

1 ALDERSON REPORTING COMPANY
2 GREGORY ALTHAM
3 HJU279000

4 MARKUP OF:
5 H.R. 313, THE DRUG TRAFFICKING SAFE HARBOR ELIMINATION ACT
6 OF 2011;
7 H.R. 1254, THE SYNTHETIC DRUG CONTROL ACT OF 2011;
8 H.R. 2471, TO AMEND SECTION 2710 OF TITLE 18, UNITED STATES
9 CODE, TO CLARIFY THAT A VIDEOTAPE SERVICE PROVIDER MAY
10 OBTAIN A CONSUMER'S INFORMED, WRITTEN CONSENT ON AN ONGOING
11 BASIS AND THAT CONSENT MAY BE OBTAINED THROUGH THE INTERNET;
12 AND
13 H.R. 2870, THE ADAM WALSH REAUTHORIZATION ACT OF 2011
14 Thursday, October 6, 2011
15 House of Representatives
16 Committee on the Judiciary
17 Washington, D.C.

18 The committee met, pursuant to call, at 10:33 a.m., in
19 Room 2141, Rayburn House Office Building, Hon. Lamar Smith
20 [chairman of the committee] presiding.

21 Present: Representatives Smith, Sensenbrenner, Coble,
22 Gallegly, Goodlatte, Chabot, Issa, King, Franks, Gohmert,
23 Chaffetz, Griffin, Marino, Gowdy, Ross, Adams, Quayle,
24 Amodei, Conyers, Berman, Nadler, Scott, Watt, Lofgren,
25 Jackson Lee, Waters, Cohen, Johnson, Pierluisi, Quigley,
26 Chu, and Deutch.

27 Staff Present: Sean McLaughlin, Majority Chief of
28 Staff; Allison Halatei, Majority Deputy Chief of
29 Staff/Parliamentarian; Sarah Kish, Clerk; Perry Apelbaum,
30 Minority Staff Director; and Joe Graupensperger, Minority
31 Counsel.

32

33 Chairman Smith. The Judiciary Committee will come to
34 order.

35 Without objection, the chair is authorized to declare
36 recesses of the committee at any time. The clerk will call
37 the roll to establish a quorum.

38 What we are trying to do is to establish a working
39 quorum before we have to go vote. That way, we can get off
40 to a little bit faster start when we return from the vote
41 about 11:30 a.m.

42 Ms. Kish. Mr. Smith?

43 Chairman Smith. Present.

44 Ms. Kish. Mr. Sensenbrenner?

45 Mr. Coble?

46 Mr. Gallegly?

47 Mr. Gallegly. Present.

48 Ms. Kish. Mr. Goodlatte? Mr. Goodlatte?

49 Mr. Goodlatte. Present.

50 Ms. Kish. Mr. Lungren?

51 Mr. Chabot?

52 Mr. Issa?

53 Mr. Pence?

54 Mr. Forbes?

55 Mr. Forbes. Present.

56 Ms. Kish. Mr. King?

57 Mr. King. Here.

58 Ms. Kish. Mr. Franks?
59 Mr. Franks. Here.
60 Ms. Kish. Mr. Gohmert?
61 Mr. Jordan?
62 Mr. Poe?
63 Mr. Chaffetz?
64 Mr. Griffin?
65 Mr. Marino?
66 Mr. Marino. Here.
67 Ms. Kish. Mr. Gowdy?
68 Mr. Ross?
69 Mrs. Adams?
70 Mr. Quayle?
71 Mr. Amodei?
72 Mr. Amodei. Here.
73 Ms. Kish. Mr. Conyers?
74 Mr. Berman?
75 Mr. Nadler?
76 Mr. Scott?
77 Mr. Scott. Here.
78 Ms. Kish. Mr. Watt?
79 Mr. Watt. Present.
80 Ms. Kish. Ms. Lofgren?
81 Ms. Jackson Lee?
82 Ms. Waters?

83 Mr. Cohen?

84 Mr. Johnson?

85 Mr. Pierluisi?

86 Mr. Quigley?

87 Ms. Chu?

88 Mr. Deutch?

89 Ms. Sanchez?

90 Mr. Coble?

91 Mr. Coble. Here.

92 Ms. Kish. Mr. Issa?

93 Mr. Issa. Here.

94 [Pause.]

95 Chairman Smith. Let me say to Members who are present
96 that if one more Member arrives, we will have a working
97 quorum, at which point we will recess immediately so that
98 Members can go vote. And then we will resume the markup
99 after the votes are over, about 11:30 a.m.

100 So if Members don't want to stay here, we will not
101 conduct any business other than to establish a working
102 quorum.

103 [Pause.]

104 Ms. Kish. Ms. Waters?

105 Ms. Waters. Here.

106 Chairman Smith. The clerk will report.

107 Ms. Kish. Mr. Chairman, 13 Members responded present.

108 Chairman Smith. Okay. A working quorum being
109 present, we will resume our markup after these votes, this
110 first series of votes is over about 11:30 a.m. And until
111 then, we stand in recess.

112 [Recess.]

113 Chairman Smith. The Judiciary Committee will
114 reconvene, and we will proceed with our markup.

115 However, first, I would like to welcome our new
116 member, Mark Amodei of Nevada. Mark Amodei graduated from
117 the University of Nevada and then the law school of the
118 University of the Pacific. He served 4 years of active duty
119 in the U.S. Army, including assignments as a JAG officer,
120 assistant United States attorney, and assistant post Judge
121 Advocate.

122 After returning to Nevada and opening a successful law
123 practice, Congressman Amodei ran for public office and was
124 elected first to the Nevada State Assembly and then to the
125 State Senate, serving a total of 12 years. While in the
126 State Senate, Mr. Amodei served as chairman of the Judiciary
127 Committee. So our issues are not unknown to him. Mr.
128 Amodei has a wealth of experience to offer as a member of
129 our committee, from law enforcement to State courts to
130 handling a gavel.

131 Welcome, Mr. Amodei, to the Judiciary Committee.
132 Appreciate your being here.

133 Mr. Conyers. Mr. Chairman?

134 Chairman Smith. And the ranking member, Mr. Conyers,
135 is recognized.

136 Mr. Conyers. I thank you, Chairman Smith.

137 On behalf of all of the Democratic members of the
138 House Judiciary Committee, we join in welcoming you. You
139 have a great background.

140 And I would like to commend to you, sir, a practice
141 that I didn't start it this morning. But I joined another
142 member of this committee, Judge Louis Gohmert, and
143 Congressman Rohrabacher on a bill, and I thought that would
144 serve as an excellent model for you to take to heart and
145 join with us on some of our bills whenever you can.

146 Thank you. And welcome to the committee.

147 Chairman Smith. Thank you, Mr. Conyers.

148 I would like now to turn to subcommittee assignments.
149 We will look for ratification of subcommittee assignments by
150 the full committee. Each of you should have a copy of the
151 new subcommittee roster before you.

152 Mr. Amodei will be joining the Subcommittee on
153 Intellectual Property, Competition, and the Internet, and
154 the Crime Subcommittee. Mr. Quayle will be leaving the
155 Crime Subcommittee and joining the Subcommittee on Courts,
156 Commercial, and Administrative Law. And finally, Mr.
157 Johnson will be joining the Subcommittee on Intellectual

158 Property, Competition, and the Internet.

159 Without objection, the new committee assignments as
160 shown on the roster are approved.

161 The first bill we had scheduled was the video privacy
162 bill. We are going to wait for Mr. Goodlatte, the primary
163 supporter of that bill, to arrive, and we expect him to be
164 here in about 45 minutes.

165 So, meanwhile, we will turn to H.R. 313, the Drug
166 Trafficking Safe Harbor Elimination Act of 2011. Pursuant
167 to notice, I now call up H.R. 313 for purposes of markup,
168 and the clerk will report the bill.

169 Ms. Kish. H.R. 313, to amend the Controlled
170 Substances Act to clarify that persons who enter into a
171 conspiracy within the United States --

172 Chairman Smith. Without objection, the bill will be
173 considered as read.

174 [The information follows:]

175

176 Chairman Smith. I will recognize myself for an
177 opening statement, and then the ranking member.

178 H.R. 313, the Drug Trafficking Safe Harbor Elimination
179 Act of 2011, which I introduced with Congressman Schiff,
180 closes a loophole in Federal law. It clarifies Congress's
181 intent that the drug trafficking conspiracy statute be given
182 extraterritorial application.

