at the time of import into the United States.''.

TITLE II—ENFORCEMENT AND PENALTIES FOR IMPORTING CONTAMINATED PRODUCTS

SEC. 201. ENHANCED BONDING REQUIREMENTS FOR PRIOR INVOLVEMENT IN IMPORTING ADULTERATED OR MISBRANDED PRODUCTS.

Section 801(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(b)) is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) The Secretary of the Treasury, acting through the Commissioner of Customs, shall issue regulations that establish a rate for a bond required to be executed under paragraph (1) for a covered product if an owner, consignee, or importer of the covered product has committed a covered violation.

''(B) The regulations shall require the owner or consignee to execute such a bond—

''(i) at twice the usual rate; or

''(ii) if the owner, consignee, or importer has committed more than 1 covered violation, at a rate that increases with the number of covered violations committed, as determined in accordance with a sliding scale established in the regulations.

''(C) In this paragraph:

''(i) The term 'committed' means been convicted of, or found liable for, a violation by an appropriate court or administrative officer.

''(ii) The term 'covered violation' means a violation relating to—

''(I) importing or offering for import into the United States—

''(aa) a covered product during a period of debarment under section 306(b)(4);

''(bb) a covered product that is adulterated within the meaning of paragraph (h), (i), (j), (k), or (l) of section 402; or

''(cc) a covered product that is misbranded within the meaning of section 403(t); or

''(II) making a false or misleading statement in conduct relating to the import or offering for import of a covered product into the United States.

''(iii) The term 'usual rate', used with respect to a bond, means the rate that would be required under paragraph (1) for the bond by a person who has not committed a covered violation.''.

SEC. 202. DEBARMENT OF REPEAT OFFENDERS AND SERIOUS OFFENDERS.

(a) IN GENERAL.—Section 306(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(b)) is amended—

(1) in paragraph (1), in the paragraph heading, by striking ''IN GENERAL.—'' and inserting ''DEBARMENT FOR VIOLATIONS RELATING TO DRUGS.—'';

(2) in paragraph (2), in the paragraph heading, by striking ''PERSONS SUBJECT TO PERMISSIVE DEBARMENT.—'' and inserting ''PERSONS SUBJECT TO PERMISSIVE DEBARMENT FOR VIOLATIONS RELATING TO DRUGS.—'';

(3) in paragraph (3), in the paragraph heading, by striking ''STAY OF CERTAIN ORDERS.—'' and inserting ''STAY OF CERTAIN ORDERS RELATING TO DEBARMENT FOR VIOLATIONS RELATING TO DRUGS.—''; and

(4) by adding at the end the following:

''(4) DEBARMENT FOR VIOLATIONS RELATING TO PRODUCT IMPORTS.—

''(A) IN GENERAL.—The Secretary may debar a person from importing a covered product or offering a covered product for import into the United States, if—

''(i) the Secretary finds that the person has been convicted for conduct that is a felony under Federal law and relates to the importation or offering for importation of any covered product into the United States; or

''(ii) the Secretary makes a written determination that the person has repeatedly or deliberately imported or offered for import into the United States a covered product adulterated within the meaning of paragraph (h), (i), (j), or (k) of section 402, or misbranded within the meaning of section 403(t).

''(B) IMPACT.—On debarring a person under subparagraph (A), the Secretary shall provide notice of the debarment to the Secretary of the Treasury, who shall deny entry of a covered product offered for import by the person.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 306 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a) is amended—

(A) in subsection (c)—

(i) in paragraph (1)—

(I) in subparagraph (B), by striking '', and'' at the end and inserting a comma;

(II) by redesignating subparagraph (C) as subparagraph (D); and

(III) by inserting after subparagraph (B) the following:

''(C) shall, during the period of a debarment under subsection (b)(4), prohibit the debarred person from importing a covered product or offering a covered product for import into the United States, and'';

(ii) in paragraph (2)(A), by inserting after clause (iii) the following:

''(iv) The period of debarment of any person under subsection (b)(4) shall be not less than 1 year.''; and

(iii) in paragraph (3)—

(I) in subparagraph (C)—

(aa) by striking ''suspect drugs'' and inserting ''suspect drugs or covered products''; and

(bb) by striking ''fraudulently obtained'' and inserting ''fraudulently obtained or on a covered product wrongfully imported into the United States''; and

(II) in subparagraph (E), by inserting ''in the case of a debarment relating to a drug,'' after ''(E)'';

