Mr. WARNER. Mr. President, I thank the distinguished majority leader and the majority leader. In essence, it is their interpretation of the bill that the purport of this amendment is covered and that it could easily have been added had I been present a little earlier and asked for its inclusion.

So, Mr. President, that satisfies my purpose and I do not think it is necessary for me to withdraw the amendment because I did not ask for its consideration in view of the unanimous consent request. We have established the legislative history that I felt was necessary.

Mr. BYRD. I thank the Senator.

Mr. WARNER. I thank the Chair.

The PRESIDING OFFICER.

The question is on agreeing to the amendment of the majority leader.

The amendment (No. 3466) was agreed to.

Mr. LEAHEY. Mr. President, the House amendments to the Freedom of Information Act provisions in the Senate-passed drug bill were generally technical in nature and I would have accepted them without change. However, I believe my fellow distinguished chairman of the Constitution Subcommittee, Senator Hart, in making minor changes in two of the House amendments and restoring original Senate language in place of a third House modification to our provisions.

The first minor change involves a House amendment clarifying our provision authorizing the assessment of review costs. As explained by Representative ENGLISH, in his statement in the CONGRESSIONAL RECORD of October 8, 1986, the House amendment was intended to establish a limitation on review costs similar to the one that was included in S. 774, the FOIA reform legislation which was passed by the Senate in the 98th Congress, and in H.R. 6414, a bill which was introduced by Representative ENGLISH, although not in the same language. Our addition to the language of the House amendment is merely intended to conform it more closely to the language of the earlier legislation; it is not, in any way, intended to indicate any disagreement with Representative ENGLISH's statement regarding the purpose and meaning of the House amendment.

The second minor change which Senator Hart and I have agreed to would simply establish an effective date of 180 days after enactment for the fee and fee waiver provisions in section 1803 of the drug bill, in place of the House provisions which would have established an effective date of 90 days after enactment.

Our final change to the House amendment of the FOIA provisions in the Senate-passed drug bill would simply amend section 109(a)(3) in the Senate version amending section (b)(7)(C) of the FOIA exemption for law enforcement records. The Senate-passed version of this amendment, as I explained in my earlier statement in the CONGRESSIONAL RECORD of September 20, 1986, was based upon an identical amendment in S. 774 designed to clarify the degree of risk of harm from disclosure which must be shown to justify withholding records under section 552(b)(6) of the law enforcement records exemption. Again, let me emphasize that this change in the statutory language substantively reflects current judicial interpretations and would not appreciably alter the affected provision in its practical application.

While the sponsors of the House amendments were concerned that such a change from the current statutory language could create problems with regard to interpretations of a related personal privacy exemption in paragraph (b)(6) of the FOIA, I am confident that the courts will recognize this change as simply codifying the current judicial interpretation of the FOIA by ascertaining the degree of risk, rather than calling for a departure to a less rigorous standard.

Let me just say that I was pleased to note that Senator Hart and Representative KRESZLER share my understanding of the purpose and meaning of the FOIA amendments contained in the omnibus drug bill. I concur with their views, as stated in the CONGRESSIONAL RECORD of October 8, 1986, finding them consistent with my own earlier comments on these provisions.

Mr. KERRY. Will the Senator yield for a question?

Mr. LEAHEY. I am happy to yield for a question.

Mr. KERRY. As a member of the Foreign Relations Committee, and Senator from a State proud to be home to some of the Nation's pre-eminent research institutions and libraries, I am concerned about the proposed changes in the Freedom of Information Act regarding the fees which will necessarily be charged for FOIA.

A week ago the Senate passed by voice vote an amendment to the drug bill (amendment 3066) which I understood to have the effect of correcting the current narrow interpretation of the waiver statutes by Federal agencies, and making waivers and reductions of fees available to all requesters when the information released contributes to public understanding of the Government. I supported the amendment's chief sponsor, the distinguished Senator from Vermont, to explain in his explanation of the amendment, that any requester engaged in the dissemination of information to the public could qualify for waiver or reduction of fees.

Therefore, I am perplexed to find additional remarks in the record raising doubts about the status of a similar category of requesters "organisations seeking to establish private repositories of public records" or "this type of private library of public docucuments." In my lengthy experience in public life, these kinds of organisations are precisely the kinds of groups that should receive the benefit of the Freedom of Information Act by seeking out documentation on important public policy issues from inside the Government, these organisations have not only saved the taxpayers billions of dollars by helping to expose waste and fraud, and the misdeeds, but they also have produced material essential to public education and the proper functioning of our democracy.

The use of the adjective "private" also puzzles me, since the gathering of government documents into a library or repository open to the public can only assist further research and public education. I am sure that the research librarians at "private" institutions in Massachusetts, like Harvard University or Boston College, and at other less-researched institutions in the dispensation of the drug bill, see their mission as fulfilling the intent of the Freedom of Information Act.

If I may ask my distinguished colleagues from Vermont, was it not the intention of this amendment to make public record available to public libraries and public interest users, not to restrict them? And was it not the intention of this new act to qualify for fee waivers and reductions all requesters who can establish the dissemination of the information to the public, where the information contributes to public understanding of the Government and its policies, and where disclosure is not primarily in the commercial interest of the requester?