183 Drug traffickers are currently allowed to conspire
184 with impunity in the United States and evade criminal
185 prosecution when their goal is to traffic drugs outside of
186 the United States. A Federal criminal case demonstrates how
187 the loophole is being exploited.

188 In 1998, two individuals conspired with members of a
189 large Colombian drug trafficking organization and a Saudi
190 Arabian prince. The goal of the conspiracy was to traffic
191 2,000 kilograms of cocaine worth over \$100 million from
192 South America to Europe.

193 Several meetings among the co-conspirators occurred in
194 Miami, Florida, and elsewhere around the world.
195 Specifically, while in Miami, they planned in detail to
196 purchase the cocaine in Colombia and ship it to Europe for
197 distribution. Ultimately, the prince used his royal jet
198 under the cover of diplomatic immunity to transport the
199 cocaine from Venezuela to Paris, France.

200 Although part of the cocaine was seized by law

201 enforcement authorities in France and Spain, about 1,000
202 kilograms of cocaine was distributed and sold in the
203 Netherlands, Italy, and elsewhere in Europe.

204 In 2005, two of the conspirators were convicted of
205 drug trafficking and conspiracy in Federal District Court in
206 Florida and each sentenced to about 24 years in prison.
207 However, in 2007, the U.S. Court of Appeals for the 11th
208 Circuit vacated their convictions.

209 The court reasoned that there is no violation of
210 Federal law when, absent congressional intent to the
211 contrary, the object of the conspiracy is to possess and
212 distribute controlled substances outside of the United
213 States, even though meetings and negotiations in furtherance
214 of the crime occurred on U.S. soil.

215 Crime is usually territorial. It is a matter of law
216 enforcement specific to the place where the crime occurs.
217 However, drug trafficking is inherently global in nature,
218 now more than ever. In fact, two other provisions of the
219 Controlled Substances Act are explicitly extraterritorial as
220 they relate to narcoterrorism and the foreign manufacture of
221 drugs for importation into the United States.

222 In addition, the primary anti-money laundering statute
223 used in drug trafficking cases is extraterritorial. The
224 Federal Maritime Drug Law Enforcement Act was enacted in
225 response to the increasing use of vessels, submersibles, and

226 semi-submersibles to traffic drugs around the world.

227 In passing that law, Congress stated, "That
228 trafficking in controlled substances aboard vessels is a
229 serious international problem and is universally condemned.
230 Moreover, such trafficking presents a specific threat to the
231 security and societal well-being of the United States."

232 Hundreds of Federal laws are expressly
233 extraterritorial. Extradition treaties among countries
234 around the world are often used to effectuate the
235 extraterritorial laws of nations. The United States is a
236 signatory to international drug control treaties.

237 This bill tells drug traffickers not to plot their
238 illegal activities in the United States, and if they do,
239 they will be brought to justice. The United States should
240 not provide a safe haven for the world's drug traffickers to
241 plot their international trafficking operations.

242 We also have a letter from the Department of Justice
243 in the last Congress, endorsing a bill virtually identical
244 to this bill. That was a letter, and we will provide
245 individuals with a copy of it, that was addressed to Senator
246 Leahy at the time this bill was considered in the last
247 Congress.

248 [The information follows:]

249

250 Chairman Smith. So I urge my colleagues to support
251 this bill and hope it will have bipartisan support.

252 That concludes my opening statement, and the gentleman
253 from Michigan, Mr. Conyers, is recognized.

254 Mr. Conyers. Thank you, Chairman Smith.

255 The problem that the bill presents, although I think
256 it is well intentioned, comes out of the Lopez-Vanegas case
257 that went to the 11th Circuit in 2007. And we are faced
258 with a problem that may extend our drug laws and some of the
259 harsh penalties that go along with them by criminalizing
260 conspiracies that take place in the United States, but the
261 activity occurs outside of the country.

262 So I will put my statement in the record. But the
263 biggest problem is that it is going to make it easier for a
264 lot of petty drug offenses to be federally criminalized.
265 And one of my unfortunate experiences is that when law
266 enforcement is trying to ramp up the conviction rate, it is
267 pretty easy to go out to many street corners and round up
268 whoever is there, and before you know it, you catch somebody
269 with something, some illegal substance.

270 And so, I have been very wary of that kind of
271 strategy. I like to see larger busts of the major
272 traffickers, the people that really create problems, and I
273 think you do, too, Chairman Smith. And that is why the
274 amendment that you have proposed is one that I think will

275 help modify some of my concerns that I have raised.

276 And that the former chairman of the subcommittee,
277 Bobby Scott of Virginia, has an amendment, as well as Sheila
278 Jackson Lee, and I think those amendments will address the
279 concerns that I raise. I am not sure if it will alleviate
280 my opposition to the bill, but I want to examine just how
281 far we go in that in those amendments.

282 So I will put my statement in the record and yield
283 back my time, and thank you.

284 [The statement of Mr. Conyers follows:]

285

286 Chairman Smith. Thank you, Mr. Conyers.

287 The gentleman from Wisconsin, the chairman of the
288 Crime Subcommittee, Mr. Sensenbrenner, is recognized for an
289 opening statement.

290 Mr. Sensenbrenner. Thank you, Mr. Chairman.

291 The United States has taken the lead in the worldwide
292 narcotics control over the past several decades. Now is not
293 the time for the U.S. to provide a safe haven for drug
294 traffickers to plot their illicit international operations.

295 Our country is a signatory to two leading
296 international drug treaties, the 1961 Single Convention on
297 Narcotic Drugs and the 1971 Convention on Psychotropic
298 Substances.

299 The first treaty has been extremely influential in
300 standardizing national drug control laws. The Controlled
301 Substances Act was intended to fulfill our treaty
302 obligations. As of January 2005, the treaty had 180
303 parties.

304 The second treaty was designed to control psychotropic
305 drugs which were not within the scope of the first treaty.
306 This treaty, supplemented by a subsequent treaty signed in
307 1988, has provisions to end international drug trafficking,
308 associated money laundering, and other drug-related crimes.

309 The U.S. must recognize that drug trafficking is a
310 crisis with severe domestic and international impacts.

311 Drugs are not trafficked simply from one location to
312 another. They make several stops on their way to their
313 final destination.

314 Their ultimate sale results in a worldwide underground
315 money laundering enterprise, often with the diversion of
316 proceeds to support terrorism around the globe. The United
317 States should prevent and criminalize conspiracies to
318 traffic drugs internationally and to demonstrate our role as
319 a leader in the anti-drug trafficking efforts, to further
320 our treaty obligations, and to protect ourselves from those
321 who traffic these drugs to further their terrorist or
322 criminal enterprises.

323 I urge my colleagues to support this legislation and
324 yield back the balance of my time.

325 Chairman Smith. Thank you, Mr. Sensenbrenner.

326 The ranking member of the Crime Subcommittee, the
327 gentleman from Virginia, Mr. Scott, is recognized.

328 Mr. Scott. Thank you, Mr. Chairman.

329 Mr. Chairman, in our overzealousness to make drug laws
330 as tough as possible, with this bill we are now considering
331 an expansion of Federal criminal law to conspiracies to
332 engage in activities which may occur completely outside the
333 United States.

334 Now we're not talking about a conspiracy to commit a
335 crime in the United States, a conspiracy to import drugs

336 into the United States. We are talking about a conspiracy
337 to do something that never involves the United States, and
338 in fact, the activity may not even be illegal where it is
339 taking place. It is conspiracy to do something where doing
340 it may not be a crime, but talking about it in the United
341 States is.

342 Now, further, this is an unfortunate fact that the
343 overcriminalization in this bill also involves the mandatory
344 minimums, which we have studied time and time again.
345 Mandatory minimums have been found to be unjust, waste the
346 taxpayers' money, do nothing about crime, violate common
347 sense. And so, the mandatory minimums are just an insult to
348 the injury.

349 Many people on mandatory minimums have concluded that
350 they make no sense. The Americans for Tax Reform president
351 Grover Norquist, American Civil Rights Institute president
352 Ward Connerly, the National Rifle Association president
353 David Keene, Justice Fellowship president Pat Nolan have all
354 called mandatory minimum sentences into question.

355 Now, back to this bill. In particular, as it has been
356 pointed out, the Lopez decision from 2007 has caused the
357 reason for the bill. The court overturned the conviction of
358 two people who formed an agreement in the United States to
359 transport cocaine from Venezuela to France, never touching
360 the United States.

