

anything they may have heard otherwise, that after this next vote, the suspension vote that we are about to take, there will be no more votes tonight because of the granting of unanimous consent awhile ago.

So, we can all go home after the next vote.

DISPENSING WITH CALL OF PRIVATE CALENDAR

Mr. MCCOLLUM. Mr. Speaker, I ask unanimous consent to dispense with the call of the Private Calendar.

The SPEAKER pro tempore. (Mr. HOBSON). Is there objection to the request of the gentleman from Florida?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, the Chair will now put the question on the motion to suspend the rules on which further proceedings were postponed today.

MEGAN'S LAW

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 2137, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. MCCOLLUM] that the House suspend the rules and pass the bill, H.R. 2137, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 418, nays 0, not voting 15, as follows:

[Roll No. 149]

YEAS—418

Abercrombie	Borski	Coleman
Ackerman	Boucher	Coleman (GA)
Allard	Brewster	Collins (IL)
Andrews	Browder	Collins (MI)
Archer	Brown (CA)	Combust
Armey	Brown (FL)	Condit
Bachus	Brown (OH)	Conyers
Baesler	Brownback	Cooley
Baker (CA)	Bryant (TN)	Costello
Baker (LA)	Bryant (TX)	Cox
Baldacci	Bunn	Coyne
Ballenger	Bunning	Cramer
Barcia	Burr	Crane
Barr	Burton	Crapo
Barrett (NE)	Buyer	Cremeans
Barrett (WI)	Callahan	Cubin
Bartlett	Calvert	Cummings
Barton	Camp	Cunningham
Bass	Campbell	Danner
Bateman	Canady	Davis
Becerra	Cardin	de la Garza
Bentsen	Castle	Deal
Bereuter	Chabot	DeFazio
Berman	Chambliss	DeLauro
Bevill	Chapman	DeLay
Bilbray	Chenoweth	Delums
Bilirakis	Christensen	Deutsch
Bishop	Chrysler	Diaz-Balart
Bliley	Clay	Dickey
Blute	Clayton	Dicks
Boehlert	Clement	Dingell
Boehner	Clinger	Dixon
Bonilla	Clyburn	Doggett
Bonior	Coble	Dooley
Bono	Coburn	Doolittle

Dornan	Kanjorski	Pelosi
Doyle	Kaptur	Peterson (FL)
Dreier	Kasich	Peterson (MN)
Duncan	Kelly	Petri
Dunn	Kennedy (MA)	Pickett
Durbin	Kennedy (RI)	Pombo
Edwards	Kennelly	Pomeroy
Ehlers	Kildee	Porter
Ehrlich	Kim	Portman
Emerson	King	Poshard
Engel	Kingston	Pryce
English	Klecza	Quillen
Ensign	Klink	Quinn
Eshoo	Klug	Radanovich
Evans	Knollenberg	Rahall
Everett	Kolbe	Ramstad
Ewing	LaFalce	Rangel
Farr	LaHood	Reed
Fattah	Lantos	Regula
Fawell	Largent	Richardson
Fazio	Latham	Riggs
Fields (LA)	LaTourrette	Rivers
Fields (TX)	Laughlin	Roberts
Filner	Lazio	Roemer
Flake	Leach	Rogers
Flanagan	Levin	Rohrabacher
Foglietta	Lewis (CA)	Ros-Lehtinen
Foley	Lewis (GA)	Rose
Forbes	Lewis (KY)	Roth
Fowler	Lightfoot	Roukema
Fox	Lincoln	Roybal-Allard
Frank (MA)	Linder	Royce
Franks (CT)	Lipinski	Rush
Franks (NJ)	Livingston	Sabo
Frelinghuysen	LoBiondo	Salmon
Frisa	Lofgren	Sanders
Frost	Longley	Sanford
Funderburk	Lowey	Sawyer
Furse	Lucas	Saxton
Gallegly	Luther	Scarborough
Ganske	Maloney	Schaefer
Gejdenson	Manton	Schiff
Gekas	Manzullo	Schroeder
Gephardt	Markey	Schumer
Geren	Martinez	Scott
Gilchrest	Martini	Seastrand
Gillmor	Mascara	Sensenbrenner
Gilman	Matsui	Serrano
Gonzalez	McCarthy	Shadegg
Goodlatte	McCollum	Shaw
Goodling	McCrery	Shays
Gordon	McDermott	Shuster
Goss	McHale	Sisisky
Graham	McHugh	Skaggs
Green (TX)	McInnis	Skeen
Greene (UT)	McIntosh	Skelton
Greenwood	McKeon	Slaughter
Gutierrez	McKinney	Smith (MI)
Gutknecht	McNulty	Smith (NJ)
Hall (OH)	Meehan	Smith (TX)
Hall (TX)	Meek	Smith (WA)
Hamilton	Menendez	Solomon
Hancock	Metcalfe	Spence
Hansen	Meyers	Spratt
Hastert	Mica	Stearns
Hastings (FL)	Millender-McDonald	Stenholm
Hastings (WA)	Miller (CA)	Stockman
Hayworth	Miller (FL)	Stokes
Hefley	Minge	Stump
Hefner	Mink	Stupak
Heineman	Moakley	Talent
Herger	Montgomery	Tanner
Hilleary	Moorhead	Tate
Hilliard	Moran	Tauzin
Hinchev	Morella	Taylor (MS)
Hobson	Murtha	Taylor (NC)
Hoeckstra	Myers	Tejeda
Hoke	Myrick	Thomas
Holden	Nadler	Thompson
Horn	Neal	Thornberry
Hostettler	Nethercutt	Thornton
Houghton	Neumann	Thurman
Hoyer	Ney	Tiahrt
Hunter	Norwood	Torkildsen
Hutchinson	Nussle	Torres
Hyde	Oberstar	Torricelli
Inglis	Obey	Towns
Istook	Olver	Trafigant
Jackson (IL)	Ortiz	Upton
Jackson-Lee (TX)	Orton	Velazquez
Jacobs	Oxley	Vento
Jefferson	Packard	Volkmer
Johnson (CT)	Pallone	Vucanovich
Johnson (SD)	Parker	Walker
Johnson, E. B.	Pastor	Walsh
Johnson, Sam	Paxon	Wamp
Johnston	Payne (NJ)	Ward
Jones	Payne (VA)	Waters
		Watt (NC)