Mr. LEAHEY. My distinguished colleagues from Massachusetts understand the amendment perfectly. Any statements in the record which give a more restrictive meaning to the amendment with regard to the waiver is in direct conflict with the clear language of the amendment itself. With this amendment, we have sought to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA to the news media and public interest users of the FOIA. Information released under the FOIA which contributes to public understanding of the Government clearly qualifies for waiver or reduction of fees. As long as it is not primarily in the commercial interest of the requester. Where disclosure is primarily in the commercial interest of the requester, and the records are requested for a commercial use, the requester will pay fees. And if he requests by amendment and review charges under this amendment, FOIA requesters engaged in the dissemination of information to the public—and that of course is the primary function of libraries and repositories of public documents—would qualify for waiver or reduction of fees under the FOIA.
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Mr. KERRY. I thank my distinguished colleague, the Senator from Vermont, for his clarification, and for his efforts to assure the free flow of information that is so vital to an informed citizenry and the continued success of our democracy.

Mr. LEVIN. In terms of procedure, the new section providing for a life sentence without parole follows the basic format of the earlier section providing for the death penalty, but with a few significant modifications. For the most part, these modifications are designed to make the provision for this law as consistent with the procedural format of S. 239, the death penalty bill reported out by the Senate Judiciary Committee earlier in this Congress, that was the death penalty provision which was passed as part of the bill by the other body.

I would ask the majority leader, who, along with Senator BYRD, is the principal sponsor of this amendment, to explain if it is his understanding that the movement of the crime victim relief bill from S. 239 to S. 311 is the result of, for instance, a conflict about life and death—life imprisonment without parole, which would be an irrevocable sentence.

Mr. DOLE, Distinguished Senator, do you have any question or any further remarks? I would like to ask a question with regard to section 31116((m)) which defines "controlling distribution" as "merchandise" which cannot be imported without a license or permit. As I read this bill, legitimate goods which are controlled by quotas or other legal restrictions could be included in this definition. Is it the intention to include such items in this bill?

Mr. BIDEN. No. The focus of this bill is to attack the importation of illegal drugs not legitimate imports. The intent was not to include legitimate imported materials like coffee or sugar as part of the controlled substances, rather the intent of the bill was to control the importation and traffic of illegal drugs in this country. Further, we did not intend to make before or cause more problems for those Americans who are in legitimate import business.

Mr. DOLE. Mr. President, since the 1972 Supreme Court decision, numerous attempts have been made in the Senate to repair the constitutional defects found by the Court in existing Federal death penalty laws. Unfortunately, the House refused to move on the issue.

Now, at long last, the other body has included a death penalty provision—limited to certain drug offenses—in its version of the drug bill. While I applaud this inclusion, the House provision did not go far enough.

Federal legislation restoring the death penalty is needed for the most heinous of Federal crimes—crimes for which our most stringent law enforcement agencies lack teeth. The death penalty is necessary to combat the drug problem. Far too many Americans use illegal drugs or diverted legal drugs. Over 4 million Americans use cocaine at least once per month. Twenty million Americans use marijuana at least once per month. These statistics are alarming.

The Senate was considering the narrower version. Even with this very limited proposal it was necessary for a cloture petition to be filed. Again it is the same small group Senators who have objected to the death provision in the drug bill who have consistently opposed proposals such as S. 239. While I have no quarrel at all with those who oppose the death penalty on philosophical grounds, it is most regrettable that cloture had to be invoked in the closing days of this session by the Congress.

The arguments in support of this measure closely parallel the rationale for the broader proposal. First, it is the deterrent effect of capital punishment. Although there is no conclusive evidence one way or the other, it is highly likely that criminal sanctions beyond those now on the books are necessary to deal with the ever growing problem of drug trafficking.

Our prisons and jails are bulging with drug offenders. Almost a quarter of the Federal inmate population is incarcerated on drug-related offenses. Many face stiff minimum mandatory terms, yet the flow into the prison system not only continues unabated, but is steadily increasing. Under these circumstances, the ultimate sanction seems appropriate. If minimum mandatory sentences do not work to deter drug criminals, then let's apply the ultimate deterrent.

Second, the death penalty is an instrument of incapacitation. Its effect is obvious. It is clear that those who have been executed are unable to commit similar crimes in the future. Too many drug offenders return to this highly profitable illicit enterprise upon release. They are incorrigible, ant-social and have proven to be dangerous to society for the rest of their lives. In the institutional setting they are chronic threats to fellow inmates and the correctional official staff.

Third, there is the matter of retribution. These individuals are directly responsible for the degradation or destruction of hundreds of our young people.

Mr. President, this Senator strongly supports the death penalty, and believes a broad death penalty should have been included. Under the bill as modified those would have been subject to this penalty will now receive a mandatory life sentence with no chance of probation or parole.

Mr. BYRD. Mr. President, the Senate should feel a fine sense of accomplishment for our work on this bill.

There is no question that drug abuse in the United States is a problem of vast and growing proportions. Millions of Americans use illegal drugs or diverted legal drugs. Over 4 million Americans use cocaine at least once per month. Twenty million Americans use marijuana at least once per month. These statistics are alarming.