361 The court ruled that current law only applies to
362 conspiracies to distribute drugs when the drug activity or
363 the activity for which the conspiracy is involved actually
364 occurs in the United States.

365 Now since transporting drugs from Venezuela to France
366 is not a violation of United States law, conspiracy to do
367 something that isn't illegal in the United States was viewed
368 not to be a crime. If one believes that we have an interest
369 in covering some of these conspiracies, we should at least
370 confine it to large-scale trafficking.

371 Now one perverse result of this would occur that, if
372 enacted, some conspiracies could be prosecuted even if the
373 underlying drug activity, the object of the conspiracy, is
374 not illegal under the laws in which it takes place. For
375 example, if an Amsterdam cafe is selling marijuana and you
376 lend money to the cafe to help them do their operations,
377 that would be a crime because you are conspiring to help
378 distribute marijuana, which is illegal in the United States.

379 If you just went to Amsterdam and started dealing out
380 the marijuana, that would not be illegal. But sitting in
381 the United States talking about it, that is a crime.

382 I will offer two amendments to deal with many of these
383 issues, and I hope we can find a way to at least improve the
384 bill, and I yield back the balance of my time.

385 Chairman Smith. Thank you, Mr. Scott.

386 I will recognize myself to offer an amendment, and the
387 clerk will report the amendment.

388 Ms. Kish. Amendment to H.R. 313, offered by Mr. Smith
389 of Texas. Page 2, line 16, after title, insert "other than
390 a violation of Section 404(a)."

391 [The information follows:]

392

393 Chairman Smith. I will recognize myself in support of
394 the amendment.

395 This amendment excludes the crime of simple possession
396 of a controlled substance from the extraterritorial
397 application of the drug conspiracy statute. The intent to
398 criminalize conspiracies to traffic and distribute drugs,
399 both in and outside of the United States, should not
400 necessarily extend to discussions about the simple
401 possession of personal use quantities of drugs when there is
402 no intent to distribute or resell those drugs.

403 For instance, young adults in the U.S. who discuss the
404 prospective personal use of drugs while on an overseas trip
405 should not be subject to the extraterritorial application of
406 the drug conspiracy statute. The intent of this legislation
407 is to apply our conspiracy laws to drug traffickers and
408 distributors, not to those who merely intend to possess the
409 drug overseas.

410 But our domestic and counterterrorism interests are
411 well served by eliminating the safe haven drug traffickers
412 currently benefit from in the U.S. So I urge my colleagues
413 to support this amendment.

414 Are there other Members who wish to be recognized?

415 Mr. Conyers. Will the gentleman yield?

416 Chairman Smith. The ranking member, the gentleman
417 from Michigan, Mr. Conyers?

418 Mr. Conyers. I would just join you in support of the
419 amendment.

420 Thank you.

421 Chairman Smith. Thank you, Mr. Conyers.

422 Are there others? The gentleman from Wisconsin, Mr.
423 Sensenbrenner?

424 Mr. Sensenbrenner. Mr. Chairman? Mr. Chairman, I
425 rise to support the amendment.

426 I have a statement. In the interest of time, I ask
427 unanimous consent to put the statement in the record and
428 yield back.

429 Chairman Smith. Without objection, the entire
430 statement will be made a part of the record.

431 [The statement of Mr. Sensenbrenner follows:]

432

433 Chairman Smith. And the gentleman from Virginia, Mr.
434 Scott, is recognized.

435 Mr. Scott. Mr. Chairman, I, too, support the
436 amendment. But I think the need for the amendment exposes
437 the problems with the bill. We are covering a lot of
438 activity, which may not even be illegal where it is taking
439 place, but we are criminalizing talking about it in the
440 United States.

441 Certainly, it shouldn't rope in people who are just in
442 simple possession where the possession itself may be legal.
443 Going to Amsterdam and smoking marijuana may be legal in
444 Amsterdam. Talking about it in the United States certainly
445 should not be a crime.

446 So I support the amendment but also would point out
447 that you would run into the same problems with the rest of
448 the bill, where the activity itself is not even illegal
449 where it is taking place.

450 Chairman Smith. Would the gentleman yield before he
451 yields back?

452 Mr. Scott. I yield.

453 Chairman Smith. I want to point out that by adopting
454 this amendment, we are actually conforming this bill to the
455 bill that was supported by the Department of Justice last
456 year, and I am holding a letter that was written from DOJ to
457 Senator Pat Leahy on September 16, 2010. So I would hope

458 that the gentleman might consider supporting the underlying
459 legislation since it is now virtually identical to the bill
460 that last year was supported by the Obama administration.

461 Mr. Scott. Reclaiming my time. Nice try.

462 [Laughter.]

463 Mr. Scott. I yield back.

464 Chairman Smith. Well, maybe there will be others on
465 the committee that will be persuaded by the Obama
466 administration's endorsement.

467 Other Members who want to be heard? The gentleman
468 from Tennessee is recognized.

469 Mr. Cohen. Thank you, sir.

470 I support the amendment, and I hope this is the
471 beginning of an understanding on this committee that we
472 shouldn't criminalize possession, that possession of -- just
473 personal possession should be treated separately over here,
474 as well as over there, just not even when talked about, but
475 when, in fact, used.

476 Because a lot of money, billions of dollars, are spent
477 incarcerating, investigating, having court cases, all these
478 different things, billions of dollars are spent on arresting
479 Americans for the possession of marijuana, and that should
480 not happen.

481 Thank you.

482 Chairman Smith. Thank you, Mr. Cohen.

483 The gentleman from Georgia, Mr. Johnson, is
484 recognized.

485 Mr. Johnson. Thank you, Mr. Chairman.

486 And I do support the amendment offered, but I would
487 argue that it should go further to include the offense of
488 possession with intent to distribute.

489 Possession with intent to distribute can be the
490 applicable charge just due to how a substance is packaged.
491 So if there are a number of -- if there is a small amount of
492 contraband involved, and it is three packets. But it is
493 less than, say, an ounce of marijuana, that would justify a
494 charge of possession with intent to distribute.

495 It could be the subject of a conspiracy under this
496 statute, and I think that we really don't need to subject
497 small-scale possessors with liability under this statute.

498 I would also point out that the situation where a
499 person makes arrangements here in the United States to share
500 marijuana, let us say, with friends overseas where it is
501 legal. So your possession with intent to distribute
502 conspiracy would lie. And so, I would ask that that
503 amendment be strongly considered.

504 Chairman Smith. Thank you, Mr. Johnson.

505 The gentleman from Iowa, Mr. King, is recognized.

506 Mr. King. Thank you, Mr. Chairman.

507 I move to strike the last word.

508 Chairman Smith. The gentleman is recognized for 5
509 minutes.

510 Mr. King. Thank you, Mr. Chairman.

511 I just would like to get some clarification. I intend
512 to ask if you would yield for a question in a moment.

513 But as I listened to the dialogue that is coming from
514 the other side of the aisle, and there might be drawn some
515 implication that this amendment and this underlying bill
516 might want to have some implications of decriminalizing
517 marijuana possession or the conspiracy to deliver it.

518 And I would ask if you could clarify that, as my
519 position that I don't have a lot of sympathy for drug users
520 or conspirators. And is there anything in this language
521 that I am missing, and would the chairman yield to a
522 question?

523 Chairman Smith. Let me reassure the gentleman from
524 Iowa that it is not the intent of this legislation, nor my
525 intent to advocate for the decriminalization of any drug.

526 Mr. King. Thank you, Mr. Chairman.

527 I appreciate that, and I yield back.

528 Chairman Smith. Thank you, Mr. King.

529 The question is on the amendment. All in favor, say
530 aye.

531 [A chorus of ayes.]

532 Chairman Smith. Opposed, no.

533 [A chorus of nays.]

534 Chairman Smith. The clerk -- will suspend. The
535 gentleman from Georgia? If you would, turn on your mike.

536 Mr. Johnson. I would respectfully move to allow an
537 amendment to your amendment, which I am about to prepare in
538 writing, which would include possession with intent to
539 distribute.

540 Chairman Smith. Okay. Mr. Johnson, what I would like
541 to do is proceed on my amendment, and you will be welcome to
542 offer another amendment --

543 Okay. I stand corrected. You need to offer your
544 amendment now. Do you want us to wait until you have that
545 drafted?