Watts (OK)	Whitfield	Woolsey
Waxman	Wicker	Wynn
Weldon (FL)	Williams	Young (AK)
Weldon (PA)	Wilson	Young (FL)
Weller	Wise	Zeliff
White	Wolf	Zimmer

NOT VOTING—15

Beilenson	Hayes	Souder
Ford	McDade	Stark
Gibbons	Molinari	Studds
Gunderson	Mollohan	Visclosky
Harman	Owens	Yates

□ 2205

Ms. WATERS, Mr. SCOTT, and Mr. WATT of North Carolina changed their vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REGARDING WITNESS RETALIATION, WITNESS TAMPERING, AND JURY TAMPERING

The SPEAKER pro tempore (Mr. HOBSON). Pursuant to House Resolution 422 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. 3120.

□ 2205

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. 3120) to amend title 18, United States Code, with respect to witness retaliation, witness tampering, and jury tampering, with Mr. LATOURETTE in the chair.

The Clerk read the title of the bill.

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

Under the rules the gentleman from Florida [Mr. MCCOLLUM] and the gentleman from Michigan [Mr. CONYERS] will each be recognized for 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. Chairman, in recent years, criminal sentences have increased in response to the scourge of drugs and violent crime, yet the penalties for retaliating against or tampering with witnesses, jurors, and court officials in criminal cases have remained unchanged. Some Federal and State prosecutors blame witness intimidation and juror tampering for the falling conviction rates in some parts of the country. Indeed, under current law, a defendant facing a Federal criminal sentence of 10 years or more may believe he or she is better off trying to influence the outcome of the trial by intimidating a witness, or tampering with a juror or court officer, because the maximum punishment for such crime is generally 10 years in prison.

In order to deter criminals and their associates from attempting to illegally influence the outcome of a criminal trial, H.R. 3120, introduced by the gentleman from Pennsylvania [Mr. FOX], increases the penalty for witness intimidation, and tampering with a juror or court official, so that it equals the maximum penalty of incarceration for the crime being tried in the case. As a result, criminals will no longer be tempted to illegally influence their trial in the hope that, even if caught, their punishment for the act of intimidation or tampering will be less than what they would have faced had they been convicted on the original charges. Specifically, this bill makes three specific amendments to the Federal criminal law.

First, this bill amends the title 18 provisions relating to retaliation against witnesses, victims, or informants. Current law provides for a maximum penalty of 10 years imprisonment for persons convicted of this crime. This bill will amend that law to provide that if the retaliation occurred because of attendance at a criminal trial, the maximum punishment will be the higher of that in the present statute, or the maximum term of imprisonment for any offense charged in the criminal case to which the retaliation related.

Second, this bill would amend the title 18 provision relating to tampering with a witness, victim, or informant. Current law provides for a maximum penalty of 10 years if the act involves intimidation or the threat of physical force—not involving death—or 1 year if the act constitutes "harassment." This bill would provide that if the offense occurred in connection with a criminal trial, the maximum punishment will be the higher of that provided by the present statute or the maximum term of imprisonment for any offense charged in the criminal case in question.

Finally, this bill would amend the title 18 provision relating to jury tampering and influencing or injuring court officials. Under current law the maximum punishment is 10 years imprisonment, unless the tampering or influence involved killing a person, in which case the punishment is death. This bill provides that if the offense occurred in connection with a criminal trial and involved the use of physical force or threat of physical force, the maximum punishment will be the higher of that provided by the present statute or the maximum term of imprisonment for any offense charged in the criminal case in question.

Mr. Chairman, the integrity of the criminal justice system is vital to public safety. Defendants must believe that any attempt to affect the rule of law by undermining the judicial process will be punished severely. This bill will help deter acts which would undermine the workings of the criminal justice system.

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

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume, but merely to initiate a discussion around this measure by pointing out that we have a rather large-size problem about drafting.

Mr. Chairman, this bill carries with it some incredible possibilities in that those who might interfere with witnesses could be subject to the same underlying penalties of a defendant, for example, the death penalty, but the defendant might be acquitted, and someone who was guilty of jury tampering could face the death penalty.

