

says it gives our citizens, our businesses a working chance, a viable chance, in a contest with foreign entities in this instance of doing business in a new world order.

Mr. GEKAS. Mr. Chairman, I rise in opposition to the amendment offered by the gentlewoman from Texas.

First of all, I want to thank the gentlewoman from Texas for bringing to the attention of the Members another region of the Federal agency world which is covered and should be covered by our bill; namely, the Commerce Department. That is one example that I had not yet had the time to show the Members should also be covered by our bill as well as every other agency to provide equal justice for our citizens no matter in which agency they appear to claim certain benefits and rights and privileges.

Secondly, the Department of Commerce, for example, which is alluded to by the gentlewoman from Texas (Ms. JACKSON-LEE) could make decisions that would disfavor American citizens as much as it could make decisions that would benefit them. And so the gentlewoman says do not bother with the courts, leave them out of it, let the Department of Commerce decide finally what is best for the American citizen. Even if a decision of the Commerce Department under her analogy finds against the American citizen and says in favor of a foreign business entity.

Well, to make the decision as to whether it is beneficial to an American citizen or not historically and constitutionally and pragmatically and with the separation of powers in tact, it will be the court that will determine the relative merits of the proposition to either protect an American citizen against a foreign company or deny benefits to an American citizen because of a foreign company. The court will decide whether the Commerce Department decision is appropriate or not.

But that is not the basic issue. The basic issue is should we allow the Department of Commerce or any other agency in the Federal Government to look at the court decision on a proposition that is now before them that is lying on the desk for immediate action and say nuts to that decision, we are going to apply what we think is the best possible plan for this claimant even if it is to the detriment of that claimant, and if it is depriving of a benefit, all the more reason why they should acquiesce to the judgment of the court.

So we are saying follow the law, Commerce Department, follow the law, and then if for some egregious invisible rationale we again determine, my gosh, it might be disastrous to have to obey the law, then we can revert to the language of the bill that we have so carefully crafted that would allow those special circumstances in which it can be proved that following the policy of the Commerce Department and the example that the gentlewoman has given,

to follow the policy would be strong enough to allow an exception to the purview of the bill. That is the way to approach this.

We believe that in order to provide equal justice at the start, we also allow justice to prevail if some great wrong would be committed by acquiescence to the law. But the way we have crafted it, that has to be proved, it has to be demonstrated, and that is fair in itself.

I urge rejection of the amendment and adherence to final passage in favor of the bill.

Mr. NADLER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the ranking member very much, and I appreciate the argument of the chairman, but let me just simply say we do not allow foreign nationals to give monies to politicians; why then should we allow foreign companies to fight our Government in court, and they have a better leg up or greater standing than our own Federal agencies to be able to protect or contest the kinds of decisions that may negatively impact on our companies, citizens, and others doing business.

As Fuji Film comes into our court system, it seems that they may have a greater standing in our court system than our Department of Commerce or Department of Justice. We are simply trying to protect jobs here. We are trying to give an equal playing field, if my colleagues will, which all of America believes in, give us an equal playing field, allow our agencies to go in, but again with their expertise and fight fairly in court against decisions that may be adverse to our business community, to those who are doing international trade, to those who find themselves in a litigation mode against a foreign entity, and why give that foreign entity, if my colleagues will, the chance to come and overcome our maybe small- or medium-sized business or maybe large corporation who stands by themselves without the clout and protection of the Federal Government.

One of the points that we have noted when we do international business is that the governments of our foreign countries are intimately interwoven in their countries doing business. Why then, if we are in trouble here in the United States and have a litigation matter without businesses should we not allow our clout, Federal agencies, to be engaged in the fight and to have the ability to be in the fight on an equal playing field.

Mr. Chairman, I ask my colleagues to join me in support on behalf of American businesses and American citizens to give them an equal playing field in the court of international thought, international business and making sure that they have the clout of the American Government behind them.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. The Chair informs the gentleman from New York (Mr. NADLER) that although time is not controlled, the time has passed. He cannot yield blocks of time when we are in the Committee of the Whole, but must remain on his feet under the five minute rule.

The gentleman from New York (Mr. NADLER) is recognized for the remainder of his time.

Mr. NADLER. Mr. Chairman, I want to simply observe that this amendment, like the last amendment offered by the distinguished gentlewoman from Texas, is a worthy amendment and improves the bill. I urge its adoption. I urge all my colleagues to vote for it.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

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

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to House Resolution 367, further proceedings on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) will be postponed.

Mr. GEKAS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. COMBEST) having assumed the chair, Mr. SNOWBARGER, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1544), to prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and relitigation of, precedents established in the Federal judicial circuits, had come to no resolution thereon.

□ 1245

WITNESS PROTECTION AND INTERSTATE RELOCATION ACT OF 1997

Mr. DIAZ-BALART. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 366 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 366

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2181) to ensure the safety of witnesses and to promote notification of the interstate relocation of witnesses by States and localities engaging in that relocation, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the

bill shall be considered for amendment under the five-minute rule. The bill shall be considered by title rather than by section. Each title shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be fifteen minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. SNOWBARGER). The gentleman from Florida (Mr. DIAZ-BALART) is recognized for one hour.

Mr. DIAZ-BALART. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purposes of debate only.

Mr. Speaker, House Resolution 366 is an open rule providing for the consideration of H.R. 2181, the Witness Protection and Interstate Relocation Act of 1997. The purpose of the legislation is to ensure the safety of State witnesses and to promote the notification of the interstate relocation of witnesses by States and localities engaging in that relocation.

Resolution 366 provides for one hour of general debate, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The rule further provides that the bill will be considered by title, with each title being considered as read.

The Chair is authorized by the rule to grant priority in recognition to Members who have preprinted their amendments in the CONGRESSIONAL RECORD prior to their consideration.

In addition, the rule allows for the Chairman of the Committee of the Whole to postpone votes during the consideration of the bill, and to reduce votes to 5 minutes on a postponed question if the vote follows a 15 minute vote.

Finally, the rule provides for one motion to recommit, with or without instructions.

Mr. Speaker, I believe that this resolution is a fair rule. It is an open rule for the thorough consideration of H.R. 2181, the Witness Protection and Interstate Relocation Act of 1997.

H.R. 2181 is a step in the right direction, Mr. Speaker, to address the very real problem of gang-related witness intimidation, which is an increasingly frequent problem as gangs expand their influence and membership beyond State lines.

In a recent survey, over half of the prosecutors in large jurisdictions cited intimidation of witnesses as a major problem in criminal proceedings.

This bill, among other things, establishes a new Federal offense for traveling interstate with the intent to delay or influence the testimony of a witness in a State criminal proceeding by bribery, force, intimidation or threat.

In Florida, our department of law enforcement has identified the presence of over 300 gangs with a membership of over 10,000, including motorcycle gangs, street gangs, prison gangs, militia gangs and racist gangs. However, of the current prison population in our State, less than 2 percent of those behind bars were convicted as part of gang-related crimes. Clearly it is very difficult to actually convict gang members, especially when witnesses are reluctant to testify for fear of retaliation in gang-related cases.

Witnesses in State proceedings are sometimes relocated to other States. Currently no Federal law exists which requires the notification of the State or local enforcement officials that a witness, sometimes with a criminal record, has been relocated to this new jurisdiction. This lack of notification has presented its share of serious difficulties. This legislation, H.R. 2181, promotes coordination among jurisdictions when a witness is relocated interstate.

It is my understanding that some Members may wish to offer germane amendments to this bill, and, under this open rule, they will have every opportunity to do so.

I would like to commend the gentleman from Florida (Mr. MCCOLLUM) for his hard work on H.R. 2181, and would urge my colleagues to support both this open rule and the underlying bill.

In conclusion, Mr. Speaker, this rule is a completely open rule. It is obviously very fair. I urge its adoption.

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

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman for yielding me the customary 30 minutes, and I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this open rule and urge my colleagues to support it so that all alternatives and potential improvements to this legislation may be considered.

Law enforcement officials around the country report that gang-related witness intimidation is now endemic in a growing number of areas. Witnesses' refusal to testify is a major concern, because it undermines the administration of justice, while simultaneously eroding public confidence.

H.R. 2181 addresses the problem of gang-related witness intimidation by

establishing a Federal offense for traveling in interstate or foreign commerce with the intent to delay or influence the testimony of a witness in a State criminal proceeding.

Such intimidation is increasingly interstate in nature and now poses a severe impediment nationally to the prosecution of violent street gangs and drug-trafficking organizations.

In 1994, a survey of 192 prosecutors found that intimidation of victims and witnesses was a major problem for 51 percent of the prosecutors in large jurisdictions. That is over half. Prosecutors interviewed for the 1996 National Institute of Justice Report on Preventing Gang and Drug-Related Witness Intimidation estimated that witness intimidation occurs in 75 to 100 percent of violent crimes committed in neighborhoods with active street gangs. Increasingly, gangs are promoting community-wide noncooperation through public humiliation, assaults and even the murder of victims and witnesses.

This type of community-wide intimidation cannot be allowed to undermine our judicial process by threatening our witnesses and our juries. I strongly support the witness notification relocation provisions in the legislation, as well as the goals of the witness intimidation provisions.

But, nevertheless, despite the laudable goals of the bill, provisions were included that allow for the death penalty for witness intimidation. The committee voted 17 to 7 against an amendment that would have deleted the death penalty provisions.

I find this death penalty provision troubling, because this past February the American Bar Association passed a resolution declaring that the system for administering the death penalty is unfair and lacks adequate safeguards. The resolution declared that executions should be stopped completely until a greater degree of fairness and due process can be achieved.