546 Mr. Johnson. Yes.

547 Chairman Smith. Okay. We will wait to do just that.

548 Mr. Johnson. Thank you.

549 Mr. Scott. Mr. Chairman?

550 Chairman Smith. While we are waiting, the gentleman
551 from Virginia, Mr. Scott, is recognized.

552 Mr. Scott. If you are looking for something to do, I
553 have an amendment at the desk.

554 [Laughter.]

555 Chairman Smith. No, we have to wait until we consider
556 the amendment to the amendment.

557 Mr. Scott. Mr. Chairman, I would ask unanimous

558 consent that we suspend action on your amendment temporarily
559 without prejudice.

560 Chairman Smith. Okay. Is there any objection to
561 that?

562 [No response.]

563 Chairman Smith. If not, we will proceed to consider
564 another amendment.

565 Mr. Scott. Mr. Chairman, I have an amendment at the
566 desk, Scott 2.

567 Chairman Smith. The clerk will report the amendment.

568 Ms. Kish. Amendment to H.R. 313, offered by Mr. Scott
569 of Virginia. Page 2, line 16 after "that," insert "is a
570 criminal offense in the place where the conduct occurs and."

571 [The information follows:]

572

573 Chairman Smith. The gentleman from Virginia, Mr.
574 Scott, is recognized to explain his amendment.

575 Mr. Scott. Thank you, Mr. Chairman.

576 First, I would like to notify the gentleman from Iowa
577 that we are not talking about in this amendment
578 decriminalizing anything. We are talking about something
579 that is not even illegal to begin with.

580 This amendment would limit the bill's application to
581 conspiracies to engage in drug activity abroad that would
582 actually be a criminal offense in the place in which that
583 conduct occurs. As it stands now, the bill will allow
584 Federal -- United States Federal prosecution of conspiracies
585 that take place in the United States to engage in drug
586 distribution that in some cases may not be illegal in the
587 country where the distribution is taking place.

588 The drug laws are not the same all over the world.
589 There are some drug transactions which are illegal in the
590 United States, but not criminally prohibited in other
591 countries.

592 For example, the use, production, and distribution of
593 marijuana for medical uses are legal in a number of
594 countries, including Israel and Canada. Those people from
595 those countries involved in medical marijuana programs in
596 their countries could face criminal prosecution if they make
597 any agreement to facilitate such programs that are legal in

598 their countries, if they say something about it in the
599 United States.

600 Now, a person in the United States could do that
601 activity in Canada. But if they cross the line and talk
602 about it in the United States, all of a sudden it is a
603 crime.

604 Some countries, such as the Netherlands, England,
605 Spain, Germany, and Canada, have heroin-assisted programs in
606 which people addicted to street heroin who have not
607 succeeded in other treatment programs, they can prescribe
608 pharmaceutical heroin as part of a broader treatment
609 regimen. If a United States citizen arranged a loan or
610 otherwise assisted those programs, that would be illegal in
611 the United States, but the activity could be legal where it
612 is taking place.

613 Now this amendment would narrow the bill to make sure
614 that the activity is illegal where it is taking place in the
615 foreign country, and that would -- and the conspiracy to do
616 that would be illegal, but not conspiring in the United
617 States to do something that is legal where it is taking
618 place.

619 It has a perverse effect in the underlying bill that
620 if you just go ahead and do it, just do it, it is legal.
621 But if you talk about it in the United States, it is
622 illegal. I would hope, Mr. Chairman, that you would at

623 least limit the application of this to things that are
624 actually illegal where the action is taking place.

625 I yield back.

626 Chairman Smith. Thank you, Mr. Scott.

627 And I will recognize myself in opposition to the
628 amendment.

629 Now this amendment requires that drug trafficking
630 conduct must be a criminal offense in the place where the
631 conduct occurs. I spoke earlier of the primary case that
632 exposed the loophole that this legislation closes.

633 The 2,000 kilograms of cocaine originated in Colombia.
634 It was transported to Venezuela and Saudi Arabia before
635 arriving in Paris. Then part of the cocaine was transported
636 to Spain. The rest of it was sold in Italy, the
637 Netherlands, and elsewhere in Europe.

638 The members of this drug trafficking conspiracy met in
639 Miami, Florida; Spain; and Saudi Arabia. The proceeds of
640 the sale of the cocaine were laundered through Switzerland.
641 Under this amendment, the Government would have been
642 required to prove that the conduct alleged in the conspiracy
643 was criminal in more than 10 countries round the world.

644 This amendment completely misses the point that in
645 international drug trafficking cases, there is not simply
646 one location where the crime occurs. International drug
647 trafficking is, by definition, international.

648 Closure of the current loophole should not require
649 proof that the conduct was criminal in 10 different
650 countries. Why do we want to make it more difficult to stop
651 drug dealers?

652 So I urge my colleagues to oppose the amendment.

653 Mr. Nadler. Mr. Chairman?

654 Chairman Smith. Are there other Members who wish to
655 speak? The gentleman from New York?

656 Mr. Scott. Will the gentleman yield?

657 Mr. Nadler. Mr. Chairman?

658 Chairman Smith. The gentleman from New York, Mr.
659 Nadler, is recognized.

660 Mr. Nadler. Thank you.

661 First of all, I think the distinguished chairman was
662 mistaken --

663 Lamar?

664 Chairman Smith. Yes, I am sorry.

665 Mr. Nadler. I think the distinguished chairman was
666 mistaken in his description of what this amendment would do.
667 In the example you just gave with 10 countries, it would be
668 sufficient under this amendment if it were illegal in any
669 one of those countries, not all of them.

670 It would not need to be illegal -- you would have to
671 show that it was illegal somewhere. You were conspiring to
672 do something. You were conspiring here to do something

673 illegal where the conduct was performed, any place where the
674 conduct was performed. So that I think that -- and that is
675 the intent of the amendment, obviously.

676 Let me just say that we have had a war on drugs for 40
677 years. The results have not been spectacular. Other
678 countries have taken different -- some countries have taken
679 the same approaches. Other countries have taken different
680 approaches.

681 Some of us think we can learn from other countries.
682 But as a general principle of law, it should not be -- we
683 should not seek to export our law somewhere else. If
684 Holland decides that the sale and distribution of marijuana
685 is perfectly okay, that is their privilege within Holland.
686 It is not up to us to comment on that. We don't have to
687 follow that here.

688 But I don't see how you can make it a crime to
689 conspire to do something that is legal. There is no
690 underlying crime. There has to be an underlying crime to
691 conspiracy. To conspire to do something legal where it is
692 done should be legal.

693 I don't understand, as an elementary principle of
694 criminal law, how you can make a conspiracy to do something
695 legal illegal.

696 Chairman Smith. Yes. If the gentleman will yield for
697 a minute?

698 Mr. Nadler. Yes. I will yield.

699 Chairman Smith. The language that you have offered as
700 an amendment says --

701 Mr. Nadler. The language that Mr. Scott has offered.

702 Chairman Smith. I am sorry, Mr. Scott has offered.

703 Page 2, line 11, after "that," insert "is a criminal offense
704 in the place where the conduct occurs."

705 Mr. Nadler. So?

706 Chairman Smith. That place could be maybe it is 9 out
707 of 10, I don't know, but it is more than just one place.

708 Mr. Scott. Mr. Chairman? Would the gentleman from
709 New York yield?

710 Mr. Nadler. I will yield.

711 Mr. Scott. It is a criminal offense in a place where
712 the conduct occurs. And that means if I can show in the
713 Venezuela, the Spain, the Italy, if I can show that it is
714 illegal in any of those places, then I have got the crime.

715 But the idea that you can lend money to a cafe in
716 Amsterdam where they distribute marijuana, and all of a
717 sudden, if you make the loan, you are guilty of conspiracy
718 to distribute marijuana because it is illegal in the United
719 States is absurd. It has to be illegal where the conduct
720 occurs, and if you distributed drugs and it was legal in
721 nine of them, but illegal in one, then you have the hook for
722 illegal where it occurs, and you can proceed with the

723 prosecution.

724 But without this amendment, it could be actually legal
725 everywhere.

726 Mr. Nadler. Reclaiming my time, I would ask the
727 gentleman from Virginia, would he accept an amendment that
728 said "is a criminal offense in any place where the conduct
729 occurs?" Just to clarify the intent.