(B) in subsection (d)—

(i) in paragraph (3)—

(I) in subparagraph (A)—

(aa) in clause (i), by striking ''or (b)(2)(A)'' and inserting ''or paragraph (2)(A) or (4) of subsection (b)''; and

(bb) in clause (ii)(II), by inserting ''in the case of a debarment relating to a drug,'' after ''(II)''; and

(II) in subparagraph (B)—

(aa) in clause (i), by striking ''or clause (i), (ii), (iii) or (iv) of subsection (b)(2)(B)'' and inserting '', clause (i), (ii), (iii), or (iv) of subsection (b)(2)(B), or subsection (b)(4)''; and

(bb) in clause (ii), by striking ''subsection (b)(2)(B)'' and inserting ''paragraph (2)(B) or (4) of subsection (b)''; and

(ii) in paragraph (4)—

(I) in subparagraph (A), by striking ''(a)(2)'' and inserting ''(a)(2) or (b)(4)'';

(II) in subparagraph (B)—

(aa) in clause (ii), by striking ''involving the development or approval of any drug subject to section 505'' and inserting ''involving, as appropriate, the development or approval of any drug subject to section 505 or the importation of any covered product''; and

(bb) in clause (iv), by striking ''drug'' each place it appears and inserting ''drug or covered product''; and

(III) in subparagraph (D), in the matter following clause (ii), by inserting '', in the case of a debarment relating to a drug,'' before ''protects''; and

(C) in subsection (l)(2), in the second sentence, by striking ''(b)(2)(B)'' and inserting ''(b)(2)(B), subsection (b)(4),''.

(2) CIVIL PENALTIES.—Paragraphs (6) and (7) of section 307(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335b(a)) are amended by striking ''306'' and inserting ''306 (except section 306(b)(4))''.

SEC. 203. INCREASED ENFORCEMENT TO IMPROVE THE SAFETY OF IMPORTED PRODUCTS.

Subchapter A of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 et seq.) is amended by adding at the end the following:

''SEC. 712. POSITIONS TO IMPROVE THE SAFETY OF IMPORTED PRODUCTS.

''There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2001 through 2003 to enable the Commissioner, in carrying out chapters IV and VIII, to decrease the health risks associated with imported covered products through the creation of additional employment positions for laboratory, inspection, and compliance personnel.''.

TITLE III—IMPROVEMENTS TO PUBLIC HEALTH INFRASTRUCTURE AND AWARENESS

SEC. 301. IMPROVEMENTS.

Title II of the Public Health Service Act (42 U.S.C. 202 et seq.) is amended by adding at the end the following:

''PART C—PUBLIC HEALTH INFRASTRUCTURE AND AWARENESS

''SEC. 251. DEFINITIONS.

''In this part:

''(1) COVERED PRODUCT.—The term 'covered product' has the meaning given the term in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

''(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

''(3) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention.

''SEC. 252. PUBLIC HEALTH SURVEILLANCE ENHANCEMENT.

''(a) IN GENERAL.—The Secretary may—

''(1) make grants to, enter into cooperative agreements with, and provide technical assistance to eligible agencies to enable the agencies to enhance their capacity to carry out activities relating to surveillance and prevention of pathogen-related disease borne in a covered product, particularly pathogen-related disease associated with imported covered products, as described in subsection (b)(1); and

''(2) carry out the activities described in subsection (b)(2).

''(b) USE OF ASSISTANCE.—

''(1) AGENCIES.—An eligible agency that receives assistance under subsection (a) shall use the assistance to enhance the capacity of the agency—

''(A) to identify, investigate, and contain threats of pathogen-related disease borne in a covered product, particularly pathogen-related disease associated with imported covered products; and

''(B) to conduct additional surveillance and studies to address prevention and control of the disease.

''(2) CENTERS FOR DISEASE CONTROL AND PREVENTION.—The Secretary may use not more than 30 percent of the funds appropriated to carry out this section—

''(A) to assist an agency described in paragraph (1) in enhancing the capacity described in paragraph (1) by providing standards, technologies, information, materials, and other resources; and

''(B) to enhance national surveillance systems, including the ability of domestic and international agencies and entities to respond to product safety issues associated with imported covered products that are identified through such systems.

''(c) ELIGIBLE AGENCIES.—To be eligible to receive assistance under subsection (a)(1), an agency shall be a State or local health department.

''(d) APPLICATION.—To be eligible to receive assistance under subsection (a)(1), an agency shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2003.

''SEC. 253. PATHOGEN DETECTION RESEARCH AND DEVELOPMENT.