What I am saying, Mr. Chairman, is that if we decide to increase the penalties for witness retaliation, jury tampering, it should be done on a much more rational basis than the one that has been dumped into this measure. I think we really may want to examine this measure much more closely than we have at the committee level.

Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, again, this is one of those bills that the general purpose one finds hard to argue with but, again, the drafting leaves some of us shuddering at the potential consequences of where we might end up. I want to point out two or three different concerns that we have with the bill. I had considered the possibility of trying to offer some amendments to address some of these items, but given what happened on the last bill, I do not want to tax the patience of my colleagues, so I just want to point these things out so that Members will know some of the concerns about the bill.

First of all, Mr. Chairman, I think the bill is unnecessary. There are underlying statutes which already provide severe penalties for witness or jury tampering and retaliation. Section 1503 provides for a penalty of up to 20 years and a fine for jury tampering. Section 1512 provides for the death penalty for murdering a witness to prevent his or her testimony at trial. Section 1513 provides the death penalty for murdering a witness in retaliation for his or her testimony at trial. So there are already severe penalties in the law for jury tampering and witness tampering, and for retaliation.

However, the more troubling aspect of this bill is that it would hold a violator, or a person engaged in jury tampering or retaliation, liable for a crime that he or she had absolutely nothing to do with and no connection to, and it would do it in a way that really fails to distinguish between people who engage in serious misconduct and people who do not engage in serious misconduct.

□ 2215

This is not your typical co-conspirator kind of situation. If you are involved in a conspiracy, you are already a part of the underlying crime.

The link here is that we are going to give you the same penalty that is charged in the underlying crime if you try to get involved with a jury or a witness in that case, and sometimes that just may not be justified.

Mr. Chairman, let me kind of play out the example that is an extreme example but a realistic example of what could happen under this bill.

Let us assume that we have a criminal case in which there are two defendants. One of those defendants is charged with some small offense. The second defendant is charged with a very, very serious offense. Both of these defendants may be tried together at the trial of the underlying offenses. If I, having no connection with either the minor offense or the major offense, decide that I would like to help my brother who is charged with the minor offense by trying to encourage a witness not to testify against my brother who is charged with the minor offense, or if I tamper with the jury to help my brother who is charged with the minor offense, then I end up being subjected to the same penalties as if I had tampered with the jury or tried to influence a witness in connections with the major offense.

So, Mr. Chairman, there is absolutely no distinction in this bill for very different kinds of conduct for which there should be distinctions drawn.

If I engage in jury tampering or witness tampering by sitting in the courtroom and casting a dirty or intimidating look at somebody, the prosecutor has the discretion to charge me with an offense that could subject me to life imprisonment, I think actually would subject me to the death penalty, even though the gentleman from Florida [Mr. MCCOLLUM] denies that this bill is intended to do that.

So there are serious drafting problems in this bill, and we tried to address those in the committee. We tried to offer amendments that would have made the kinds of distinctions between somebody who is tampering with a jury or tampering with a witness in a case which is a minor offense as opposed to someone who is doing the same thing in a case that might justify the death penalty or life imprisonment. My colleagues on the other side say, "Well, we don't care about that. We just want to be hard on crime. We want to have that reputation for being hard on crime. This is a tough year."

So we are back here with one of these bills that superficially is a good idea but is drawn in such a way and so broadly that it ceases to be rational in its potential application. Apparently we just do not care.

Mr. Chairman, my colleagues on the committee rejected amendment after amendment that would have made this a better bill, that would have allowed there to be bipartisan support, or strong support for this bill. They simply did not care.

So, I cannot let this go without expressing severe reservations I have

about this bill, not the general underlying intent of the bill, which I think is good; but its failure to discriminate between bad actors and worse actors and not-so-bad actors is contrary to sound public policy. My colleagues need to be aware of that.

Mr. MCCOLLUM. Mr. Chairman, I yield myself 2 minutes.

I simply want to respond to what I know are genuine concerns my colleagues have expressed about what the language of this bill is and what it does, but I believe that their concerns are not with merit. The bill itself has explicit language in it that any reasonable interpretation would see that it does not contain a chance whatsoever, that anybody could get the death penalty because they violated this particular bill.

Mr. Chairman, what it says is if the retaliation, or if the offense occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment which may be imposed for the offense under this section shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case. And that is repeated three times in the bill for the three different parts of the criminal code which this applies to, that exact same language.

We are talking about the maximum term of imprisonment. That is the most, the greatest amount of punishment that anybody could receive is the maximum term of imprisonment that the underlying crime would have imposed if the person who was on trial at the time the jury tampering, the witness tampering had occurred had been convicted and been sentenced. That does not contemplate the death penalty.

Mr. Chairman, I might also add that I believe the severity of this punishment is warranted. We are not convicting somebody of the underlying crime when they are tampering. They are indeed being convicted of those existing Federal crimes that have been on the books for many years, for witness tampering and jury tampering and intimidation. We need to send a message that, when you do that kind of crime, you are going to get punished for that crime, for the jury tampering and the witness tampering in a very severe manner.

We are simply using what the gentleman from Pennsylvania [Mr. FOX] has creatively come up with, and that is the maximum punishment for the underlying crime as the crime for these crimes. But there is no new crime somebody is being convicted of.

Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. FOX], who is the author of this bill.