730 Chairman Smith. If the gentleman from Virginia will
731 yield?

732 I don't think that is going to solve the problem,
733 which is that a conspiracy involves multiple acts of
734 criminal behavior. It is going to be multiple by
735 definition. So I don't know --

736 Mr. Nadler. No, no, no. I think I have the time. I
737 am reclaiming the time.

738 I don't understand that at all. A conspiracy doesn't
739 necessarily involve -- it has to have one overt act, by
740 definition, one overt act. So if you and I say let us lend
741 money to Hendrik in Amsterdam so that he can expand his
742 marijuana parlor and then we wire the money, that is a
743 conspiracy to help him do something that is legal where he
744 does it.

745 And it doesn't need multiple acts. It needs one act.
746 A conspiracy involves one overt act. That is the definition
747 of a conspiracy. A meeting of the -- a conspiracy is a

748 meeting of the minds and one overt act.

749 So it seems to me, Mr. Chairman, there are two
750 questions here. One is your objection, which I think can be
751 easily clarified. Certainly, the intent is not to say it
752 has to be illegal every place. The intent is illegal in any
753 place where the conduct occurs, then it is okay. I mean
754 then you can criminalize the conspiracy to aid that.

755 But second of all, a conspiracy has to have a criminal
756 underlying offense. If I conspire to give a college
757 scholarship to poor children, so? That is a nice thing to
758 do. There has got to be a criminal underlying thing that
759 underlies the conspiracy.

760 And therefore, I think Mr. Scott's amendment, perhaps
761 clarified to make clear his intent that it should be any
762 country, ought to be elementary.

763 Mr. Scott. I ask unanimous consent that the gentleman
764 be given 1 additional minute.

765 Chairman Smith. Without objection, the gentleman will
766 have another additional minute.

767 Mr. Nadler. And I will yield to the gentleman.

768 Mr. Scott. The indictment would just cite that the
769 conspiracy was formed and cite the place where it was
770 illegal. The amendment is a criminal offense in the place
771 where the conduct occurred. If you are going to accuse them
772 of conspiring to distribute drugs in Venezuela, all you have

773 got to do is show that it is illegal in Venezuela.

774 But if you are talking about some substances and maybe
775 we have got further on, we have got some synthetic stuff
776 that may not be illegal in all the other countries, and you
777 have got some people talking about doing something in France
778 that is legal in France, that is ought not be what you are
779 trying to cover with this legislation. But it is, in fact,
780 what is covered.

781 I yield back to the gentleman.

782 Chairman Smith. The gentleman from Wisconsin, Mr.
783 Sensenbrenner, is recognized.

784 Mr. Sensenbrenner. Mr. Chairman, listening to the
785 arguments in favor of this amendment is very puzzling to me
786 because in the past we have had bills to provide
787 extraterritorial jurisdiction on crimes such as genocide and
788 child soldiers. And my friends on the other side of the
789 aisle have said these crimes are so heinous we ought to have
790 extraterritorial jurisdiction, and that is the law today.

791 And now, all of a sudden, when we are talking about
792 international drug trafficking, which happens a lot more
793 often and has been serious enough to bring about two
794 treaties that have been negotiated, we see my friends on the
795 other side of the aisle poking holes in that.

796 And that not only is misguided, you know, to me, it is
797 shocking. Because one of the biggest problems our society

798 faces is the use of illegal drugs, and a lot of these
799 illegal drugs cross international borders.

800 Now the whole purpose of these treaties is to stop the
801 trafficking because it is easier to stop the trafficking at
802 its source or when the drugs are along the way, as they are
803 being passed off from one person in the chain to the next,
804 than it is to have them come into the United States, and
805 then the book is thrown at the drug traffickers.

806 We need to be able to enforce these treaties to the
807 fullest extent possible. This amendment is a huge step
808 backward, and I would like to hear from my friends on the
809 other side why we ought to give a "get out of jail" card
810 free to drug traffickers who do this extraterritorially when
811 the committee has overwhelmingly and perhaps unanimously
812 decided not to give that "get out of jail free" card to
813 those who commit genocide or to those who recruit child
814 soldiers.

815 Of course --

816 Mr. Nadler. Would the gentleman yield?

817 Mr. Sensenbrenner. Of course, I will be happy to
818 yield. Because I would like to know the answer to that, and
819 I will reclaim my time if you don't give one.

820 Mr. Nadler. I am going to give an answer to that
821 because --

822 Mr. Sensenbrenner. I am happy to yield.

823 Mr. Nadler. -- it is a fair question, but one with a
824 simple answer.

825 Opinions around the world differ on how to deal with
826 the drug traffic. Some people think marijuana is a
827 terrible, heinous offense. We have it as Schedule I.
828 Holland, for example, does not. They are entitled in their
829 country to their opinion under their democratic form of
830 government. We shouldn't be trying to enforce our opinion
831 on them.

832 Genocide, on the other hand, or heinous war crimes,
833 they are not entitled to their opinion. We don't respect
834 the Nazis' opinion that it is okay to commit genocide, and
835 to hell with them. But there are legitimate differences of
836 opinion, which we must respect, in other democratic
837 countries on questions about how to deal with drugs.

838 Mr. Sensenbrenner. Well, reclaiming my time, that
839 wasn't a simple answer because it took you several sentences
840 to try to give it.

841 Mr. Nadler. I just wanted to emphasize.

842 Mr. Sensenbrenner. But this is -- the argument that
843 the gentleman from New York is making is refuted by the
844 international drug treaties which have been ratified by the
845 United States Senate and under the Constitution are the
846 supreme law of the land. So even though you might not like
847 these treaties, they are the supreme law of the land. So

848 let us implement them, and let us enforce them so that we
849 live up to our treaty obligations.

850 Mr. Cohen. Will the gentleman yield?

851 Mr. Sensenbrenner. I yield back the balance of my
852 time.

853 Chairman Smith. The gentleman yields back the balance
854 of his time.

855 The gentleman from Tennessee, Mr. Cohen, is
856 recognized.

857 Mr. Cohen. Thank you, Mr. Chairman.

858 You know, this is kind of -- all this is talking about
859 in reality is marijuana in the Netherlands. And if somebody
860 wants to smoke marijuana in the Netherlands or buy some
861 marijuana, it is legal there. It is not like genocide or
862 murder. It is just absurd to get it that way.

863 I would remind the gentleman from Wisconsin there was
864 a time in this country that some of the same attitudes
865 prevailed about lotteries. And if you bought a lottery
866 ticket, you were, in essence, a criminal, and you were a
867 gambler, and you should go to hell. Well, that is not what
868 we think today. But at one time, we did.

869 And society sometimes moves forward. It moved forward
870 in the lottery business and will move forward in the drug
871 possession business. And the Netherlands is way ahead of
872 us. And the idea that what we would be doing is

873 criminalizing speech. You want to criminalize speech? We
874 have got a First Amendment in this country. That is
875 different than anything to do with genocide, and this is
876 absurd to get there.

877 Mr. Chairman, you have got a good idea. But what Mr.
878 Scott's amendment is, is simply saying somebody who wants to
879 go to the Netherlands and might have a conversation
880 shouldn't get caught in a possible trap. It is very simple,
881 and I don't know why the amendment can't be accepted because
882 it just helps your bill go along without allowing for a
883 miscarriage of justice for people who are doing something
884 totally legal.

885 These international drug agreements, that is for
886 trade, export, cross country lines. What we are talking
887 about in Mr. Scott's amendment is something that goes on
888 solely within the borders of a nation and have nothing to do
889 with the United States. And I don't think you intend to get
890 that, Mr. Chairman. You are looking at getting drug
891 traffickers, not people that may be going on a vacation.

892 I yield.

893 Mr. Scott. Would the gentleman yield?

894 Mr. Cohen. Yes, sir. I do yield.

895 Mr. Scott. One of the differences in this, this is a
896 conspiracy bill, and you are trying to get people who are
897 committing conspiracies. All of the examples mentioned by

898 the gentleman from Wisconsin were making the underlying
899 behavior a crime. This is a conspiracy to do something that
900 isn't a crime.

901 All of these international drug deals, that's when the
902 underlying action is, in fact, a crime.

903 Mr. Sensenbrenner. Will the gentleman from Virginia
904 yield?

905 Mr. Scott. It is his time.

906 Mr. Sensenbrenner. Or gentleman from Tennessee yield?

907 Mr. Cohen. I will yield to the gentleman from
908 Wisconsin for the purpose of questioning the gentleman from
909 Virginia or me.

910 Mr. Sensenbrenner. Okay. Well, first of all, my
911 lottery winnings are a matter of public record, and I don't
912 think I am going to hell for that because I was asked by a
913 bishop whether I tithed the winnings, and I did before he
914 asked me.