''(a) IN GENERAL.—The Secretary may conduct applied research, directly or by grant or contract, to develop new or improved methods for detecting and subtyping emerging pathogens (borne in covered products) in human specimens, covered products, and relevant environmental samples. The Secretary may use funds appropriated to carry out this section to support applied research by State health departments or institutions of higher education.

''(b) APPLICATION.—To be eligible to receive a grant or enter into a contract under subsection (a), an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2003.

''SEC. 254. TRAINING, EDUCATION, AND PUBLIC INFORMATION.

''(a) IN GENERAL.—The Secretary may—

''(1) make grants and enter into contracts with eligible entities, to support training activities and other collaborative activities with the entities to inform health professionals about disease borne in covered products, including strengthening training networks serving State, local, and private entities; and

''(2) increase and improve the activities carried out by the Centers for Disease Control and Prevention to provide information to the public on disease borne in covered products.

''(b) ELIGIBLE ENTITIES.—To be eligible to receive a grant or enter into a contract under subsection (a), an entity shall be a medical school, a nursing school, an entity carrying out clinical laboratory training programs, a school of public health, another institution of higher education, a professional organization, or an international organization.

''(c) APPLICATION.—To be eligible to receive a grant or enter into a contract under subsection (a), an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(d) CONSULTATION.—In carrying out this section, the Secretary shall consult with Federal, State, and local agencies, international organizations, and other interested parties.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2003.

''SEC. 255. INTERNATIONAL PUBLIC HEALTH TRAINING AND TECHNICAL ASSISTANCE.

''(a) IN GENERAL.—The Secretary shall, directly or by agreement, provide training and technical assistance to agencies and entities in foreign countries, to strengthen the surveillance and investigation capacities of the agencies and entities relating to disease borne in covered products, including establishing or expanding activities or programs such as the Field Epidemiology and Training Program of the Centers for Disease Control and Prevention.

''(b) APPLICATION.—To be eligible to enter into an agreement under subsection (a), an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal years 2001 through 2003.

''SEC. 256. SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.

''(a) IN GENERAL.—On the request of a recipient of assistance under section 252, 253, 254, or 255, the Secretary may, subject to subsection (b), provide supplies, equipment, and services for the purpose of aiding the recipient in carrying out the section involved and, for such purpose, may detail to the grant recipient any officer or employee of the Department of Health and Human Services. Such detail shall be without interruption or loss of civil service status or privilege.

''(b) CORRESPONDING REDUCTION IN PAYMENTS.—With respect to a request described in subsection (a), the Secretary shall reduce the amount of payments under the section involved by an amount equal to the cost of detailing the officer or employee and the fair market value of the supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such a request, expend the amounts withheld.''.

SUMMARY OF IMPORTED PRODUCTS SAFETY IMPROVEMENT AND DISEASE PREVENTION ACT OF 2000

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Imported Products Safety Act of 2000—Title I: Improvements to the Product Safety Import System—Amends the Federal Food, Drug, and Cosmetic Act to require imported covered products to be prepared, packed, and held under a system meeting the requirements of such Act, or determined by the Secretary of Health and Human Services (Secretary) to be equivalent to domestic requirements. (''Covered product'' means a food as defined under Section 201(f) of the Act and that is not a dietary supplement.) Directs the Secretary to: (1) develop an implementation plan; and (2) conduct overseas covered product system evaluations.

Directs the Secretary to establish, for use by the Secretary of the Treasury, a system to deny the entry of imported covered products from a specific area, producer, manufacturer, or transporter into the United States that: (1) has been repeatedly adulterated or associated with repeated outbreaks of foodborne disease, presents a health danger, and is likely without systematic changes to cause disease or be adulterated again; or (2) in an emergency determination, has been strongly associated with a serious outbreak of foodborne disease.

Makes a conforming amendment to the Public Health Service Act.

(Sec. 102) Deems as adulterated an imported (of offered for import) covered product: (1) withheld for review that is distributed prior to the Secretary's authorization of distribution; (2) ordered to be held in secure storage prior to distribution that is not so held; (3) required to be destroyed that is not so destroyed; (4) previously denied admission that is subsequently offered for admission without a showing of appropriate compliance (port shopping); or (5) owned or consigned by a debarred person.

Authorizes the Secretary to: (1) prohibit distribution of an imported covered product until the Secretary so authorizes; (2) prohibit distribution and require the secure storage of an imported covered product if the importer, owner, or consignee of such product is a person against whom the Secretary of the Treasury has assessed certain liquidated damages for failure to redeliver covered products subject to a bond; (3) order dangerous imported covered products to be destroyed; and (4) require marking of refused entry (but not ordered destroyed) covered product until brought into appropriate compliance. Deems as misbranded a covered product refused entry that is not so marked.