Mr. FOX of Pennsylvania. Mr. Chairman, I rise today to speak on behalf of the bill, H.R. 3120, which addresses in my legislation three of the important issues facing the American judicial

system, jury and witness tampering and witness retaliation.

An overlooked shortcoming of our criminal statutes has allowed these three offenses to create opportunities and incentives for criminals in this country. I believe the legislation will close this loophole, provide prosecutors with additional leverage in combating criminals, and ensure that justice in our courts may not be impeded by additional criminal activity.

Currently, tampering in a Federal court can bring sentences which may be significantly less than those which come with serious crimes such as first and second degree murder, kidnaping, air piracy and drug trafficking. Over the years, as Federal penalties for these crimes have increased, the penalties for tampering with a witness or jury have failed to keep pace. This discrepancy has thereby created an incentive for individuals standing trial to attempt to intimidate witnesses and jurors or to offer a bribe.

The need for the bill, Mr. Chairman, was outlined well in a Wall Street Journal story in January of 1995 where it detailed the proliferation of tampering and intimidation cases throughout the country. Take, for example the case of Newark, New Jersey, in 1988 where 20 defendants stood trial on charges of racketeering in connection with their alleged membership in a well-known crime family. All 20 defendants were acquitted. However, in 1994 two of the defendants pleaded guilty to jury tampering after co-defendants in a separate case turned them in. Instead of being able to apply a sentence equal to that of the original crime, those two defendants benefited from the present system and faced lesser sentences for the jury tampering offense. What is worse than a case like this is that the most successful tampering goes unnoticed, or at least unprosecuted, leading to the acquittals of dangerous criminals, high number of unsolved cases, and a perceived failure of our own justice system.

The bill before Members today is the combined version of three bills I had previously introduced in H.R. 1143, 1144 and 1145. Those three bills had garnered broad bipartisan support including the chairman and ranking member of the full Judiciary Committee as well as the chairman and ranking member of the Subcommittee on Crime. We appreciate the gentleman from Michigan who was an original cosponsor of those pieces of legislation and a special thanks of course to the gentleman from Florida [Mr. MCCOLLUM] who has shepherded the legislation and given us a great deal of advice on the bill as it relates to his own experience in working with crime prevention and in making sure we move legislation like this forward.

I thank those four of my distinguished colleagues as well as the other cosponsors of this legislation and the committee staff for their support and diligence in working the bill to the floor. I am certain that by equating the

penalties for these crimes with the potential sentences for other Federal crimes, this legislation creates a disincentive for those facing stiff sentences for egregious offenses to tamper with a jury or intimidate a witness.

As a former assistant district attorney in Montgomery County, Pennsylvania, I have experienced firsthand the frustration that is faced by citizens and members of the criminal justice system when cases go unsolved because witnesses will not step forward. Recently in my own home district a burglary suspect was arrested after returning a car to a rental agency. While in the country correctional facility, the suspect placed 15 threatening phone calls to a rental agency employee to keep her from testifying against him. Police said that the suspect made the calls through a third party who set up a conference call. The warden is now correcting the procedural problem of phone use but we as legislators need to do what we can to eliminate the incentive to tamper.

I empathize with distinguished prosecutors such as Montgomery County District Attorney Michael Marino and District Attorney Lynne Abraham of Philadelphia who daily face the challenges posed by both jury and witness tampering and witness retaliation. Both have endorsed this legislation as well as the National District Attorneys Association and the Pennsylvania District Attorneys Association. I also should note, Mr. Chairman, that the Department of Justice has stated its support for this penalty enhancement which, in their words, "is clearly and rationally designed to deter the commission of this type of offense" and being appropriate, is not overly broad.

At the State level we believe the penalties for jury tampering can vary state to state, from less than a year up to 7 years. District Attorney Abraham recently blamed witness intimidation as a chief cause of the high number of unsolved homicides in Philadelphia. Twenty years ago Philadelphia police solved 86 percent of homicides but last year that number was down to 58 percent. District Attorney Abraham has blamed the trend primarily on a growing lack of cooperation from witnesses fearing retribution from criminals. I am particularly hopeful that the legislation before members today will set a standard for the States to follow and lead to greater uniformity nationwide for tampering penalties, increased security for jurors and witnesses, and a more effective system of justice for all.

In that light I am speaking out today to each of the States to reexamine their sentences for tampering offenses.

Mr. Chairman, I urge that the House pass this corrective legislation to protect witnesses, jurors, victims and the justice system that we so much cherish.

Mr. CONYERS. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. I thank the gentleman for yielding time.

Mr. Chairman, I believe the gentleman from North Carolina stated very eloquently the problems with this particular legislation. Let me again begin by stating, as I believe I did in the previous bill, that the idea here behind this legislation is a good one. I support the stated objective of H.R. 3120. If someone, it can be proven, violated the law by tampering with a juror or a witness in order to try to help out a defendant, that person should be penalized. If the penalties that we have under current law for the specific crime of jury tampering or witness tampering do not seem to be commensurate to the type of offense that may have been committed in tampering and perhaps helping someone get off without penalty, then we should consider extending the violation of law and the penalties thereby to that person who tampered with a juror or with a witness. Where this legislation loses me is in its scope. It overreaches. We had the discussion in committee, and I respect the gentleman from Florida's position that it does not, but it does in two respects.