915 Mr. Cohen. I passed the lottery in Tennessee. So I
916 think you are an angel.

917 Mr. Sensenbrenner. Well, thank you.

918 [Laughter.]

919 Mr. Cohen. On that issue.

920 Mr. Sensenbrenner. Okay. But to get to the point
921 that the gentleman from Virginia is making, genocide was not
922 a crime in Nazi Germany. Genocide was not a crime in Pol

923 Pot's Cambodia. Genocide is not a crime in some countries
924 in Africa where there are still genocides that are going on.

925 So the argument that is made is that we ought not to
926 apply this law because what something might be happening in
927 the international drug trade because it is not a crime
928 someplace else, I think is entirely wrong.

929 Mr. Cohen. If I can reclaim my time, I would ask you
930 a question. If you would yield?

931 Is not murder against the law in those countries you
932 mentioned?

933 Mr. Sensenbrenner. Yes, they are, but genocide is
934 not.

935 Mr. Cohen. And isn't genocide murder? But genocide
936 is murder. So you kill one person, it is against the law.
937 You kill a whole bunch, it isn't.

938 Mr. Sensenbrenner. Well, some countries have rule of
939 law, and some don't. That is why genocides take place.

940 Mr. Nadler. Would the gentleman yield?

941 Mr. Cohen. I yield to the gentleman from New York.

942 Mr. Nadler. Thank you.

943 Again, the answer is that some crimes are so
944 inherently heinous that we have decided in this country that
945 regardless of the laws of other countries, it is a part of
946 the law of mankind, and the UN has decided that, that we
947 will prosecute those. That no one has the right, no country

948 has the right to legalize genocide. No country has the
949 right to legalize mass murder.

950 Mr. Cohen. Would the gentleman yield?

951 Mr. Nadler. Contrast that with almost anything else.
952 Drugs. Drugs, opinions differ. And frankly, we ought not
953 to impose our opinion on the people of another sovereign
954 country who may have a different opinion.

955 And given that fact, it is completely incomparable to
956 genocide where we say we don't care what the law of Nazi
957 Germany is. You are violating basic human rights and you
958 ought to have known, and we are going to prosecute you
959 anyway. And that is why genocide is a violation of the
960 international criminal laws, has been made such.

961 And let me say one other thing. You talk about
962 international treaties. I don't think that Holland, for
963 example, is in violation of an international treaty for
964 having its laws, its decisions as to what wise drug policy
965 is with regard to marijuana, for example.

966 I don't think Great Britain or Portugal are in
967 violation of international drug treaties for deciding that
968 where other remedies have failed, a medical model for
969 maintaining addicts on heroin is a good idea.

970 Mr. Cohen. Mr. Nadler?

971 Mr. Nadler. I am not suggesting that it is a good or
972 bad idea, but they have the right to make that decision.

973 Mr. Cohen. Mr. Nadler?

974 Mr. Nadler. All we are saying in this amendment is
975 that we should not have -- you can't have a conspiracy to do
976 something that is legal.

977 Mr. Cohen. If I could reclaim my time for one second?
978 A long time ago, a gentleman told me don't get lost going
979 down rabbit trails. We are going down a rabbit trail that
980 has been carved out by the gentleman from Wisconsin.

981 The issue is not genocide. The issue is simply
982 conduct in this country's speech about a jurisdiction where
983 it is legal and should that be made illegal, which is a
984 contravention of the First Amendment. We are talking about
985 the First Amendment, not genocide.

986 Chairman Smith. The gentleman's --

987 Mr. Cohen. Mr. Smith is a great champion of the First
988 Amendment.

989 Chairman Smith. The gentleman's time has expired.
990 The question is on the amendment. Those in favor, say
991 aye.

992 Mr. Cohen. It is about the First Amendment.

993 [A chorus of ayes.]

994 Chairman Smith. Opposed, say no.

995 [A chorus of nays.]

996 Chairman Smith. In the opinion of the chair, the nays
997 have it, and the amendment is not agreed to.

998 Mr. Scott. Roll call, Mr. Chairman?
999 Chairman Smith. A roll call vote has been requested,
1000 and the clerk will call the roll.
1001 Ms. Kish. Mr. Smith?
1002 Chairman Smith. No.
1003 Ms. Kish. Mr. Smith votes no.
1004 Mr. Sensenbrenner?
1005 Mr. Sensenbrenner. No.
1006 Ms. Kish. Mr. Sensenbrenner votes no.
1007 Mr. Coble?
1008 [No response.]
1009 Ms. Kish. Mr. Gallegly?
1010 Mr. Gallegly. No.
1011 Ms. Kish. Mr. Gallegly votes no.
1012 Mr. Goodlatte?
1013 [No response.]
1014 Ms. Kish. Mr. Lungren?
1015 [No response.]
1016 Ms. Kish. Mr. Chabot?
1017 Mr. Chabot. No.
1018 Ms. Kish. Mr. Chabot votes no.
1019 Mr. Issa?
1020 [No response.]
1021 Ms. Kish. Mr. Pence?
1022 [No response.]

1023 Ms. Kish. Mr. Forbes?
1024 [No response.]
1025 Ms. Kish. Mr. King?
1026 Mr. King. No.
1027 Ms. Kish. Mr. King votes no.
1028 Mr. Franks?
1029 Mr. Franks. No.
1030 Ms. Kish. Mr. Franks votes no.
1031 Mr. Gohmert?
1032 [No response.]
1033 Ms. Kish. Mr. Jordan?
1034 [No response.]
1035 Ms. Kish. Mr. Poe?
1036 [No response.]
1037 Ms. Kish. Mr. Chaffetz?
1038 Mr. Chaffetz. No.
1039 Ms. Kish. Mr. Chaffetz votes no.
1040 Mr. Griffin?
1041 Mr. Griffin. No.
1042 Ms. Kish. Mr. Griffin votes no.
1043 Mr. Marino?
1044 [No response.]
1045 Ms. Kish. Mr. Gowdy?
1046 Mr. Gowdy. No.
1047 Ms. Kish. Mr. Gowdy votes no.

1048 Mr. Ross?
1049 Mr. Ross. No.
1050 Ms. Kish. Mr. Ross votes no.
1051 Mrs. Adams?
1052 Mrs. Adams. No.
1053 Ms. Kish. Mrs. Adams votes no.
1054 Mr. Quayle?
1055 [No response.]
1056 Ms. Kish. Mr. Amodei?
1057 Mr. Amodei. No.
1058 Ms. Kish. Mr. Amodei votes no.
1059 Mr. Conyers?
1060 Mr. Conyers. Aye.
1061 Ms. Kish. Mr. Conyers votes aye.
1062 Mr. Berman?
1063 Mr. Berman. Aye.
1064 Ms. Kish. Mr. Berman votes aye.
1065 Mr. Nadler?
1066 Mr. Nadler. Aye.
1067 Ms. Kish. Mr. Nadler votes aye.
1068 Mr. Scott?
1069 Mr. Scott. Aye.
1070 Ms. Kish. Mr. Scott votes aye.
1071 Mr. Watt?
1072 Mr. Watt. Aye.

1073 Ms. Kish. Mr. Watt votes aye.
1074 Ms. Lofgren?
1075 [No response.]
1076 Ms. Kish. Ms. Jackson Lee?
1077 Ms. Jackson Lee. Aye.
1078 Ms. Kish. Ms. Jackson Lee votes aye.
1079 Ms. Waters?
1080 Ms. Waters. Aye.
1081 Ms. Kish. Ms. Waters votes aye.
1082 Mr. Cohen?
1083 Mr. Cohen. Aye.
1084 Ms. Kish. Mr. Cohen votes aye.
1085 Mr. Johnson?
1086 Mr. Johnson. Aye.
1087 Ms. Kish. Mr. Johnson votes aye.
1088 Mr. Pierluisi?
1089 Mr. Pierluisi. Aye.
1090 Ms. Kish. Mr. Pierluisi votes aye.
1091 Mr. Quigley?
1092 [No response.]
1093 Ms. Kish. Ms. Chu?
1094 [No response.]
1095 Ms. Kish. Mr. Deutch?
1096 Mr. Deutch. Aye.
1097 Ms. Kish. Mr. Deutch votes aye.

1098 Ms. Sanchez?

1099 [No response.]

1100 Chairman Smith. The gentleman from California?

1101 Mr. Issa. No.

1102 Ms. Kish. Mr. Issa votes no.

1103 Chairman Smith. Are there any other Members who wish
1104 to record their votes?

1105 [No response.]