My fear is that the proliferation of new death penalty offenses that we keep churning out only works to guarantee that executions will indeed become more haphazard. I do not oppose this open rule, however.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DIAZ-BALART. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid upon the table.

The SPEAKER pro tempore (Mr. Ewing). Pursuant to House Resolution 366 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2181.

□ 1256

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole

House on the State of the Union for the consideration of the bill (H.R. 2181) to ensure the safety of witnesses and to promote notification of the interstate relocation of witnesses by States and localities engaging in that relocation, and for other purposes, with Mr. SNOWBARGER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Florida (Mr. MCCOLLUM) and a member of the minority party each will control 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. MCCOLLUM).

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

Mr. Speaker, H.R. 2181, which is before us today, represents another important step by this Congress to address the unacceptably high levels of violent crime ravaging our country today. A lot of people do not realize that when they read about or hear that the violent crime rate in the country has come down the last two or three years, that it is still as high as it is, and that is why when they turn on their television sets at night and watch violence so much on that set, it is not out of proportion, even though some critics want to say it is.

Back in 1960 there were about 165 violent crimes for every 100,000 people in our population. That is 165 for every 100,000 people. About 4 years ago, we reached a little height in terms of the total number of violent crimes at about 685 violent crimes for every 100,000 people in our population, a huge difference between 1961-65 and the 165.

Now that we have had a marginal decrease in the violent crime rate over the past couple years, that is, down to the last year's figures of about 630 violent crimes for every 100,000 people, still more than 4 times as many violent crimes committed in the last year in this country per capita, per 100,000 in the population, as was the case in 1960. Way too much.

It means if you go to a 7-Eleven store, a convenience store, in the evening to buy a carton of milk, it is 4 times more likely you are going to get robbed or murdered or mugged or raped or whatever by an assailant than it was back in 1960.

We cannot take the country back to 1960 in a lot of ways, but we certainly should be able to take it back there in terms of the total numbers of violent crimes per capita in this Nation.

It is absolutely outrageous that this is the case, and that is why we have tried over the last year or two in this Congress to address those issues. That is why we have the law that went into effect to encourage the States to adopt truth in sentencing, to make those who commit violent crimes serve at least the greater portion of their sentence, the 85 percent rule, rather than in the last few years where it was at about 33 or 34 percent of their sentences.

□ 1300

That has been very successful, by the way, in over half the States now, with a pool of money being offered to them to build more prisons if they will agree to change their laws to make that truth-in-sentencing requirement, so violent criminals serve at least 85 percent of their sentences. That is why more than half of the States, to get that pool of money, have changed their laws now and we have those laws in place in those States. That is going to mean those who commit those violent repeat crimes are going to be locked up for long periods of time, not to be back out on the streets to commit the crimes.

We have also done some other things that are equally important in a bill that passed this Congress, at least passed this House, this body, last year, with regard to juvenile justice, where we are attempting to get some consequences put in the juvenile justice laws of this Nation very early on, so that those who commit misdemeanor crimes, spray painting graffiti on a building as a teenager, or perhaps running over a parking meter, breaking a store window, vandalizing the store, whatever, get a chance to see that there are some consequences, be it community service or otherwise. We have done an incentive grant program to the States in this proposed legislation that is now pending in the other body that would provide the States with additional resources if they would simply make sure, and assure the Attorney General of the United States, that they are putting consequences in some kinds of punishment, from the very early misdemeanor crimes that juvenile delinquents have, because we know most violent crimes proportionately are committed by teenagers in their middle to later years of teenaged life.

This is all part of a pattern, this bill today, H.R. 2181, to try to get control over this extreme violence that is out here in our country today. Yesterday we passed a bill in the House that would give some real tough teeth to Federal laws with regard to gun use. Whenever there is a violent crime committed using or in some way brandishing or discharging a firearm, or if there is a drug trafficking crime at the Federal level involving the possession or brandishing or discharging of a firearm, if that is indeed the case, then if the bill that passed the House becomes law, anyone who does that, in addition to whatever sentence they get for the underlying crime they are committing, anybody who does that is going to get 10 more years on for possession, 15 more years on for brandishing, and 20 more years added onto their sentence for the discharge of a firearm in connection with that crime.

Today H.R. 2181 is another step in that effort. It is another smart, tough response to the problem of juvenile violent crime we are talking about. It is the product of two hearings, this bill

today, one which was held in my home district of Orlando, Florida, with a great deal of input from the Justice Department and the U.S. Marshals Service. It is derived in part from a proposal in the President's juvenile crime bill and it has strong bipartisan support.

Mr. Chairman, today there is a crisis emerging in our country. Violent street gangs are intimidating and retaliating against witnesses who have the courage to testify against them. In every major city in America today the rule of law is under attack by violent street gangs that are using violence and the threat of violence to silence those who would help bring those who are criminals in those gangs to justice. The stories of witnesses paying the ultimate price for their willingness to testify are as tragic as they are numerous.

Eduardo Samaniego, a courageous 14-year-old from Pomona, California, was one such victim. The son of a maintenance worker, Eduardo avoided gangs, although they virtually engulfed his working class neighborhoods. As much as possible he lived the life of a typical adolescent, becoming a star Little League baseball player, and dreaming of making the big leagues.

But one afternoon right in his own neighborhood Eduardo witnessed a gang murder. To his parents great pride, he was one of only three witnesses among approximately 15 who had observed the shooting who agreed to testify. He spoke up firmly at the preliminary hearing, but he never had a chance to testify at trial. Within a week Eduardo was fatally shot in an alley near his home. Not surprisingly, the two other witnesses subsequently refused to testify at trial.

The threatened violence and actual violence used by gangs against such witnesses is by itself enough to demand action, but the spectacle of violent street thugs getting away with undermining the administration of justice in cities, counties, and States throughout the country is simply intolerable. Sadly, their outrageous conduct has already led to the erosion of public confidence in law enforcement and our judicial system in too many communities, making community cooperation even more difficult to obtain.

Intimidation of witnesses is on the rise around the country, with the problem now endemic in a growing number of cities, cities as diverse as Los Angeles, California, Des Moines, Iowa and Washington, D.C.

The tentacles of street gangs extend and even flourish behind bars. Fear of retaliation is often fed by the belief that incarcerated gang members will return quickly to the community life after serving brief sentences and will be able while incarcerated to arrange for other gang members to target potential witnesses. Meetings that I had of the Subcommittee on Crime in the last Congress around the country with various community leaders in five different sections of the country reinforce

the fact that indeed this was the case, that there is an awful lot of crime being directed and conducted out of prisons today in this Nation, far too much, and much of it is gang-related, and much of it involves witness intimidation, to try to allow the person who is serving jail time, who is the leader of the gang or the leader of organized crime in that community, or drug trafficking crime, whatever, to get off the hook or to get one of his compatriots off the hook.

The mere fact that a crime is gang-related can be sufficient to prevent an entire neighborhood from cooperating. In New York City, a local gang executed a man for a petty drug theft. The gang then decapitated him and used his head as a soccer ball, kicking it around in the street. This atrocity served the gang's purpose. According to local law enforcement, the lack of cooperation by residents in this neighborhood prevented law enforcement officials from solving nearly 30 homicides in 1994, and contributed to an atmosphere of rampant violence in which an average of 8 gunshots occurred each night.

The traditional steps taken by State and local law enforcement to counter the problem of witness intimidation continue to be helpful, but these measures, which include requesting high bail, prosecuting witness intimidation vigorously, and enhancing witness and victim protection program services, are by themselves increasingly not enough.

As gangs have become more interstate in their operations and scope, their ability and willingness to track down witnesses who have moved to other States has increased. As a result, State and local law enforcement officials such as those who testified in our June, 1997 Subcommittee on Crime hearing have called for a greater Federal role in responding to interstate witness intimidation.

Title I of H.R. 2181 responds to this problem by establishing a Federal offense for traveling in interstate or foreign commerce with the intent to delay or influence the testimony of a witness in a State criminal proceeding by bribery, force, intimidation, or threat. The penalties provided for such an offense, in addition to fines, are imprisonment for not more than 10 years if serious bodily injury results, imprisonment for not more than 20 years, and if death results from the offense, the sentence may be for any terms of years or for life or the death penalty.

At our June 1997 subcommittee hearing a deputy district attorney from Los Angeles County, Jennifer Snyder, provided compelling testimony regarding the value of tough penalties for those who intimidate witnesses.

When asked whether the penalties provided in this bill would have any deterrent effect, and relying on the existing California State law for what occurs in that State, she stated, "Gang members know that it is the death penalty to kill a witness. We have heard

that in our wire intercepts, we hear it in their casual conversations. They know the difference between mad dogging, or staring at a witness, and what is going to cost him if they actually go through with it and kill them. So it does have an impact when you are talking about increasing the punishment."

In addition to establishing a new crime and tougher personalities aimed at protecting witnesses, title II of the bill seeks to protect witnesses by facilitating safe and effective witness protection programs.

Witness protection programs are an indispensable tool in combating violent crime. In cases involving drug trafficking and organized criminal activity, prosecutors often must rely on the testimony of witnesses who were involved in some facet of the illegal operation.

In order to encourage them to testify, the government may need to offer protection when such witnesses are subject to retaliatory threats by defendants.

As the subcommittee learned during its November 1996 field hearing, the nature and sophistication of witness protection programs varies widely. Some localities have no witness protection and relocation capability. And even those that do have such capability vary considerably. While most programs do not relocate witnesses out of State, others, such as Puerto Rico's program, do so frequently.

There is currently no Federal law directly addressing the interstate relocation of witnesses. As such, unless required by a State's own law or by other agreement, programs are under no legal obligation to notify local law enforcement officials and witnesses with criminal records who are relocated interstate.