□ 2230

First, I would disagree with the gentleman from Florida that in fact the language in the bill is clear that no one could face the death penalty. I think it is very ambiguous as to whether someone could face the death penalty under this legislation for having tampered with a juror or a witness.

In fact, it probably can be cured fairly readily with some language that made it clear that when we have language that talks about the maximum term that could have been imposed for any offense charged in such case, if it were to be clear that it would include any term other than the death penalty, that would make it very clear that the previous language where it talks about the maximum term of imprisonment is meant to exclude the death penalty.

But that is not my biggest concern, because it is the fact that you can get to that stage which concerns me, and that is what I would like to focus the rest of my remarks with regard to this legislation on.

It seems to me that in trying to penalize someone for having done the misdeed, and it is a terrible misdeed, of trying to help someone get off in a prosecution by tampering with a witness, threatening a juror, or anything like that, that we go beyond that sensibility that we try to maintain in our judicial system, and in some cases we mock justice by saying that someone who may have tampered with a juror or with a witness in an effort to try to help someone in a low-level offense that may be related in a case with a number of other offenses, including very high level offenses, for example, first degree murder, that that individual that tampered with the juror, and, remember, tampering could be offering

an incentive to someone, a juror or a witness, that that person all of a sudden can face the same penalty that that criminal defendant that may have killed five people is facing, of either the death penalty or imprisonment without the possibility of parole.

Mr. Chairman, let me see if I can try to come up with an example that makes it a little bit clearer what I am trying to say. We tried to do this in committee, and I know to some degree folks get lost.

But if you have an individual, let us call him Joe, involved in a crime, let us say he is out there with some friends, and his friends tell him to come along, they are going to get some cash. They need some money, so they are going to stop by and rob a convenience store. Joe has no idea that his friends may do anything more than just try to get some quick cash.

Say one of Joe's friends does the worst thing of all and kills the guy in the convenience store working there, the clerk. That individual who did the shooting is now subject to first degree murder charges, and, because Joe may have been, let us say, in the car driving at the time, waiting for these guys to come back out, he, as a result of the felony murder, is also subject to up to the death penalty for that first degree murder.

That is rightfully so. He participated, maybe not totally knowingly, but he participated in a crime that could have and did in fact, lead to the death of an individual.

So, now Joe goes home and he tells his mother he has to flee the law because he just did a bad thing. He does not necessarily explain to his mother what he did. Let us say his mother tries to harbor him for a few days. Now she has abetted a first degree murder defendant. She can be charged with having abetted a criminal defendant.

Now, let us say all these folks get charged in the same case, including the mother, because she tried to protect her son before maybe even she even turned him in. Somehow she is involved in a low level offense.

Mr. Chairman, let us say Joe's father is totally broken up by this. His son is now subject to first degree murder charges, his wife tried to abet her son, and so now he sees his son and his wife facing criminal charges. Say he goes and speaks to a witness and says, "My wife didn't mean it; can't you have mercy? Let her go. Judge, do whatever you have to do with my son, just be fair," et cetera, et cetera.

The witness comes back and tells the prosecutor, "You know what? Joe's father tried to talk me into helping Joe's mother in this case so she would be let go and I wouldn't testify against her."

What penalty should he pay? Well, we have the current law that says anyone who tampers with a jury or witness can face criminal punishment. That is already in existing law. Joe's father can face penalties for witness tampering or jury tampering right now. But this bill

says that Joe's father, because he went to the witness or a juror and said "Help my wife out, she didn't really know what she was getting into," that Joe's father now can face the same first degree murder penalties that Joe faces, and, really, that the gunman who did the killing faces for what was done?

Now, Joe's father may have been trying to help his wife get off of a small offense, and it was wrong, and he should be penalized, but should he now face the death penalty or life imprisonment without possibility of parole because he tried to help his wife out? Most people I think would say no. But this bill says yes, he can.

Mr. Chairman, I would not mind seeing Joe's father charged with something similar to what his wife was being charged with if it was greater in penalty than what he faced exclusively under our witness or juror tampering laws right now. But I do not believe Joe's father should have to now go before a jury that may decide to give him the death penalty. I do not think most juries would, to begin with, and I do not think we ever really get to that stage very often. But because we do not think anyone would go to that extreme, it does not mean we should legislate to those extremes, and we should not legislate to the point where we mock justice and sensibility. That is where we are heading.

I do not know if this runs afoul of the Constitution as something approaching cruel and unusual punishment. I certainly think that we could have corrected this in committee, and it still can be corrected, to make it clear that we can relate the punishment for those who tamper with witnesses and jurors to those crimes that are related to the person they were trying to help get off, those defendants they were trying to help get off from criminal penalties.

But this goes a little bit beyond, not a little bit, quite a bit beyond, and I think it is unfortunate that the drafting of this legislation makes it very difficult for someone who really takes the time to read this bill to support it.

Otherwise it would be a good bill. If it was connected to the purpose, I think we could find we could get total support. As I said before, it is unfortunate the drafting was not done very well.

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

Mr. Chairman, I know the gentleman from California is very genuine in his comments. He made similar comments and concerns expressed in the committee when we considered this bill, but I believe the illustration the gentleman gave in and of itself is flawed in terms of what the legislation that we are here dealing with today would do.