(Sec. 108) Shortens the period before a refused entry article which is not exported shall be destroyed.

(Sec. 109) Authorizes the Secretary to provide for the collection and analysis of imported covered products by entities other than the Food and Drug Administration.

Title II: Enforcement and Penalties for Importing Contaminated Food—Amends the Federal Food, Drug, and Cosmetic Act to establish bonding requirements for persons involved in prior importing of adulterated or misbranded covered products.

(Sec. 202) Authorizes the Secretary to debar a person from importing covered products into the United States for covered product import-related repeat or felony activities.

(Sec. 203) Authorizes appropriations for additional Food and Drug Administration laboratory, inspection, and compliance personnel.

Title III: Improvements to Public Health Infrastructure and Awareness—Amends the Public Health Service Act to authorize the Secretary, through the Centers for Disease Control and Prevention, to make grants to, enter into contracts with, and provide technical assistance to State and local health entities for enhanced surveillance and prevention of foodborne disease, particularly related to imported covered products. Authorizes appropriations.

Authorizes the Secretary, with respect to foodborne disease, to: (1) conduct pathogen detection research and development; and (2) provide for training, education, and public information. Authorizes appropriations.

Directs the Secretary to provide related international public health training and technical assistance. Authorizes appropriations.

Mr. KENNEDY. I am reintroducing this important bill because of the seriousness of the problem it addresses and to spur this Congress to take action. I commend Senator MIKULSKI for her continued leadership on this legislation to close the critical gaps in our imported food safety laws.

Citizens deserve to know that the foods they eat are safe and wholesome, regardless of their source. The United States has one of the safest food supplies in the world. Yet, every year, millions of Americans become sick, and thousands die, from eating contaminated food. Food-borne illnesses cause billions of dollars a year in medical costs and lost productivity. Often, the source of the problem is imported food.

The number of reports in the press of illnesses caused by eating contaminated imported foods has grown steadily over the past few years.

For example, in 1997, school children in five states contracted Hepatitis A from frozen strawberries served in the school cafeterias. Fecal contamination is a potential source of Hepatitis A, and the strawberries the children ate came from a farm in Mexico where workers had little access to sanitary facilities.

Earlier this year, cases of typhoid fever in Florida were linked to a frozen tropical fruit product from Guatemala. Again, poor sanitary conditions appear to be at the root of the problem.

Gastrointestinal illness has been linked to soft cheeses from Europe. Bacterial food poisoning has been attributed to canned mushrooms from the Far East.

The emergence of highly virulent strains of bacteria, and an increase in the number of organisms that are resistant to antibiotics, make microbial contamination of food a major public health challenge.

Ensuring the safety of imported food is a huge task. Americans now enjoy a wide variety of foods from around the world and have access to fresh fruits and vegetables year round. In 1997, the Food Safety Inspection Service of the Department of Agriculture handled 118,000 entries of imported meat and poultry. The FDA handled far more—2.7 million entries of other imported food. Current FDA procedures and resources allowed for less than two percent of those 2.7 million imports to be physically inspected. Clearly, we need to do better.

The FDA lacks sufficient authority to prevent contaminated food imports from reaching our shores. The agency has no legal authority to require that food imported into the United States has been prepared, packed and stored under conditions that provide the same level of public health protection as similar food produced in the United States. Under current procedures, the FDA takes random samples of imports as they arrive at the border. The imports often continue on their way to stores in all parts of the country while testing is being done, and it is often

difficult to recall the food if a problem is found. Unscrupulous importers make the most of the loopholes in the law, including substituting cargo, falsifying laboratory results, and attempting to bring a refused shipment in again, at a later date or at a different port.

The legislation we are reintroducing today will give the Secretary of Health and Human Services the additional authority needed to assure that food imports are as safe as food grown and prepared in this country.

It will give the FDA greater authority to deal with outbreaks of foodborne illness and to bar further imports of dangerous foods until improvements at the source can guarantee the safety of future shipments. This authority covers foods that have repeatedly been associated with food-borne disease, have repeatedly been found to be adulterated, or have been linked to a catastrophic outbreak of food-borne illness.

The legislation will also close loopholes in the law and give the FDA better tools to deal with unscrupulous importers.