1106 Chairman Smith. If not, the clerk will report.

1107 Ms. Kish. Mr. Chairman, 11 Members voted aye; 13

1108 Members voted nay.

1109 Chairman Smith. A majority having voted against the
1110 amendment, the amendment is not agreed to.

1111 We will go back to the gentleman from Georgia, Mr.
1112 Johnson, and he is recognized to offer an amendment to my
1113 earlier amendment.

1114 Mr. Johnson. Yes, thank you, Mr. Chairman.

1115 I have an amendment to your amendment at the desk.

1116 Chairman Smith. The clerk will report the amendment.

1117 Ms. Kish. Amendment to Smith amendment to H.R. 313,
1118 offered by Mr. Johnson. In the matter proposed to be
1119 inserted by the Smith amendment, after 404(a), insert "for a
1120 violation that consists of possession with intent to
1121 distribute a controlled substance."

1122 [The information follows:]

1123

1124 Chairman Smith. The gentleman from Georgia is
1125 recognized to explain his amendment.

1126 Mr. Johnson. Thank you.

1127 For the reasons stated earlier, I would offer this
1128 amendment to your amendment and ask that it be considered
1129 and passed.

1130 Chairman Smith. The gentleman yields --

1131 Mr. Johnson. And I will yield back.

1132 Chairman Smith. The gentleman yields back the balance
1133 of his time.

1134 I will recognize myself in opposition to the
1135 amendment.

1136 This amendment would effectively eviscerate this
1137 legislation and allow drug traffickers to continue to enjoy
1138 their refuge in the United States. There are essentially
1139 two types of possession of illegal drugs, simple possession
1140 and possession with intent to distribute.

1141 Simple possession includes the control or ownership of
1142 amounts to be used by one individual. Possession with
1143 intent to distribute encompasses the resale of drugs to
1144 others, as well as the cultivation, manufacture, and
1145 importation of drugs.

1146 My earlier amendment carves out simple possession from
1147 the scope of this legislation. This amendment would exempt
1148 significant drug distributors from the reach of the drug

1149 conspiracy statute and afford them continuing protections.
1150 If this amendment is approved, a drug trafficker would have
1151 to traffic significant amounts of Schedule I drugs for this
1152 bill to apply.

1153 This amendment would excuse all but a small number of
1154 the most horrible traffickers from Federal law. That should
1155 not be the goal, and I am sure that is not the intent of the
1156 gentleman. Anyone who distributes or traffics drugs should
1157 not be able to contrive their illegal plans in the United
1158 States.

1159 So I urge my colleagues to oppose the amendment.

1160 Mr. Johnson. Would the gentleman yield?

1161 Chairman Smith. And I will yield to the gentleman
1162 from Georgia.

1163 Mr. Johnson. Thank you, Mr. Chairman.

1164 It is important to note that in a conspiracy case, the
1165 acts of all of the contributors or conspirators are
1166 imputable to even someone who has no privy of communications
1167 or contact with that person. So, in other words, a
1168 possession with intent to distribute conspiracy here in
1169 America, a conversation, along with an act in furtherance
1170 thereof, and then there is an unrelated participant in that
1171 same conspiracy in a foreign land who may have committed a
1172 murder or a kidnapping in furtherance of that conspiracy.
1173 Then the person who participated in the mere possession with

1174 intent to distribute small amount of controlled substance
1175 that is illegal in the place where it was going to be
1176 distributed is, therefore, subject to draconian punishment
1177 under the laws of this country.

1178 And I think it is wrong. I think that this is a door
1179 that opens for the prosecution and for law enforcement to
1180 totally -- well, I think that this is ripe for a lot of
1181 exploitation in a way that should not be intended by this
1182 legislation.

1183 And so, for that reason, I would ask that you consider
1184 supporting this amendment to your amendment.

1185 Chairman Smith. Thank you, Mr. Johnson.

1186 I will reclaim my time and just reiterate that I think
1187 there is a big difference between simple possession, which I
1188 recognize in the underlying amendment, and intent to
1189 distribute, which is a far more serious crime. And I do not
1190 want to encourage that particular type of crime.

1191 Are there any other Members who wish to be heard?

1192 [No response.]

1193 Chairman Smith. If not, the vote is on Mr. Johnson's
1194 amendment. All in favor, say aye.

1195 [A chorus of ayes.]

1196 Chairman Smith. Opposed, nay.

1197 [A chorus of nays.]

1198 Chairman Smith. In the opinion of the chair, the nays

1199 have it, and the amendment is not agreed to.

1200 We will now go to a vote on the Smith amendment, the
1201 underlying amendment. All in favor, say aye.

1202 [A chorus of ayes.]

1203 Chairman Smith. Thank you.

1204 All opposed, nay.

1205 [No response.]

1206 Chairman Smith. In the opinion of the chair, it is
1207 unanimous, and the ayes have it.

1208 We will now go to, I think, the remaining amendment on
1209 this bill, and I think that is going to be offered by the
1210 gentleman from Virginia, Mr. Scott?

1211 Mr. Scott. Mr. Chairman, I think there may be another
1212 amendment in addition to this one. But I have an amendment
1213 at the desk, Scott 3.

1214 Chairman Smith. The clerk will report the amendment.

1215 Ms. Kish. Amendment to H.R. 313, offered by Mr. Scott
1216 of Virginia. Page 2, line 16 --

1217 Chairman Smith. Without objection, the amendment will
1218 be considered as read.

1219 [The information follows:]

1220

1221 Chairman Smith. The gentleman from Virginia is
1222 recognized to explain his amendment.

1223 Mr. Scott. Thank you, Mr. Chairman.

1224 This amendment limits the bill's application to
1225 conspiracies to engage in conduct which under Federal law
1226 would be punishable by imprisonment of greater than 20
1227 years. The goal of this amendment is to limit the reach of
1228 the United States conspiracy laws involving drug
1229 transactions solely on foreign soil that does not reach the
1230 United States at all, at least limit that to the highest
1231 level of drug trafficking.

1232 Local law enforcement can deal with the low-level drug
1233 sellers and possessors. It is the Federal Government that
1234 has to deal with the international focus. But hopefully, we
1235 won't waste mandatory minimum sentences on low-level drug
1236 offenders on an international basis.

1237 Mr. Chairman, under the bill, the language is that
1238 engage in conduct in any place outside the United States
1239 that would constitute a violation of this title if committed
1240 in the United States. This title is 21 U.S.C., which is the
1241 drug control section. That includes prescriptive drugs.

1242 You can have a situation where you have a drugstore in
1243 France, and France doesn't require a prescription for some
1244 pain reliever. If I write down an address where you can
1245 find a pharmacy that would give prescriptions without -- you

1246 don't need a prescription. You can go get it over the
1247 counter. That would be a violation of United States law.

1248 I have conspired to violate what would be illegal in
1249 the United States, but not illegal in France. Let us just
1250 cover it to what would be 20 years or more. The serious
1251 drug trafficking offenses, all of them provide, all the big
1252 ones allow 20 years or more. Let us limit it to that, and
1253 not all the little, rinky-dink stuff you can get caught up
1254 in because things are legal in one country and illegal in
1255 another.

1256 I would hope you would pass the amendment.

1257 Chairman Smith. Thank you, Mr. Scott.

1258 I will recognize myself in opposition. And rather
1259 than repeat my statement that I made in regard to Mr.
1260 Johnson's amendment, I will just say that the same reasons I
1261 objected to Mr. Johnson's amendment are applicable to this
1262 amendment.

1263 Let me see if I need to yield to the gentleman from
1264 Wisconsin, Mr. Sensenbrenner? I do not.

1265 Are there other Members who wish to be heard on this
1266 amendment?

1267 [No response.]

1268 Chairman Smith. If not, the question is on the
1269 amendment. All in favor, say aye.

1270 [A chorus of ayes.]

1271 Chairman Smith. Opposed, nay.
1272 [A chorus of nays.]
1273 Chairman Smith. In the opinion of the chair, the nays
1274 have it, and the amendment is not agreed to.
1275 The gentleman from Virginia requests a recorded vote,
1276 and the clerk will call the roll.
1277 Ms. Kish. Mr. Smith?
1278 Chairman Smith. No.
1279 Ms. Kish. Mr. Smith votes no.
1280 Mr. Sensenbrenner?
1281 Mr. Sensenbrenner. No.
1282 Ms. Kish. Mr. Sensenbrenner votes no.
1283 Mr. Coble?
1284 [No response.]
1285 Ms. Kish. Mr. Gallegly?
1286 [No response.]
1287 Ms. Kish. Mr. Goodlatte?
1288 [No response.]
1289 Ms. Kish. Mr. Lungren?
1290 [No response.]
1291 Ms. Kish. Mr. Chabot?
1292 Mr. Chabot. No.
1293 Ms. Kish. Mr. Chabot votes no.
1294 Mr. Issa?
1295 [No response.]