First of all, I think it is the very, very situation in which you would find joint trials involving the more minor offense, the aiding and abetting and so forth at one time which could conceivably mean when somebody tampers or

intimidates a juror or a witness in a case because they were concerned with the lesser offense, they could wind up, because there were several joint defendants or codefendants, getting a much more serious penalty than would be justified for the maximum sentence for the one defendant they were concerned about when they went and messed around with him.

Frankly, for that particular illustration, I am not terribly concerned about that, because I think if somebody goes and messes with a juror or tries to do the kind of witness tampering we would prohibit under this bill that the gentleman from Pennsylvania [Mr. FOX] has drafted, then I think that it does not make much difference what the underlying crime is. If they are doing that, we need to send a very tough message out there and say, "Look, you are doing that. Even if it was a lesser crime, and you are going to get a really tough punishment because you are being tried with some codefendant with a greater crime and therefore your sentence will be greater, then so be it." It is a bigger message that goes not there and says if you mess around, you are going to get yourself in really deep, deep, deep trouble if you are messing with a witness or juror.

Second, the illustration you gave about the issue of the tampering that occurred would not be actually covered by this particular underlying bill we are dealing with today. If it were a juror, there was no force or physical intimidation being used in your illustration. That is what is required to get this bill going with respect to the increased penalties with respect to a jury tampering situation. There has to be physical force or the threat of physical force to do that.

With respect to somebody attempting to tamper with a witness or victim or an informant, this is based on the underlying statute, section 1512 of title 18, you have to knowingly use intimidation or physical force or threaten or corruptly persuade another person or attempt to do so or engage in misleading conduct toward another person with the intent to influence, delay, et cetera. Just talking to a witness, just talking with a victim or informant and saying, "Gosh, my son was a good guy, he really didn't do anything that wrong," or the way you went about it, I do not believe that person would be covered.

I get your point. I do not agree with it. But I thought we ought to make it very clear that the illustration, as mild as you were making that tampering, probably would not be a crime in any event. But if it were truly tampering, truly intimidation under either the juror, physical threat definition of the current law or under the corrupting as well as physical threat interpretation of current law dealing with the witness tampering provisions, I think that the sentence we are putting out in this bill is very justified to deter that kind of

activity across the board nationally, and society as a whole will benefit by having that deterrence placed in the law we are going to do tonight in this bill, and that is by placing into law a provision that says if you tamper with a jury or tamper with a witness in a Federal trial, you are going to subject yourself to precisely the same penalty that is there and existed for the defendant or the accused and in that underlying trial, except, and I think this is very clear, and I realize some of my colleagues over there do not want to think it is so clear, but it is very clear you could not get the death penalty under this bill that is being considered tonight that the gentleman from Pennsylvania [Mr. FOX] wrote. But you could get the maximum imprisonment term under the wording of this bill that the accused could get. I think that is very appropriate.

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

Mr. CONYERS. Mr. Chairman, I have no further requests for time, and I reserve my time.

Mr. MCCOLLUM. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. FOX], the author of the bill, who wishes to respond a little further.

Mr. FOX of Pennsylvania. Mr. Chairman, in relationship to the comments made by the gentleman from California, and I do appreciate his sincerity of purpose and interest in this subject, and I know the gentleman shares, as well as the Members on both sides of the aisle, the interests of making sure we protect victims and also have fair trials.

When it comes to the situation discussing about Joe, obviously under the coconspiracy rule, all those in the conspiracy, regardless of whether or not they pull the trigger are involved and of course would be felony murder to all. Obviously the mother is aiding and abetting. The father in this case takes justice in his own hand. Albeit we have sympathy for a father whose son has committed a felonious crime and been involved with something certainly very upsetting to the family, we know that under our system of justice, he had an alternative, and that alternative was to go to court at the time of sentencing and make his plea for clemency for his son. Obviously the mother's case is de minimis as far as the court is concerned, because she did not really get involved in the major offense.

I think Mr. MCCOLLUM is very clear when he spoke of the face that in this case, in this bill, there is no death penalty that would apply. What we are trying to do is look out for the victims in the United States, and that is to make sure we have fair trials and that those who commit felonies have to answer them in a court of law.

It also should be pointed out for the RECORD we were very much persuaded by the cogent arguments of the gentleman from North Carolina [Mr. WATT], at the time of the subcommit-

tee hearing, and we accepted one of his amendments, which, by the way, does add some very important language to make sure that this case would apply where we have a criminal defendant involved with tampering which involves a threat of physical force. That clarification was a very important amendment which I think was an improving amendment, which shows the bipartisan spirit with which the gentleman from Florida [Mr. MCCOLLUM] and the committee and the gentleman from Michigan [Mr. CONYERS] and others moved forward in making this legislation hopefully a reality.

I believe that the prosecutors who we are dealing with here want to make sure we have a fair bill and the Justice Department that carefully looks over legislation has endorsed it.

□ 2245

Mr. MCCOLLUM. Mr. Chairman, I have no further requests for time, and I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. Mr. Chairman, I was looking through the code book to try to see if I could understand what the gentleman from Florida was saying with regard to my example. The gentleman from Florida said that it would only apply if there were a case of physical force in the jury tampering or witness tampering. I failed to find the exclusion or the requirement that there be physical tampering.

It can include a number of things which would provide for intimidation and physical force, but that is not a requirement within the statute. So it could include a number of other things.