The potential problems associated with failing to provide notification were highlighted by the June 15, 1996 incident in Osceola County, Florida. On this occasion, Florida Highway Patrol officers and plainclothes Puerto Rico police officers moving a witness narrowly averted an altercation. The Florida troopers thought the officers from Puerto Rico were criminals posing as FBI agents, while the officers from Puerto Rico apparently thought the Florida troopers were assassins sent to kill their witnesses.

As a result of this incident, the Florida Department of Law Enforcement and the Puerto Rico Department of Justice entered into a Memorandum of Understanding to regulate the relocation of witnesses between the State and the Commonwealth. I am pleased to report that there have been no incidences since this Memorandum of Understanding was implemented.

Title II of this bill addresses the need for coordination among jurisdictions when a witness is relocated interstate, by directing the Attorney General to survey State and local protection programs with the aim of making training available to those programs.

The Attorney General is also directed to promote coordination among State and local interstate witness relocation programs, in part by developing a model Memorandum of Understanding for interstate witness relocation. This model Memorandum of Understanding is to include a requirement that notice be provided to the jurisdiction to which the relocation has been made in certain cases.

It is also noted that that particular notification has to be narrow. You cannot just blanket notify everybody that might possibly be in law enforcement or you do not protect your witnesses.

There needs to be a targeted method of doing that in order to provide protection in those States where these witnesses are relocated for the residents of those States because, often, these witnesses who are relocated themselves are potentially very dangerous since they were involved, often, in the underlying crime some way or another and are being protected in order to get them to testify against somebody who is perceived by the other State or jurisdiction's authorities to have committed a more heinous crime or maybe be the organizer and the head kingpin of that criminal enterprise.

Title II also authorizes the Attorney General to make grants under the Byrne discretionary grant program to those jurisdictions that have interstate witness relocation programs that have substantially followed the Memorandum of Understanding in terms of how it has been structured and proposed as a model.

Mr. Chairman, the two titles of this bill, taken together, represent a strong commitment to protect witnesses in federal and State criminal trials, and in doing so, to strengthen the criminal justice systems around the country which are increasingly overwhelmed, particularly by gang violence, but by violence generally.

Mr. Chairman, I have traveled through the drug source countries of South America over the last three months, and I have seen the tragic results of unchecked drug trafficking and violent crimes. I have seen what happens when the rule of law is under siege. The tradition of democratic self-government breaks down, and ordered liberty becomes a thing of the past.

In the United States, we cannot tolerate such lawlessness directed against our justice system. We must ensure that we have the right laws and the right penalties in place to send an unmistakable message to those who would subvert justice.

We must have the provisions in this bill which would provide for very, very tough penalties, including an up to the death penalty where murder occurs, for people across the State line to intimidate or kill a witness to avoid their own conviction or the conviction of somebody in their gang or somebody in their criminal enterprise.

We do not have that law now. It needs to be on the books, not only so

that when that does occur we can see justice carried out for the ones who perpetrate this crime, but in order to send the message, the message to those who do talk, as Ms. Snyder, the Los Angeles County prosecutor, told us, who do talk among themselves, whose wire intercepts we have heard, who understand what the penalties and the prices are. And when they understand it, they will be far less likely to go over and do this kind of intimidation across State lines.

I want to thank the Justice Department and the Marshals Service for their input into this much-needed bipartisan legislation.

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

□ 1315

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

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Florida (Mr. MCCOLLUM) for that extensive review of the witness intimidation and relocation bill. We can all support the notion that those who obstruct our system of justice must be subject to penalties, and we can support measures designed to make such conduct a Federal crime. If State lines are crossed, which is along the lines of measures proposed in the administration's juvenile justice bill, I think that this is also a good thing to do.

May we also indicate our support for the need to collect information regarding what States are doing in terms of relocating witnesses and notifying other States of those relocations. We need Federal standards for such programs, and I fully support witness relocation and notification provisions contained in this bill. And if it were not for the inclusion of the death penalty, I would support this legislation.

Recently, the Death Penalty Information Center issued a report entitled "Innocence and the Death Penalty: The increasing danger of mistaken executions." This report described 16 instances since 1973 in which condemned prisoners had to be released from death row because mistakes had led to wrongful convictions. The figure represents more than 1 percent of the approximately 6,000 people sentenced to death in that period. And, of course, there are no measures to calculate the number of innocent people actually executed.

Last year, the American Bar Association passed a resolution declaring that the system for administering the death penalty in the United States is unfair and lacks adequate safeguards. They further declared that the executions should be stopped until a greater degree of fairness and due process could be achieved.

So 25 years after the Furman vs. Georgia invalidation of the death penalty in the Supreme Court, finding that

the penalty was so wantonly and so freakishly imposed that those being sentenced to die received cruel and unusual punishment, I am sorry to say little has changed. The death penalty is still inflicted upon a capriciously selected, random handful. Moreover, the proliferation of new death penalty offenses only works to guarantee that its imposition will even become more hazardous and more capricious.

There is compelling evidence for many jurisdictions that the race of the defendant is the primary factor governing the imposition of the death sentence. In Georgia, the district attorney in one circuit sought the death penalty in 29 cases, and in 23 of those 29 cases, the defendant was African-American, although blacks made up only 44 percent of the population.

Similar evidence is emerging under the Federal death penalty for drug kingpins. Of the 37 defendants for whom the death penalty was sought between 1988 and 1994, four were white, four were Hispanic, but 29 were African-American.

Death sentences are even more frequently imposed when the victim is white. Since 1977, more than 80 percent of the country's death penalty cases have involved white victims, while about half of the homicides committed each year in the United States involve black victims.

A study by Professor David Baldus at the University of Iowa of over 250,000 homicide cases in Georgia, which controlled for 230 nonracial factors, found that a person accused of murdering a white was 4.3 times more likely to be sentenced to death than a person accused of murdering a black. Although fewer than 40 percent of Georgia homicide cases involved white victims, 87 percent of all the cases in which a death sentence was imposed involved white victims.

We are also concerned that the imposition of the death penalty has become so routine that there is now immediate support for the addition of this penalty whenever it is suggested. A death penalty attached to a new crime is deemed unremarkable and seldom engenders serious debate or discussion, and that is why I raise it on the floor with the measure before us.

Given the overwhelming concerns of fairness and accuracy with which the death penalty is imposed, combined with the lack of a proven deterrent effect, it is my strong desire and intention to modify the measure that is on the floor to contain a life sentence rather than the death penalty.

Mr. Chairman, with that I yield back the balance of my time.

Mr. MCCOLLUM. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana (Mr. BUYER), a member of the committee.

Mr. BUYER. Mr. Chairman, I appreciate the gentleman from Florida yielding to me.

Mr. Chairman, I rise in support of H.R. 2181, which is to address the very

real problem of intimidation of witnesses. The instances of intimidation across State lines is especially pronounced in gang and drug cases, frustrating the ability of State and local authorities to successfully prosecute these cases to include the Federal Government.

The intimidation of witnesses is specifically intended to undermine and subvert our system of justice. I believe that it is an insult to the integrity of the judicial system. Let me give an example.

The last case that I was involved with in the United States Attorney's Office involved two Colombians charged with the distribution of cocaine. Three of our witnesses were also witnesses in a State collateral case, one of which was an informant who we had spoken to. The following morning they were found in the kitchen of an apartment, their hands tied behind their backs, washcloths stuffed in their mouths, and the back of their heads were blown off with shotguns.

Mr. Chairman, I can share that in all other cases that these individuals had been involved, not only in Federal cases, but also in State cases, no one would step forward to testify. The intimidation was very real and it was very effective. We never found out who actually pulled the trigger and killed these people, but I would have enjoyed having the opportunity to have prosecuted them.

Such a strategy of violence intended to intimidate does have a chilling impact on the system and I saw it firsthand. Opponents to this bill believe that in such instances the death penalty should not be used as the ultimate punishment. I disagree. The death penalty is appropriate to those who would kill to undermine our judicial system for their own personal gain.

Mr. Chairman, this intimidation does undermine and have a chilling impact upon the judicial system. It is not healthy and I support this bill.

Mr. MCCOLLUM. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. ROGAN), the newest member of the Committee on the Judiciary.

Mr. ROGAN. Mr. Chairman, I thank the distinguished gentleman from Florida (Mr. MCCOLLUM), chairman of the subcommittee, not only for his leadership on this particular issue, but for his eloquence in presenting it before the House. In doing so, I wish also to thank and congratulate the distinguished gentleman from Michigan (Mr. CONYERS), our ranking member, for his articulate presentation today, and for the dissenting views he and others put forth in the subcommittee report.

Although I do differ with the gentleman from Michigan in his opinion respecting the death penalty, aside from this philosophical difference, his statement respecting the merits of the bill itself is in line with those of the subcommittee chairman.

Mr. Chairman, it is significant that all the members of the subcommittee

who heard this bill see a real need for this particular legislation. Our differences are over the level of penalty that should be imposed for the most egregious cases.

This bill strikes a particular chord with me, because before I arrived in Congress I spent 10 years as both a criminal trial court judge in Los Angeles County and as a member of the Los Angeles County District Attorney's Office. Specifically, during my tenure in the District Attorney's Office, I was assigned to what was called the hard-core gang murder unit.

My job on a daily basis for a couple of years was prosecuting gang cases, particularly gang murder cases. It was very common for members of that unit like myself to carry over 20 open gang murder cases.