In addition, the legislation will authorize the Centers for Disease Control and Prevention to target resources toward enhanced surveillance and prevention activities to deal with foodborne illnesses, including new diagnostic tests, better training of health professionals, and increased public awareness about food safety.

Too many citizens today are at unnecessary risk of food-borne illness. The measure we are proposing is designed to reduce that risk as much as possible, both immediately and for the long term. We know that there are powerful special interests that put profits ahead of safety. But Americans need and deserve laws that better protect their food supply. This is essential legislation, and I look forward to working with my colleagues to see that it is enacted as soon as possible.

ADDITIONAL COSPONSORS

S. 345

At the request of Mr. ALLARD, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 345, a bill to amend the Animal Welfare Act to remove the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful.

S. 656

At the request of Mr. REED, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 656, a bill to provide for the adjustment of status of certain nationals of Liberia to that of lawful permanent residence.

S. 779

At the request of Mr. ABRAHAM, the names of the Senator from Indiana (Mr. BAYH) and the Senator from New Jersey (Mr. TORRICELLI) were added as cosponsors of S. 779, a bill to provide that no Federal income tax shall be imposed on amounts received by Holocaust victims or their heirs.

S. 801

At the request of Mr. SANTORUM, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 801, a bill to amend the Internal Revenue Code of 1986 to reduce the tax on beer to its pre-1991 level.

S. 866

At the request of Mr. CONRAD, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 866, a bill to direct the Secretary of Health and Human Services to revise existing regulations concerning the conditions of participation for hospitals and ambulatory surgical centers under the medicare program relating to certified registered nurse anesthetists' services to make the regulations consistent with State supervision requirements.

S. 1020

At the request of Mr. GRASSLEY, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1020, a bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts.

S. 1074

At the request of Mr. TORRICELLI, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) were added as a cosponsor of S. 1074, a bill to amend the Social Security Act to waive the 24-month waiting period for medicare coverage of individuals with amyotrophic lateral sclerosis (ALS), and to provide medicare coverage of drugs and biologicals used for the treatment of ALS or for the alleviation of symptoms relating to ALS.

S. 1109

At the request of Mr. MCCONNELL, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 1109, a bill to conserve global bear populations by prohibiting the importation, exportation, and interstate trade of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes.

S. 1110

At the request of Mr. LOTT, the names of the Senator from California (Mrs. BOXER) and the Senator from North Carolina (Mr. HELMS) were added as cosponsor of S. 1110, a bill to amend the Public Health Service Act to establish the National Institute of Biomedical Imaging and Engineering.

S. 1472

At the request of Mr. SARBANES, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1472, a bill to amend chapters 83 and 84 of title 5, United States Code, to modify employee contributions to the Civil Service Retirement System and the Federal Employees Retirement System to the percentages in effect before the statutory temporary increase in calendar year 1999, and for other purposes.

S. 1562

At the request of Mr. NICKLES, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 1562, a bill to amend the Internal Revenue Code of 1986 to classify certain franchise operation property as 15-year depreciable property.

S. 1762

At the request of Mr. COVERDELL, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1762, a bill to amend the Watershed Protection and Flood Prevention Act to authorize the Secretary of Agriculture to provide cost share assistance for the rehabilitation of structural measures constructed as part of water resources projects previously funded by the Secretary under such Act or related laws.

S. 1851

At the request of Mr. CAMPBELL, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1851, a bill to amend the Elementary and Secondary Education Act of 1965 to ensure that seniors are given an opportunity to serve as mentors, tutors, and volunteers for certain programs.

S. 2018

At the request of Mrs. HUTCHISON, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from Washington (Mr. GORTON) were added as cosponsors of S. 2018, a bill to amend title XVIII of the Social Security Act to revise the update factor used in making payments to PPS hospitals under the medicare program.

S. 2045

At the request of Mr. HATCH, the name of the Senator from Georgia (Mr. COVERDELL) was added as a cosponsor of S. 2045, a bill to amend the Immigration and Nationality Act with respect to H–1B nonimmigrant aliens.

S. 2068

At the request of Mr. GREGG, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Florida (Mr. MACK) were added as cosponsors of S. 2068, a bill to prohibit the Federal Communications Commission from establishing rules authorizing the operation of new, low power FM radio stations.

S. 2083

At the request of Mr. ROBB, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 2083, a bill to amend the Internal Revenue Code of 1986 to provide a uniform dollar limitation for all types of transportation fringe benefits excludable from gross income, and for other purposes.

S. 2217

At the request of Mr. CAMPBELL, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2217, a bill to require the Secretary of the Treasury to mint coins in