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

Mr. BECERRA. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, the way that this is worded in the bill with respect to the question of jury tampering limits it to physical force. Part of that was the amendment that was offered by the gentleman from North Carolina [Mr. WATT] in the full committee. So, if the gentleman is dealing with the witness tampering, that is not the story. But jury tampering very clearly is only physical force.

Mr. BECERRA. Mr. Chairman, so the example that I gave still applies, that there is not always a need for physical force in order for these enhanced penalties to attach. I think the gentleman left the impression that, unless someone went out there and committed physical force, that witness or juror tampering could not include the enhanced penalties.

Mr. MCCOLLUM. Mr. Chairman, if the gentleman will continue to yield, under the tampering with a witness under existing law, the language I was reading from the statute says, uses intimidation or physical force, threatens or corruptly persuades, which I would

interpret to mean bribery in some other way, another person, or attempts to do so, or engages in misleading conduct towards another person. Those are the prerequisites.

I just thought that the gentleman's point is well made. There are other things besides physical force. But I thought that the illustration the gentleman gave would have been a father talking with a witness without any offering of a bribe or any intimidation the way the gentleman described it. That is a mild enough version that I do not think we could get the fellow on the underlying crime. That is all.

Mr. BECERRA. I appreciate the gentleman's comments. I want to make sure it is clear that what the gentleman has said to try to further explain makes it clear that you do not have to have only physical force in to face these particular enhanced penalties, that you can engage in misleading conduct. If that father had engaged in misleading conduct to try to help his wife be relieved of the penalties in a criminal prosecution, he still could face not the penalties that relate to witness or jury tampering under current law and not just the penalties that his wife may have faced, which may have been greater penalties than what he would face under the current juror or witness tampering laws, but he could face the penalties that some kid unknown to him faces for having shot that convenience store clerk, which could be first degree murder and therefore the death penalty.

What I am just trying to make clear is there is a disconnect between what this bill ultimately can do and I believe what the gentleman is trying to do. I believe the gentleman from Pennsylvania [Mr. FOX], is onto something that is crucial. That is to make sure that, if someone is going to tamper with a witness or with a juror or retaliate, that we penalize them. And if we find that the penalties under current law for that type of activity tampering are too minimal, then maybe we should attach to them penalties that relate to the tampering they did, but keep it consistent.

If that person tried to tamper to try to help someone who was a low level offender, make sure they pay the price that the low level offender would have paid, not the price that someone totally perhaps unrelated to that person faces. I think, if he had done that, I have no problems with it whatsoever. But it just goes beyond, I think it overreaches, and it makes it very difficult to believe that we would really want to say this in our statutes.

My only problem is, again, it is not with the intent. It is that we are passing laws here, and what we are saying to the people of this country, quite honestly to the history of the United States, is that we are trying to do the best by America. And it does not seem to me the best thing to do for America is to pass laws that ultimately someone is going to say, whoa, we have to redefine this and go back into it.

Mr. McCOLLUM. Mr. Chairman, I have no further speakers, and I reserve the balance of my time to close.

Mr. CONYERS. Mr. Chairman, I yield back to the balance of my time.

Mr. McCOLLUM. Mr. Chairman, I yield myself such time as I may consume to close.

I will not spend much of that time doing it. I would like to point out to my colleagues that the circumstances that we are developing about these various scenarios could well be taken care of, and I hope they will be, if there are mitigating extenuating circumstances by the Sentencing Commission. What we are passing tonight is a much more severe maximum penalty. But we are not in any way preventing the Sentencing Commission from coming along as we would anticipate they would do and suggesting that there would be something lesser given in those situations where there were extenuating mitigating circumstances, perhaps those types of things involving cases where there are more than one accused being tried at one time or some unusual circumstances such as the gentleman from California was describing.

Mr. Chairman, the bottom line though is that what we are doing tonight, the really significant thing we are doing by passing this bill, and I certainly urge its adoption, is what the gentleman from Pennsylvania [Mr. FOX] was creative enough to come forward with. This is to send a message to those who would commit jury tampering and witness tampering that, if they commit that, they are really going to get the book thrown at them. This is not something you do, that this is taken as seriously as a lot of other very, very serious crimes are taken, and that they could serve a lot of time in jail because they are doing that, not just the maximum 10 years we have today.

They could serve 30 years or 40 years or 50 years or longer in jail if they commit witness tampering and jury tampering in a Federal trial. That is the significance of what is being done today. We are saying that the maximum penalty in witness tampering and jury tampering in a Federal trial after this becomes law will be the maximum of the underlying crime for which the accused in the case being tried is charged.

I would urge my colleagues to accept it. Again, I commend the gentleman from Pennsylvania for offering this. I think it is a very constructive and appropriate new deterrent in the Federal criminal justice system.

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

Mr. BEREUTER. Mr. Chairman, this Member rises today in support of H.R. 3120, legislation to prevent jury and witness tampering and witness retaliation.

This Member was a cosponsor of each of these separate bills as they were originally introduced by the gentleman from Pennsylvania [Mr. FOX] before they were placed in one piece of legislation and also a cosponsor of

the H.R. 3019. Existing penalties for these crimes do not create a deterrent for criminals often facing life imprisonment or the death penalty for their crimes. Criminals will risk a small fine in order to be declared not guilty.