Mr. Chairman, those were extremely difficult cases to prosecute. The difficulty did not come from the lack of ballistic evidence, because we often had ballistic evidence. They were not difficult because we did not have fingerprints. Often we had fingerprints. And the difficulty did not come from a lack of witnesses. There were generally many witnesses. The difficulty came in getting those witnesses who saw the crime to come to court and testify. The whole trick to trying gang cases was getting the witnesses into court to tell what they saw.

Generally speaking, when a violent crime occurred, in the excitement of the moment or in the confusion when the police arrived, we often could find a lot of people who were willing to tell the police exactly what they saw, exactly what they heard, and identify the perpetrators. But once the police crime scene tape came down, once the squad cars left and once the detectives returned to the station, those witnesses became victims within their own community—helpless to the intimidation and threats from gang members. It did not take long for any of them to find out what the bottom line was to their safety.

Mr. Chairman, there was a curious phenomenon from the time of the crime until we empaneled the jury: a predictable loss of a witness' memory. Often we would try to do whatever we could to accommodate these witnesses, such as preparing to move them out of the neighborhood. But even that became problematic, because the sophistication of gangs throughout this country has become such that their boundaries are no longer within a neighborhood or a city. Their sophistication and their reach crosses State lines. That is why the current situation cries out for the remedy being suggested by this legislation.

The need for this bill is uncontroverted from both sides, and that is why I again congratulate and thank the gentleman from Florida, the subcommittee chairman, for bringing this to the floor. Again I thank the gentleman from Michigan, the ranking member, and the minority members of

the subcommittee, for their support for the bill in concept.

Mr. Chairman, this will make an incredible difference to those who are on the front lines every single day trying to prosecute these cases to make our neighborhoods safe, and for those who must live in these areas. And I cannot emphasize enough to my colleagues what a difference this bill will make once it is on the books. It will note of those people who ought to be protected, those whom we call upon to do their civic duty and go before the bar of justice to help convict dangerous offenders. This will be a significant help to their level of comfort and safety.

Ms. DEGETTE. Mr. Chairman, I rise today to express my regret that H.R. 2181, the Witness Protection and Interstate Relocation Act, expands the death penalty in federal law.

Members of this Congress have heard definitive testimony from law enforcement officials that witness intimidation and coercion are increasing at a disturbing rate. As the instance of intimidation rises for gang-related and drug crimes, Congress must be responsive. Witnesses need to feel confident that they will be removed and protected from aggressors. Creating a series of new opportunities for courts to impose the death penalty, however, is not the answer.

Mr. KUCINICH. Mr. Chairman, I rise to state my views on H.R. 2181, the Witness Protection and Interstate Relocation Act of 1997.

While this bill includes many valuable provisions which would improve States' witness protection and relocation programs, I cannot, in good faith vote for final passage due to a provision currently in the bill.

My fellow colleagues, my moral and religious values prevent me from voting for a bill which calls for imposition of the death penalty. I believe those who commit serious crimes should be severely punished, even to the extent of life imprisonment, but I do not believe in the death penalty. I believe very strongly in the sanctity of life, and my voting record consistently reflects this belief.

I hope that when this bill goes to conference the death penalty provision is removed. I look forward to working with my colleagues on both sides of the aisle to provide the States with the means to protect witnesses who put their lives at risk to do the right thing and to set strong and reasonable penalties for those who engage in witness intimidation or obstruction of justice.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I support you in your efforts to address the crisis of witness intimidation; however, I do have some concerns. The problem of witness intimidation is a growing problem and one that must be addressed by this Congress. In a growing number of criminal cases around the United States, police and prosecutors are unable to prosecute cases successfully because key witnesses refuse to testify for fear of retaliation by defendants.

This problem is particularly acute in gang- or drug-related cases. In fact, prosecutors report that the mere fact that a crime is gang-related is often sufficient to ensure neighborhood silence. This situation is frustrating for prosecutors because the absence of an overt threat precludes the use of traditional responses to witness intimidation.

It is hard not to sympathize with the witnesses to these crimes who choose to remain

silent out of fear of harm to themselves or their loved ones. These are people who are surrounded daily by crime, violence and death. They witness first-hand the horrors that the nation sees only on the six-o'clock news. They know that the threat of retaliation is not an idle one.

A 1994 survey of prosecutors found that 51 percent of prosecutors in large jurisdictions and 43 percent of those in small jurisdictions, identified intimidation of witnesses as a problem. Several prosecutors interviewed for the 1996 National Institute of Justice Report, "Preventing Gang- and Drug-Related Witness Intimidation," estimated that witness intimidation occurs in 75 to 100 percent of the violent crimes committed in neighborhoods with active street gangs.

This all points to the fact that witness intimidation is a very serious concern because it undermines the administration of justice and erodes public confidence in the justice system.

However, I do have some concerns about this legislation includes the death penalty for witness intimidation that results in death. Recently, the Death Penalty Information Center issued a report entitled "Innocence and the Death Penalty: The Increasing Danger of Mistaken Executions." This report describes 69 instances since 1973 in which condemned prisoners had to be released from death row because mistakes had led to wrongful convictions. This figure represents more than one percent of the approximately 6,000 people sentenced to death in that period. If an amendment is offered which would give a federal judge discretion in removing an imposed death penalty sentence and commuting it to life imprisonment when the facts do not support the imposition of a death penalty, then my colleagues should support such an amendment. This legislation addresses the problem of witness intimidation by establishing a new federal offense for interstate travel to intimidate a witness. It also requires that States which relocate witnesses into other States notify law enforcement in the "recipient" state.

Mr. BLUMENAUER. Mr. Chairman, I support the Witness Protection and Interstate Relocation Act as passed by the House of Representatives today. I voted for the bill because I believe protection of witnesses is one of the most important principles of the judicial process. We cannot tolerate interference or tampering with witnesses at any level of the judicial process, and any effort the federal government can make to ensure greater witness protection is a step in the right direction. While I do not agree with some of the details of the bill, in my mind, the importance of protecting witnesses, a cornerstone of our system of justice, supersedes those concerns.

Mr. DEUTSCH. Mr. Chairman, I rise today in strong support of this important legislation.

H.R. 2181 establishes meaningful guidelines for interstate witness relocation procedures. The legislation will help avoid conflicts between law enforcement agents of differing jurisdictions. In 1996, Florida officials narrowly missed an armed conflict with Puerto Rican agents who were protecting a witness in central Florida. This legislation will ensure that state officials are fully aware of witness relocation efforts in their communities so we can avoid the types of problems we've experienced in Florida.

Between 1987-1996, 83 witnesses have been relocated to Florida from Puerto Rico

alone. More than 1 out every 10 of these have a criminal record. Without a formal process for notification and cooperation, we are unknowingly jeopardizing the lives of innocent Americans and law enforcement agents. This legislation will protect these citizens and public safety officers.

There are serious questions about the appropriate procedures for interstate relocation. I attempted to address these concerns when I traveled to Puerto Rico last year and met with the Justice Minister to craft an agreement between our two states. This was followed by the first, and only, Memorandum of Understanding on interstate witness relocation procedures.

This legislation will build on our efforts to facilitate coordination between jurisdictions. Mr. Speaker, I am pleased to join my colleagues, Congressmen McCOLLUM and ROMERO-BARCELO, in sponsoring this important legislation and I urge its adoption.

Mr. McCOLLUM. Mr. Chairman, I thank the gentleman from California (Mr. ROGAN) for his wise comments, and I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the bill shall be considered under the 5-minute rule by title, and each title shall be considered read.

The Chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment, and may reduce to not less than 5 minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device without intervening business, provided that the time for voting by electronic device on the first in any series of questions shall not be less than 15 minutes.

The Clerk will designate section 1.

The text of section 1 is as follows:

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 "Witness Protection and Interstate Relocation Act of 1997".

The CHAIRMAN. Are there any amendments to section 1?

The Clerk will designate title I.

The text of title I is as follows:

TITLE I—GANG-RELATED WITNESS INTIMIDATION AND RETALIATION

SEC. 101. INTERSTATE TRAVEL TO ENGAGE IN WITNESS INTIMIDATION OR OBSTRUCTION OF JUSTICE.

Section 1952 of title 18, United States Code, is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

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

"(b) Whoever travels in interstate or foreign commerce with intent by bribery, force, intimidation, or threat, directed against any person, to delay or influence the testimony of or prevent from testifying a witness in a State criminal proceeding or by any such means to cause any person to destroy, alter, or conceal a record, document, or other object, with intent to impair the object's integ-

rity or availability for use in such a proceeding, and thereafter engages or endeavors to engage in such conduct, shall be fined under this title or imprisoned not more than 10 years, or both; and if serious bodily injury (as defined in section 1365 of this title) results, shall be so fined or imprisoned for not more than 20 years, or both; and if death results, shall be so fined and imprisoned for any term of years or for life, or both, and may be sentenced to death."

SEC. 102. CONSPIRACY PENALTY FOR OBSTRUCTION OF JUSTICE OFFENSES INVOLVING VICTIMS, WITNESSES, AND INFORMANTS.

Section 1512 of title 18, United States Code, is amended by adding at the end the following:

"(j) Whoever conspires to commit any offense defined in this section or section 1513 of this title shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."

The CHAIRMAN. Are there any amendments to title I?

□ 1330

AMENDMENT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS:

Page 3, after line 14, insert the following:

SEC. 103. FURTHER CONSIDERATION OF DEATH SENTENCE RECOMMENDATION.

(a) IN GENERAL.—Section 3591(a) of title 18, United States Code, is amended by adding at the end the following: "Notwithstanding the preceding sentence, a defendant who has been found guilty of an offense described in section 1512(j) or 1952(b) for which a sentence of death is provided shall not be sentenced to death but shall be sentenced to life imprisonment if court has any doubt that the defendant actually committed the offense."