A Nebraska jury tampering case, involving the murder trial of Roger Bjorklund in 1993, demonstrates the need for changes in the Federal jury tampering law. We have no teeth in our jury tampering laws. The present weak laws actually encourage accused individuals to interfere with a jury or witnesses. They have very little to lose. This is a loophole that must be closed.

Mr. Chairman, this Member urges his colleagues to support this important measure.

Mr. DOYLE. Mr. Chairman, whether in the national spotlight or in our hometown, attempts to derail law enforcement investigations and influence judicial decisions through coercion is increasingly becoming the criminal's preferred line of defense. No longer is the arm of intimidation restricting itself to organized crime. When individuals employ this type of behavior in a small or close knit community, the effect of the manipulation can literally freeze that neighborhood's sense of community in its tracks. When individuals successfully exercise intimidation in the courtroom, we are in danger of knowingly forfeiting an inalienable right; the right to a fair trial.

I realize the limited effect deterrents such as the provisions of H.R. 3120 can have if they are not enforced. It is my hope however, that the message of H.R. 3120 will bolster law enforcement's efforts and will break through to individuals who might otherwise resort to witness and jury tampering tactics. It is also my hope that this legislation will sound a voice of support and encouragement to individuals who are a witness to, or victim of crime. In order for our communities to be safe environments, we must make it clear that every individual is equally important and deserves protection. An aware and involved resident is our best tool to preventing and combating crime.

As a cosponsor of the original components of this bill, H.R. 1143, H.R. 1144, and H.R. 1145, I strongly believe that increasing the maximum sentence for individuals convicted of tampering or harassing juries and witnesses in criminal cases is a reasonable and just response to such actions. I urge my colleagues to support final passage of H.R. 3120, the Increased Punishment for Witness and Jury Tampering Act.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment and is considered as having been read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 3120

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 18, United States Code, is amended—

(1) in section 1513—

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

(B) by adding at the end the following:

“(c) If the retaliation occurred because of attendance at or testimony in a criminal case, the maximum term of imprisonment

which may be imposed for the offense under this section shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.”;

(2) in section 1512, by adding at the end the following:

“(i) If the offense under this section occurs in connection with a trial of a criminal case, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.”; and

(3) in section 1503(a), by adding at the end the following: “If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.”.

The CHAIRMAN. During consideration of the bill for amendment, the chairman of the Committee of the Whole may accord priority in recognition to a Member offering an amendment that he has preprinted in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered as having been read.

Pursuant to the order of the House of today, the chairman of the Committee of the Whole House 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 electric 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.

Are there any amendments to the bill?

If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose, and the Speaker pro tempore (Mr. SHADEGG) having assumed the chair, Mr. LATOURETTE, 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. 3120) to amend title 18, United States Code, with respect to witness retaliation, witness tampering and jury tampering, pursuant to House Resolution 422, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

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

The question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

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

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. LIPINSKI] is recognized for 5 minutes.

[Mr. LIPINSKI addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. BURTON] is recognized for 5 minutes.

[Mr. BURTON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. FILNER] is recognized for 5 minutes.

[Mr. FILNER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. MICA] is recognized for 5 minutes.

[Mr. MICA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut [Mr. GEJDENSON] is recognized for 5 minutes.

[Mr. GEJDENSON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. RIGGS] is recognized for 5 minutes.

[Mr. RIGGS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SMITH] is recognized for 5 minutes.

[Mr. SMITH addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gen-

tleman from Washington [Mr. METCALF] is recognized for 5 minutes.

[Mr. METCALF addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. KINGSTON] is recognized for 5 minutes.

[Mr. KINGSTON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

OUTSTANDING LEGISLATION

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Pennsylvania [Mr. FOX] is recognized for 60 minutes as the designee of the majority leader.

Mr. FOX of Pennsylvania. Mr. Speaker, I will just take a few moments to address the House, just to congratulate my colleagues today who introduced outstanding legislation which was passed. DICK CHRYSLER's bill which is going to increase the penalties for those who commit crimes against children and the elderly, and by doing this we will put a disincentive in our criminal justice system for those who were thinking about committing violent crimes against children under 14 and the elderly.

I also commend Congressman ROYCE from California for his outstanding legislation which will for the first time create the Federal offense of stalking between States. I was pleased to hear from one of his constituents who had a 13-year ordeal with someone stalking her and her life in jeopardy constantly. Others have not been as fortunate to be able to live through the experience and thank goodness for EDWARD ROYCE's legislation that will now put some teeth in the law to add a disincentive in severe penalties for those who would commit the crime of Federal stalking.

Finally, I wish to congratulate DICK ZIMMER, who passed today with our help Megan's law. The Kanka family, Megan Kanka, who was brutally murdered and raped by a criminal who lived right across the street virtually in her neighborhood in New Jersey.

□ 2300

That crime was so egregious that we now have a new Federal law which will require that there be, by those criminals who have committed prior acts of sexual offenses, to be registered, and so we can make sure that we limit the amount of crimes like these again and so that Megan's life will not have been in vain.

Her parents, Maureen and Richard Kanka, gave eloquent testimony this morning here at the Capitol about the importance of Megan's law in requiring that our States notify communities of the presence of convicted sex offenders who might pose a danger, just like they did to their daughter. And our hearts