(b) CONFORMING AMENDMENT.—Section 3594 of title 18, United States Code, is amended in the first sentence by inserting " , subject to the second sentence of section 3591(a) " before the period.

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

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

There was no objection.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, this amendment provides that in cases where a jury has imposed the death sentence or death resulting from witness intimidation, if a court has any doubt regarding the defendant's guilt, the court shall sentence the defendant to life imprisonment rather than death.

This amendment is offered because of the Supreme Court's decisions regarding what has come to be known as "actual innocence." Incredibly, the Supreme Court has held that actual innocence, without proof of a violation of a defendant's constitutional rights, is not enough to stop a death sentence.

In the case, only a few years back, of *Herrera v. Collins*, the Court ruled that a death row inmate who presents be-

lated evidence of innocence is not ordinarily entitled to a new hearing before being executed. In that case, Judge Rehnquist stated that the Federal habeas courts sit to ensure that individuals are not imprisoned in violation of the Constitution, not to correct errors of fact.

According to the Supreme Court, newly discovered evidence has never been regarded as a sufficient basis for the Federal Court relief in the absence of some underlying constitutional violation. And that is notwithstanding the finality of a death penalty. If a mistake has been made, there is no way to undo it.

For the last 26 years, a little over 1 percent of the nearly 7,000 Americans sentenced to death have been released from death row after new facts came to light indicating their innocence. This means that at least 700 people who were sentenced to death were not guilty. In the State of Illinois alone in the past few years no fewer than nine death row inmates have been released after their innocence was proven.

While the system worked in these cases, if we ignore the fact that many of these people were imprisoned wrongfully for many years, the evidence that cleared these men turned up by accident and could well have been discovered too late to halt their executions. This means that although we do not know how many innocent people have been executed, we do know that there are such people and that their numbers are substantial.

This amendment is an accommodation to the irrevocable nature of the death penalty. It provides that where doubt of guilt remains, the opportunity to reverse the conviction on the basis of new evidence must be preserved, and a death sentence obviously does not allow for this.

The effect of this provision, then, would allow the trial judge to stop the imposition of the death penalty only in cases involving the death of witnesses in those cases in which experience has shown the greatest likelihood of erroneous conviction. In practice, this would mean the judges would exclude the death penalty in cases that turned on sometimes notoriously unreliable evidence of uncorroborated eye-witness identifications on the bargained-for testimony of accomplices and jailhouse informants.

The court would remain free to sentence the defendant to life imprisonment without possibility of parole. Only the death penalty would be precluded and only in cases where the judge, based on his experience, could conclude that the possibility of miscarriage of justice actually existed.

This amendment will not totally eliminate the possibility of error in capital cases involving witness intimidation, but it would provide a safety check, reducing the risk of sentencing innocent people to death.

No such safety mechanism exists now. The trial judge can only determine whether the evidence is sufficient

to convict and impose a death sentence. But as the law currently stands, a judge has no power to protect the defendant against the possibility of factual error by the jury.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. CONYERS) has expired.

(By unanimous consent, Mr. CONYERS was allowed to proceed for 1 additional minute.)

Mr. CONYERS. Mr. Chairman, the same is true on appeal. While appellate courts must review the adequacy of the evidence and the procedural regularity of the trial and sentencing, on appeal all factual determinations must be made in the light most favorable to the prosecution and appellate courts are powerless to reverse a death sentence based on questionable but legally sufficient evidence unless some harmful procedural error occurred at trial.

Only by means of this amendment will trial judges, in the limited number of cases involving violations of this act, acquire the power to ensure that the death penalty will not be imposed when the evidence appears strong enough to convict but not strong enough to bet a life on it.

Even those who in this Chamber do not oppose the death penalty, I do not think they can be in favor of executing innocent people; and, therefore, I urge my colleagues to support this amendment.

Mr. MCCOLLUM. Mr. Chairman, I rise in strong opposition to the amendment.

The death penalty has been debated on this floor many times, and I respect the gentleman's views and philosophy on this subject differ from mine considerably, but it is particularly poignant today, in light of this bill and how the death penalty would be applied if this new Federal crime were created and the issue of the death penalty generally.

I think it is probably true to say that there is no more important situation to have the deterrent effect of the death penalty than in this case where we have witness intimidation.

The truth of it, so everybody understands this, and I will make it very clear, the amendment the gentleman from Michigan is offering today would prohibit the death penalty from applying in this legislation to the witness intimidation cases where somebody crosses a State line and kills somebody to prevent them from testifying.

Do we support, the question really should be, capital punishment for vicious criminals who brutally kill bystanders who happen to have the misfortune of witnessing a serious crime and are brave enough to come forward and testify against the criminals? That is what we are talking about in this legislation. If we vote for the amendment, we are voting against the possibility of the death penalty for that provision.

Believe me, just as the prosecuting attorney in Los Angeles said, that I

mentioned, Ms. Snyder, in my opening statement on this bill, there is an understanding among those in the street gangs who are doing this witness intimidation and who do cross State lines and have people killed to keep them from testifying. There is an understanding about what the punishment is. And if the death penalty is there, they are far less likely to do it.

We all know the overwhelming majority of the American public supports capital punishment. For as long as I have been a Member of this body, the House has consistently voted in favor of the death penalty.

Mr. Chairman, there is good reason for this record of strong support. The death penalty is the just punishment for the most heinous of crimes, and there are few crimes more heinous than the murder of a witness. Such murders destroy the lives of the victim and the victim's family and rock the very foundations of the criminal justice system.

It is absolutely essential that the possibility of the death penalty exist in this situation. How else will we deter a drug gang member who faces the possibility of a long prison term from killing a critical witness called to testify against him? If the death penalty is not an option, such criminals assume that they have nothing to lose if they kill witnesses. They face no greater punishment if they get caught. We cannot sit idly by and let it occur. That is why gang prosecutors so strongly support the death penalty provisions in this bill.

Let me say we have heard a lot of about the imposition of the death penalty in America. A few facts, I think, might set the record straight.

The death penalty is actually rarely used in comparison to the number of murders in this country. Less than one-tenth of 1 percent of all murderers are executed. Less than one-tenth of 1 percent of all murderers are executed.

Death penalties are imposed with extraordinary care and accuracy. There is no evidence whatsoever that anyone truly innocent has been executed since the Supreme Court reinstated the death penalty in 1976.

While I respect the statistics the gentleman from Michigan raised a moment ago with regard to the fact that there are some people who have been put on death row who have been ultimately exonerated, they were not executed, obviously.

And there is a long period of time for appeal. The average time for appeal in this Nation has been about 10 years. We hope with the change in the habeas corpus laws we passed last year it will get down to 4 to 6 years. But it is a long period of time.

If somebody is truly innocent, there is going to be plenty of time for them to get off death row. It is not as though it were occurring right before the sentence was being carried out.

The average time a convicted murderer sits on death row before they are executed, as I said, is 10 years.

In 1996, there was a total of 3,219 prisoners on death row; and only 45 were executed.

Among the offenders on death row, 66 percent had at least one prior felony conviction and almost 10 percent had a previous murder conviction. Forty-two percent were on probation, parole or supervised release at the time they committed the crime which landed them on death row.

Studies by anti-death penalty scholars, including last year's report by the Death Penalty Information Center, or a highly publicized 1987 study from Stanford Law Review, failed to sufficiently confirm that one innocent person had been executed. In fact, both studies showed that innocent individuals were released, as I said earlier, well before their executions.

There are many other facts about capital punishment that we could discuss but time does not permit me today.

Let me conclude by saying on this amendment, Mr. Chairman, that it should be defeated. When gang members can joke about killing snitches, we know America is in trouble. If we strip the death penalty from this bill, Congress will take a dangerous step closer to turning America's criminal justice system over to brute force rather than to the rule of law.

I urge my colleagues to vote against this amendment. Leave the death penalty in in this bill. It is as important or more important than in any other provision of Federal law to have the death penalty for those who cross States lines to intimidate and to actually kill a witness who otherwise would testify.

The message is important, the deterrent message; and, obviously, the execution itself, in some cases, is certainly as justified as in any other heinous crime.

The CHAIRMAN. The time of the gentleman from Florida (Mr. MCCOLLUM) has expired.

(On request of Mr. CONYERS, and by unanimous consent, Mr. MCCOLLUM was allowed to proceed for 3 additional minutes.)

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

Mr. MCCOLLUM. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I thank the gentleman very much for yielding.

The only two points I wanted to bring up is this is not about whether we are for or against the death penalty. This amendment is to make sure that, if the court has any doubt that the defendant actually committed the offense, the court would be allowed to suspend the sentence of death and provide a sentence of life imprisonment.

And with reference to the gentleman's observation that there is no evidence that any person that has been executed was innocent, it is pretty hard after the execution to ask people to continue to look for evidence that the execution was wrong. We know

that they were on death row and we have saved them because the effort and the energies persisted while they were alive.

So I would not want the gentleman to conclude from the fact that we have not proven that people executed were in fact innocent turns on the fact that they were in fact guilty. That is a pretty long stretch.

□ 1345

Those were the two points in his refutation I wanted to bring forth.

Mr. MCCOLLUM. Mr. Chairman, if I could reclaim my time, I do want to address that. I am glad he pointed it out to me. The point about any doubt is what bothers me in his amendment more than anything else. He has suggested that a person shall be sentenced to life imprisonment if the court has any doubt. As the gentleman knows, the rule of law with regard to this matter is reasonable doubt now, not any doubt whatsoever. I think by passing this, he effectively means there will be no death penalty when he puts out any doubt. It is very difficult to come up with cases where that standard would be applicable and it would be I think an extraordinary change in the law that exists in all other death penalty cases to my knowledge in the Nation, let alone here in the Federal system, to have the contingency of this as any doubt as opposed to reasonable doubt. Reasonable doubt is the current standard, which he would not need an amendment to do as the gentleman knows. I oppose this. I think he has cleverly drawn this. I respect why he has done it. Again he and I philosophically differ. But I think it is clever by one too much. Effectively it would end the death penalty or not allow it in most of the cases, or at least in a great many of them that would be involved in the prosecution under this bill. I think my remarks earlier were equally applicable regardless of the subtlety of this point he is making which is true and technically correct.

I thank the gentleman for allowing me the additional time, but I again strongly oppose this amendment and urge its defeat because we need an ordinary, everyday, plain vanilla death penalty provision in here if we are going to deter gangs from going across State lines and intimidating people and witnesses, especially the death penalty part applying when they kill somebody when they do that, kill a potential witness.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS).

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 113, noes 300, not voting 17, as follows:

[Roll No. 20]

AYES—113

Abercrombie	Hinchey	Neal
Ackerman	Hoekstra	Oberstar
Allen	Hooley	Obey
Baldacci	Jackson (IL)	Olver
Barrett (WI)	Jackson-Lee	Owens
Becerra	(TX)	Pappas
Berman	Johnson (WI)	Paul
Blumenauer	Johnson, E. B.	Payne
Bonior	Kennedy (MA)	Rahall
Brown (CA)	Kennedy (RI)	Rangel
Brown (OH)	Kildee	Rivers
Carson	Kilpatrick	Roybal-Allard
Clay	Kind (WI)	Rush
Clayton	Klecza	Sabo
Clyburn	Klug	Sanders
Conyers	Kucinich	Sawyer
Coyne	LaFalce	Scott
Cummings	Levin	Serrano
Davis (IL)	Lewis (GA)	Skaggs
DeFazio	Lowe	Slaughter
DeGette	Maloney (NY)	Stabenow
Delahunt	Markut	Stark
Dixon	Martinez	Stokes
Ehlers	McCarthy (MO)	Stupak
Engel	McCarthy (NY)	Thompson
Eshoo	McDermott	Thurman
Evans	McGovern	Tierney
Fattah	McKinney	Torres
Filner	McNulty	Towns
Frank (MA)	Meehan	Velazquez
Furse	Meeke (FL)	Vento
Goodling	Meeke (NY)	Waters
Gutierrez	Millender	Watt (NC)
Gutknecht	McDonald	Waxman
Hall (OH)	Minge	Weygand
Hamilton	Mink	Wise
Hastings (FL)	Moakley	Yates
Hefner	Mollohan	
Hiiliard	Nadler	

NOES—300

Aderholt	Cook	Gordon
Andrews	Cooksey	Goss
Archer	Costello	Graham
Armey	Cox	Granger
Bachus	Cramer	Green
Baesler	Crane	Greenwood
Baker	Crapo	Hall (TX)
Ballenger	Cubin	Hansen
Barcia	Cunningham	Harman
Barr	Danner	Hastert
Barrett (NE)	Davis (FL)	Hastings (WA)
Bartlett	Davis (VA)	Hayworth
Barton	Deal	Hefley
Bass	DeLay	Heger
Bateman	Deutsch	Hill
Bentsen	Diaz-Balart	Hilleary
Bereuter	Dickey	Hinojosa
Berry	Dicks	Hobson
Bilbray	Dingell	Holden
Bilirakis	Doggett	Horn
Bishop	Dooley	Hostettler
Blagojevich	Doolittle	Houghton
Bliley	Doyle	Hoyer
Blunt	Dreier	Hulshof
Boehkert	Duncan	Hunter
Boehner	Dunn	Hutchinson
Bonilla	Edwards	Hyde
Borski	Ehrlich	Inglis
Boswell	Emerson	Istook
Boucher	English	Jefferson
Boyd	Ensign	Jenkins
Brady	Etheridge	John
Bryant	Everett	Johnson (CT)
Bunning	Ewing	Johnson, Sam
Burr	Farr	Jones
Burton	Fawell	Kanjorski
Buyer	Fazio	Kaptur
Callahan	Foley	Kasich
Calvert	Forbes	Kelly
Camp	Fossella	Kim
Campbell	Fowler	King (NY)
Canady	Fox	Kingston
Cannon	Franks (NJ)	Knollenberg
Cardin	Frelinghuysen	Kolbe
Castle	Frost	LaHood
Chabot	Galleghy	Lampson
Chambliss	Ganske	Lantos
Chenoweth	Gekas	Largent
Christensen	Gephardt	Latham
Clement	Gibbons	LaTourette
Coble	Gilchrest	Lazio
Coburn	Gillmor	Leach
Collins	Gilman	Lewis (CA)
Combest	Goode	Lewis (KY)
Condit	Goodlatte	Linder

Lipinski	Pickett	Smith (OR)
Livingston	Pitts	Smith (TX)
LoBiondo	Pombo	Smith, Adam
Lofgren	Pomeroy	Smith, Linda
Lucas	Porter	Snowbarger
Maloney (CT)	Portman	Snyder
Manton	Price (NC)	Solomon
Manzullo	Pryce (OH)	Souder
Mascara	Quinn	Spence
Matsui	Radanovich	Spratt
McCollum	Ramstad	Stearns
McCrery	Redmond	Stenholm
McDade	Regula	Strickland
McHale	Reyes	Stump
McHugh	Riley	Sununu
McInnis	Roemer	Talent
McIntosh	Rogan	Tanner
McIntyre	Rogers	Tauscher
McKeon	Rohrabacher	Tauzin
Menendez	Ros-Lehtinen	Taylor (MS)
Metcalf	Rothman	Taylor (NC)
Miller (FL)	Roukema	Thomas
Moran (KS)	Royce	Thornberry
Moran (VA)	Ryun	Thune
Morella	Salmon	Tiahrt
Murtha	Sanchez	Trafficant
Myrick	Sandlin	Turner
Nethercutt	Sanford	Upton
Neumann	Saxton	Visclosky
Ney	Scarborough	Walsh
Northup	Schaefer, Dan	Wamp
Norwood	Schaffer, Bob	Watkins
Nussle	Schumer	Watts (OK)
Ortiz	Sensenbrenner	Weldon (FL)
Oxley	Sessions	Weldon (PA)
Packard	Shadegg	Weller
Pallone	Shaw	Wexler
Parker	Shays	White
Pascrell	Sherman	Whitfield
Pastor	Shimkus	Wicker
Pease	Shuster	Wolf
Peterson (MN)	Sisisky	Woolsey
Peterson (PA)	Skeen	Wynn
Petri	Skelton	Young (AK)
Pickering	Smith (MI)	Young (FL)

NOT VOTING—17

Brown (FL)	Klink	Poshard
DeLauro	Luther	Riggs
Ford	Mica	Rodriguez
Gejdenson	Miller (CA)	Schiff
Gonzalez	Paxon	Smith (NJ)
Kennelly	Pelosi	

□ 1408

Messrs. BOB SCHAFFER of Colorado, CLEMENT and PETERSON of Pennsylvania changed their vote from "aye" to "no."

Mr. SCOTT and Mr. HOEKSTRA changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. GEJDENSON. Mr. Speaker, I regret that I missed two votes pertaining to H.R. 2181, the Witness Protection and Interstate Protection and Interstate Relocation Act and H.R. 1544, the Federal Agency Compliance Act. At the time I was attending the funeral of former Connecticut governor and Senator Abraham Ribicoff. If I had been here, I would have voted yes on Roll Call #19 and yes on Roll Call #20.

The CHAIRMAN. Are there any further amendments to title I?

The Clerk will designate title II.

The text of title II is as follows:

TITLE II—WITNESS RELOCATION AND SAFETY

SEC. 201. WITNESS RELOCATION SURVEY AND TRAINING PROGRAM.

(a) SURVEY.—The Attorney General shall survey all State and selected local witness protection and relocation programs to determine the extent and nature of such programs and the training needs of those programs. Not later than 270 days after the date of the

enactment of this section, the Attorney General shall report the results of this survey to Congress.

(b) TRAINING.—Based on the results of such survey, the Attorney General shall make available to State and local law enforcement agencies training to assist those law enforcement agencies in developing and managing witness protection and relocation programs.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsections (a) and (b) for fiscal year 1998 not to exceed \$500,000.

SEC. 202. FEDERAL-STATE COORDINATION AND COOPERATION REGARDING NOTIFICATION OF INTERSTATE WITNESS RELOCATION.

(a) ATTORNEY GENERAL TO PROMOTE INTERSTATE COORDINATION.—The Attorney General shall engage in activities, including the establishment of a model Memorandum of Understanding under subsection (b), which promote coordination among State and local witness interstate relocation programs.

(b) MODEL MEMORANDUM OF UNDERSTANDING.—The Attorney General shall establish a model Memorandum of Understanding for States and localities that engage in interstate witness relocation. Such a model Memorandum of Understanding shall include a requirement that notice be provided to the jurisdiction to which the relocation has been made by the State or local law enforcement agency that relocates a witness to another State who has been arrested for or convicted of a crime of violence as described in section 16 of title 18, United States Code.

(c) BYRNE GRANT ASSISTANCE.—The Attorney General is authorized to expend up to 10 percent of the total amount appropriated under section 511 of subpart 2 of part E of the Omnibus Crime Control and Safe Streets Act of 1968 for purposes of making grants pursuant to section 510 of that Act to those jurisdictions that have interstate witness relocation programs and that have substantially followed the model Memorandum of Understanding.

(d) GUIDELINES AND DETERMINATION OF ELIGIBILITY.—The Attorney General shall establish guidelines relating to the implementation of subsection (c) and shall determine, consistent with such guidelines, which jurisdictions are eligible for grants under subsection (c).

SEC. 203. BYRNE GRANTS.

Section 501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended—

(1) by striking “and” at the end of paragraph (25);

(2) by striking the period at the end of paragraph (26) and inserting “; and”; and

(3) by adding at the end the following:
“(27) developing and maintaining witness security and relocation programs, including providing training of personnel in the effective management of such programs.”.

SEC. 204. DEFINITION.

As used in this title, the term “State” includes the District of Columbia, Puerto Rico, and any other commonwealth, territory, or possession of the United States.

The CHAIRMAN. Are there any amendments to title II?

AMENDMENT OFFERED BY MR. SCOTT

Mr. SCOTT. Mr. Chairman, I offer an amendment.

Mr. MCCOLLUM. Mr. Chairman, I reserve a point of order on the amendment.

The Clerk read as follows:

Amendment offered by Mr. SCOTT:

Page 3, line 4, insert the following before the quotation mark:

“When considering whether to inflict the death penalty for a violation of this section, the jury shall consider, as a mitigating factor, whether the evidence, although sufficient to permit a finding of guilt, does not completely remove all doubt about the defendant’s guilt.”

Page 3, line 14, insert the following before the quotation mark:

“When considering whether to inflict the death penalty for a violation of this section, the jury shall consider, as a mitigating factor, whether the evidence, although sufficient to permit a finding of guilt, does not completely remove all doubt about the defendant’s guilt.”

The CHAIRMAN. That is an amendment to title I, and we have gone beyond title I at this point.

Mr. SCOTT. Mr. Chairman, I ask unanimous consent that the amendment be considered in order.

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

There was no objection.

The CHAIRMAN. Does the gentleman from Florida reserve his point of order?

Mr. MCCOLLUM. Mr. Chairman, I withdraw my point of order.

The CHAIRMAN. The Chair recognizes the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. Chairman, this amendment is on the same lines as the previous amendments. This amendment also provides a safeguard against executing innocent people. Unlike the last amendment, however, which allowed the judge to void the decision by the jury, this amendment simply proposes a way for the jury to consider the possibility of the defendant’s innocence.

I offer this amendment to exclude the death penalty as an option whenever the evidence does not foreclose all doubt regarding a defendant’s guilt.

In 1988, the Supreme Court held that a defendant has no constitutional right to have a capital sentencing jury consider as a reason not to impose the death penalty the possibility that the defendant may be innocent. This means that if the jurors are to consider the possibility of error as a reason to vote against imposing the death penalty, the law must explicitly provide for such consideration.

Under current law, the jurors are told to consider a long list of specific mitigating factors as reasons not to sentence a defendant to death. These factors can include that the defendant is mentally ill, youthful, under duress or suffered impaired capacity at the time of the crime. The law does not, however, require the jury to consider the most basic reason of all for worrying against the imposition of death, the possibility the defendant is actually not guilty of the crime for which he has been convicted. The amendment would add residual doubt to the list of mitigating factors a citizen jury can consider.

□ 1415

The amendment provides that the jury may consider any doubt that the

defendant committed the offense, notwithstanding that such doubt may initially not be considered to constitute reasonable doubt.

This amendment should be unobjectionable, even to my colleagues opposed to the death penalty. This does not take away anything from the power of the trier of fact, nor does it overturn a trier of fact’s determination. This amendment merely instructs the jury to consider, among other mitigating and aggravating factors that they already consider, whether the jury has remaining doubts as to whether the defendant is actually the perpetrator of the crime.

Again, this amendment will not stop innocent people from winding up on death row or even being executed. It will, however, offer another check, another way for us to say hold on, we better be certainly sure that a person committed an offense before we sentence him or her to death, at least in cases arising from violations of this particular statute.

This extra safeguard, I think, is certainly desirable, in light of the consequences. When you vote on this amendment, remember that since 1976, 66 inmates have been freed from death row based on strong evidence of their innocence. I urge my colleagues to vote in favor of the amendment.

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

Mr. Chairman, I equally and strongly oppose this amendment, as I did the one before this offered by the gentleman from Michigan. The amendment, while clear in its nature, is one which effectively destroys the death penalty provisions in this bill and sets a different course for the consideration of whether to impose the death penalty or not from any other law of this Nation that I am aware of, either State or Federal.

What it does effectively is to say that you have to completely remove all doubt before you impose a death penalty. It is given as a mitigating factor, which sounds innocent enough, but what happens in a criminal trial when you get to the sentencing phase on the death penalty under Federal law is that under the Supreme Court ruling and under the legislation that has been established since the court several years ago overturned the death penalty as unconstitutional, there has been a way to reestablish it, and that way involves a weighing of aggravating and mitigating circumstances that are put forward for consideration with regard to the death penalty.

There is very precise statutory language constructs in Federal law with regard to this. There are listings of what those aggravating factors are and what those mitigating factors might be, and here is what you produce to the jury or to the deciding court.

In this particular case, what the gentleman from Virginia is trying to do is to suggest that the burden gets a lot higher for the prosecution seeking the

death penalty in a witness intimidation murder case; again, one of those cases which I think is the most heinous of all crimes, where you are intimidating a witness and trying to prevent him or her from being able to testify to get a conviction in a major gang-related case or an organized crime or otherwise case.

Well, gosh knows, when that situation occurs, murdering the witness is the strongest form possible of intimidation. Not only does it intimidate, obviously eliminating that witness altogether, but it intimidates other witnesses, which is what this legislation is all about, by sending an extraordinarily strong message. We are trying to send one equally strong or stronger back that says look, if you go across a state line and kill a witness, you are going to get the death penalty for doing that.

Well, what is happening here though is because under the gentleman from Virginia's construct, you would add another mitigating factor that says to whoever is deciding this, before you can give the death penalty after the conviction has occurred of killing a witness in an intimidation across the state line matter, you have got to have removed completely all doubt. It does not say just all doubt, it says completely remove all doubt of the defendant's guilt.

Let me tell you, there are example after example where somebody could interject some spurious, rather simplistic type of evidence, that would allow some doubt to exist. I think some doubt exists in lots and lots of cases where the death penalty is imposed.

For example, you can have a whole stack of evidence over here of the crime and that somebody did it, but you can have a single witness come in and say gee, Sam is my best friend and he was with me drinking last night.

Does that create reasonable doubt, when you have got all this other evidence outweighing it on the other side in the guilt or innocence or sentencing phase? The answer is no, it does not create reasonable doubt. But if it is a jury instruction or an instruction under the law to the court on the death penalty, it could create some doubt, however tiny, however small that is, which would effectively mean that in virtually any case, anybody could drum up somebody to walk in and give an alibi, even though there is overwhelming evidence they committed the heinous crime for which they are getting the death penalty or might get the death penalty. Then you would not be able to say, a decider of the death penalty, the sentence, could not say that all doubt had been completely removed, which is what is required by the gentleman from Virginia.

So the bottom line is, the gentleman's amendment is just as pernicious as the previous one. It effectively eliminates the death penalty for those who would commit the crimes for which it is intended that they receive

the death penalty in witness intimidation, witness murder, in this bill that is before us today.

I urge strongly the defeat of this amendment. It is a killer amendment in the true sense of the word, in that it eliminates the death penalty teeth of this bill, and it needs to be defeated.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the last word.

Mr. Chairman, let me just submit to my colleagues that what would be pernicious is not the provisions of this amendment. What would be pernicious is if our country put somebody to death, and then found that what they were being put to death for was untrue. And that has been happening more and more recently with the advent of new technological advances, such as the advances in DNA research. We are able now to go back 20 or 30 years and find out that people have in fact been put to death by our country, by our system of criminal justice, for a crime that they did not commit. That is what is pernicious.

This amendment has nothing to do with the burden of proof. The burden of proof is whether you are guilty or innocent. In our system of justice, that burden of proof is, in a criminal case, beyond a reasonable doubt.

This amendment goes to what is considered after there has been a determination of guilt or innocence beyond a reasonable doubt. It goes to what you consider in determining whether there is a death penalty assessed, whether you put somebody to death.

So this is not about the burden of proof on guilt or innocence; this is about what you consider in deciding whether someone should be put to death by our criminal justice system.

Simply put, the amendment says if there is one iota of doubt, if there is any doubt about it, the jury which is considering whether to put a person to death or not ought to be able to take that into account. That is all it says.

I submit that is a very reasonable proposition. The notion that we are doing something un-American by trying to remove any doubt before we use the official forces of the government to put a citizen to death is surprising to me.

I think this amendment is imminently reasonable. I encourage my colleagues to support it. It is not pernicious, it is just plain good sense.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. SCOTT).

The amendment was rejected.

The CHAIRMAN. Are there further amendments to title II of the bill?

There being no further amendments, under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. LAZIO of New York) having assumed the chair, Mr. SNOWBARGER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under

consideration the bill (H.R. 2181) to ensure the safety of witnesses and to promote notification of the interstate relocation of witnesses by States and localities engaging in that relocation, and for other purposes, pursuant to House Resolution 366, he reported the bill back to the House.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

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

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

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

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

Mr. MCCOLLUM. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were— yeas 366, nays 49, answered "present" 1, not voting 14, as follows:

[Roll No. 21]
YEAS—366

Abercrombie	Collins	Gekas
Ackerman	Combest	Gephardt
Aderholt	Condit	Gibbons
Allen	Cook	Gilchrest
Andrews	Cooksey	Gillmor
Archer	Costello	Gilman
Armey	Coyne	Goode
Bachus	Cramer	Goodlatte
Baesler	Crane	Goodling
Baker	Crapo	Gordon
Baldacci	Cubin	Goss
Ballenger	Cunningham	Graham
Barcia	Danner	Granger
Barr	Davis (FL)	Green
Barrett (NE)	Davis (VA)	Greenwood
Bartlett	Deal	Gutierrez
Barton	DeFazio	Gutknecht
Bass	DeLauro	Hall (TX)
Bateman	DeLay	Hamilton
Becerra	Deutsch	Hansen
Bentsen	Diaz-Balart	Harman
Bereuter	Dickey	Hastert
Berman	Dicks	Hastings (WA)
Berry	Dingell	Hayworth
Bilbray	Dixon	Hefley
Bilirakis	Doggett	Hefner
Bishop	Dooley	Herger
Blagojevich	Doolittle	Hill
Bliley	Doyle	Hilleary
Blumenauer	Dreier	Hinchev
Blunt	Duncan	Hinojosa
Boehlert	Dunn	Hobson
Boehner	Edwards	Hoekstra
Bonilla	Ehlers	Holden
Borski	Ehrlich	Hooley
Boswell	Emerson	Horn
Boucher	Engel	Hostettler
Boyd	English	Houghton
Brady	Ensign	Hoyer
Bryant	Eshoo	Hulshof
Bunning	Etheridge	Hunter
Burr	Evans	Hutchinson
Burton	Everett	Hyde
Buyer	Ewing	Inglis
Callahan	Farr	Istook
Calvert	Fawell	Jackson-Lee
Camp	Fazio	(TX)
Campbell	Filner	Jefferson
Canady	Foley	Jenkins
Cannon	Forbes	John
Cardin	Fossella	Johnson (CT)
Carson	Fowler	Johnson (WI)
Castle	Fox	Johnson, E. B.
Chabot	Frank (MA)	Johnson, Sam
Chambliss	Franks (NJ)	Jones
Chenoweth	Frelinghuysen	Kanjorski
Christensen	Frost	Kaptur
Clement	Gallegly	Kasich
Coble	Ganske	Kelly
Coburn	Gejdenson	Kennedy (MA)

Kennelly	Ney	Shuster
Kildee	Northup	Sisisky
Kim	Norwood	Skaggs
Kind (WI)	Nussle	Skeen
King (NY)	Obey	Skelton
Kingston	Olver	Slaughter
Klecza	Ortiz	Smith (MI)
Klug	Oxley	Smith (NJ)
Knollenberg	Packard	Smith (OR)
Kolbe	Pallone	Smith (TX)
LaHood	Pappas	Smith, Adam
Lampson	Parker	Smith, Linda
Lantos	Pascrell	Snowbarger
Largent	Pastor	Snyder
Latham	Pease	Solomon
LaTourette	Peterson (MN)	Souder
Lazio	Peterson (PA)	Spence
Leach	Petri	Spratt
Levin	Pickering	Stearns
Lewis (CA)	Pickett	Stenholm
Lewis (KY)	Pitts	Strickland
Linder	Pombo	Stump
Lipinski	Pomeroy	Stupak
Livingston	Porter	Sununu
LoBiondo	Portman	Talent
Lofgren	Price (NC)	Tanner
Lowey	Pryce (OH)	Tauscher
Lucas	Quinn	Tauzin
Maloney (CT)	Radanovich	Taylor (MS)
Maloney (NY)	Rahall	Taylor (NC)
Manton	Ramstad	Thomas
Manzullo	Redmond	Thompson
Markey	Regula	Thornberry
Mascara	Reyes	Thune
Matsui	Riggs	Thurman
McCarthy (MO)	Riley	Tiahrt
McCarthy (NY)	Rodriguez	Tierney
McCollum	Roemer	Torres
McCrery	Rogan	Trafficant
McDade	Rogers	Turner
McHale	Rohrabacher	Upton
McHugh	Ros-Lehtinen	Velazquez
McInnis	Rothman	Vento
McIntosh	Roukema	Visclosky
McIntyre	Royce	Walsh
McKeon	Ryun	Wamp
McNulty	Salmon	Watkins
Meehan	Sanders	Watts (OK)
Menendez	Sandlin	Waxman
Metcalf	Sanford	Weldon (FL)
Millender-	Sawyer	Weldon (PA)
McDonald	Saxton	Weller
Miller (FL)	Scarborough	Wexler
Minge	Schaefer, Dan	White
Moakley	Schaffer, Bob	Whitfield
Moran (KS)	Schumer	Wicker
Moran (VA)	Sensenbrenner	Wise
Morella	Sessions	Wolf
Murtha	Shadegg	Woolsey
Myrick	Shaw	Wynn
Neal	Shays	Young (AK)
Nethercutt	Sherman	Young (FL)
Neumann	Shimkus	

NAYS—49

Barrett (WI)	Jackson (IL)	Rangel
Bonior	Kennedy (RI)	Rivers
Brown (CA)	Kilpatrick	Roybal-Allard
Brown (OH)	LaFalce	Rush
Clay	Lewis (GA)	Sabo
Clayton	Martinez	Scott
Clyburn	McDermott	Serrano
Conyers	McGovern	Stabenow
Cox	McKinney	Stark
Cummings	Meek (FL)	Stokes
Davis (IL)	Meeks (NY)	Towns
DeGette	Mink	Waters
Delahunt	Mollohan	Watt (NC)
Fattah	Oberstar	Weygand
Furse	Owens	Yates
Hastings (FL)	Paul	
Hilliard	Payne	

ANSWERED "PRESENT"—1

Kucinich

NOT VOTING—14

Brown (FL)	Luther	Pelosi
Ford	Mica	Poshard
Gonzalez	Miller (CA)	Sanchez
Hall (OH)	Nadler	Schiff
Klink	Paxon	

□ 1446

Mr. MCGOVERN and Ms. WATERS changed their vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. SANCHEZ. Mr. Speaker, on rollcall vote 21, final passage of H.R. 2181, I was unavoidably detained.

Had I been present, I would have voted YES.

PERSONAL EXPLANATION

Mr. COX of California. Mr. Speaker, on rollcall No. 21, I am recorded as voting no. I wish to be recorded for the record as aye.

PARLIAMENTARY INQUIRY

Mr. GEKAS. Mr. Speaker, it is my understanding that what is left yet to occur on the floor is the voting on the two Jackson-Lee amendments and then final passage. Has the Speaker notified the House that that is the order, if it is?

The SPEAKER pro tempore (Mr. BLUNT). The gentleman's understanding is correct.

Mr. GEKAS. That is the case. The SPEAKER pro tempore. That is the Chair's understanding.

Mr. GEKAS. So it will be two amendments back to back, Jackson-Lee and then final passage.

The SPEAKER pro tempore. The gentleman is correct.

Mr. GEKAS. I thank the Speaker very much.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 2495

Mr. COLLINS. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of the bill, H.R. 2495.

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

There was no objection.

FEDERAL AGENCY COMPLIANCE ACT

The SPEAKER pro tempore. Pursuant to House Resolution 367 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1544.

□ 1449

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1544) to prevent Federal agencies from pursuing policies of unjustifiable non-acquiescence in, and relitigation of, precedents established in the Federal judicial circuits, with Mr. LAZIO of New York (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose earlier today, the demand for a recorded vote on the amendment offered by the

gentlewoman from Texas (Ms. JACKSON-LEE) had been postponed, and the bill was open for amendment at any point.

Are there any further amendments to the bill?

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. There being no further amendments, pursuant to House Resolution 367, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: amendment No. 1 offered by the gentlewoman from Texas (Ms. JACKSON-LEE) and amendment No. 2 offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The Chair will reduce to 5 minutes the time for the second electronic vote.

AMENDMENT OFFERED BY MS. JACKSON-LEE

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on amendment No. 1 offered by the gentlewoman from Texas (Ms. JACKSON-LEE) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 164, noes 253, not voting 13, as follows:

[Roll No. 22]

AYES—164

Abercrombie	Engel	Klecza
Ackerman	Eshoo	Kucinich
Allen	Etheridge	LaFalce
Andrews	Evans	Lampson
Baesler	Farr	Lantos
Baldacci	Fattah	Levin
Barcia	Fazio	Lewis (GA)
Barrett (WI)	Filner	Lofgren
Becerra	Fox	Lowey
Bentsen	Frank (MA)	Maloney (CT)
Berman	Furse	Maloney (NY)
Blagojevich	Gejdenson	Manton
Blumenauer	Gephardt	Markey
Bonior	Green	Martinez
Borski	Greenwood	Mascara
Boucher	Gutierrez	Matsui
Brown (CA)	Hamilton	McCarthy (MO)
Brown (OH)	Harman	McCarthy (NY)
Cardin	Hastings (FL)	McDermott
Carson	Hefner	McGovern
Clay	Hilliard	McHale
Clayton	Hinchev	McIntyre
Clyburn	Hinojosa	McKinney
Conyers	Holden	McNulty
Coyne	Hooley	Meehan
Danner	Hoyer	Meek (FL)
Davis (IL)	Jackson (IL)	Meeks (NY)
DeFazio	Jackson-Lee	Menendez
DeGette	(TX)	Millender-
Delahunt	Jefferson	McDonald
DeLauro	Johnson (WI)	Mink
Deutsch	Johnson, E. B.	Moakley
Dicks	Kaptur	Mollohan
Dingell	Kennedy (MA)	Moran (VA)
Dixon	Kennedy (RI)	Nadler
Doggett	Kennelly	Neal
Dooley	Kildee	Oberstar
Doyle	Kilpatrick	Obey
Edwards	Kind (WI)	Olver