1296 Ms. Kish. Mr. Pence?
1297 [No response.]
1298 Ms. Kish. Mr. Forbes?
1299 [No response.]
1300 Ms. Kish. Mr. King?
1301 Mr. King. No.
1302 Ms. Kish. Mr. King votes no.
1303 Mr. Franks?
1304 Mr. Franks. No.
1305 Ms. Kish. Mr. Franks votes no.
1306 Mr. Gohmert?
1307 [No response.]
1308 Ms. Kish. Mr. Jordan?
1309 [No response.]
1310 Ms. Kish. Mr. Poe?
1311 [No response.]
1312 Ms. Kish. Mr. Chaffetz?
1313 Mr. Chaffetz. No.
1314 Ms. Kish. Mr. Chaffetz votes no.
1315 Mr. Griffin?
1316 Mr. Griffin. No.
1317 Ms. Kish. Mr. Griffin votes no.
1318 Mr. Marino?
1319 [No response.]
1320 Ms. Kish. Mr. Gowdy?

1321 Mr. Gowdy. No.

1322 Ms. Kish. Mr. Gowdy votes no.

1323 Mr. Ross?

1324 Mr. Ross. No.

1325 Ms. Kish. Mr. Ross votes no.

1326 Mrs. Adams?

1327 Mrs. Adams. No.

1328 Ms. Kish. Mrs. Adams votes no.

1329 Mr. Quayle?

1330 [No response.]

1331 Ms. Kish. Mr. Amodei?

1332 Mr. Amodei. No.

1333 Ms. Kish. Mr. Amodei votes no.

1334 Mr. Conyers?

1335 Mr. Conyers. Aye.

1336 Ms. Kish. Mr. Conyers votes aye.

1337 Mr. Berman?

1338 [No response.]

1339 Ms. Kish. Mr. Nadler?

1340 Mr. Nadler. Aye.

1341 Ms. Kish. Mr. Nadler votes aye.

1342 Mr. Scott?

1343 Mr. Scott. Aye.

1344 Ms. Kish. Mr. Scott votes aye.

1345 Mr. Watt?

1346 [No response.]

1347 Ms. Kish. Ms. Lofgren?

1348 [No response.]

1349 Ms. Kish. Ms. Jackson Lee?

1350 Ms. Jackson Lee. Aye.

1351 Ms. Kish. Ms. Jackson Lee votes aye.

1352 Ms. Waters?

1353 [No response.]

1354 Ms. Kish. Mr. Cohen?

1355 Mr. Cohen. Aye.

1356 Ms. Kish. Mr. Cohen votes aye.

1357 Mr. Johnson?

1358 Mr. Johnson. Aye.

1359 Ms. Kish. Mr. Johnson votes aye.

1360 Mr. Pierluisi?

1361 Mr. Pierluisi. Aye.

1362 Ms. Kish. Mr. Pierluisi votes aye.

1363 Mr. Quigley?

1364 [No response.]

1365 Ms. Kish. Ms. Chu?

1366 Ms. Chu. Aye.

1367 Ms. Kish. Ms. Chu votes aye.

1368 Mr. Deutch?

1369 Mr. Deutch. Aye.

1370 Ms. Kish. Mr. Deutch votes aye.

1371 Ms. Sanchez?

1372 [No response.]

1373 Chairman Smith. The gentleman from North Carolina?

1374 Mr. Watt. Aye.

1375 Ms. Kish. Mr. Watt votes aye.

1376 Chairman Smith. The gentlewoman from California?

1377 Ms. Waters. Aye.

1378 Ms. Kish. Ms. Waters votes aye.

1379 Chairman Smith. The gentleman from California?

1380 Mr. Gallegly. No.

1381 Ms. Kish. Mr. Gallegly votes no.

1382 Chairman Smith. The clerk will report.

1383 Ms. Kish. Mr. Chairman, 11 Members voted aye; 12

1384 Members voted nay.

1385 Chairman Smith. A majority having voted against the

1386 amendment, the amendment is not agreed to.

1387 Are there any other amendments on this bill? The

1388 gentlewoman from Texas, Ms. Jackson Lee, is recognized for

1389 the purposes of offering an amendment.

1390 Ms. Jackson Lee. I have an amendment at the desk --

1391 Number 5 revised.

1392 Chairman Smith. The clerk will report the amendment.

1393 Ms. Kish. Amendment to H.R. 313, offered by Ms.

1394 Jackson Lee of Texas. Page 2, line 19, after the first

1395 period, insert "a person may not be convicted --"

1396 Ms. Jackson Lee. I ask that the amendment be
1397 considered as read.

1398 Chairman Smith. Without objection, the amendment will
1399 be considered as read.

1400 [The information follows:]

1401

1402 Chairman Smith. And the gentlewoman is recognized to
1403 explain her amendment.

1404 Ms. Jackson Lee. Thank you very much, Mr. Chairman.

1405 I think we all can come to an agreement that we are
1406 opposed to the proliferation of drugs, and certainly, we
1407 understand that this legislation is an attempted fix that
1408 was generated by a particular case that resulted in the
1409 overturn of a conviction because of the question of whether
1410 or not we covered drug sales overseas.

1411 I think that we have an important mission, but I also
1412 think that we must conform some of these efforts to ensure
1413 that the principles of ability to defend one's self is in
1414 place.

1415 My amendment simply is a reflection on many of the
1416 occurrences in the United States where people are, in fact,
1417 convicted on thinly veiled informant testimony that is
1418 tainted by an individual's desire to be paid, an
1419 individual's desire to have their sentences reduced and,
1420 therefore, would in some instances or in many instances have
1421 given false testimony.

1422 Though it is a domestic case, one of the glaring
1423 examples is the case in Texas, the Tulia case, legislation
1424 that I introduced indicating "no more Tulias," where an
1425 entire town was convicted under tainted testimony of
1426 informants and law enforcement officers.

1427 In this instance, I have focused on informants or
1428 individuals who are acting on behalf of a law enforcement
1429 officer, and I have examples that this occurs. In general,
1430 a person making an accusation might have a variety of
1431 motives for providing this information. For example, they
1432 might lie in order to get a reduced sentence or because they
1433 are trying to frame a person.

1434 Texas requires corroboration in cases where the only
1435 evidence is the word of an undercover informant. There are
1436 multiple cases in which African Americans and Mexican
1437 Americans were falsely accused of criminal activity based on
1438 the whims of inappropriate behavior by law enforcement
1439 officers without corroborating evidence and informants.

1440 In the instance of Tulia, you had an undercover
1441 officer that was allowed to work alone and was not required
1442 to provide audio tape, video surveillance, or anything else.
1443 Ultimately, the Governor of the State of Texas eventually
1444 pardoned the Tulia defendants after 4 years of imprisonment.
1445 The same thing occurred in Hearne, Texas, where 28 African
1446 Americans out of 45,000 other residents were arrested.

1447 So there is a long list of unfortunate results in
1448 having uncorroborated testimony by one person, and this
1449 person could be acting under the arm of a law enforcement
1450 officer or otherwise, but give tainted testimony for their
1451 own purposes. And so, this simply says that on this bill,

1452 this should not be allowed, particularly because of the
1453 stretch we are making with the actions occurring in other
1454 countries.

1455 I no more want drug proliferation to occur outside the
1456 border as I want it to occur inside. But I believe since we
1457 are developing a nexus here under U.S. laws, we should act
1458 to fairly ensure that weak, whimsical evidence is not the
1459 basis of the either indictment and then subsequent
1460 conviction of a potentially innocent individual.

1461 With that, I yield back my time and ask colleagues to
1462 vote for this amendment.

1463 Chairman Smith. Thank you, Ms. Jackson Lee.

1464 Mr. Sensenbrenner. Mr. Chairman?

1465 Chairman Smith. I will recognize the gentleman from
1466 Wisconsin, Mr. Sensenbrenner.

1467 Mr. Sensenbrenner. Mr. Chairman, I rise in opposition
1468 to the amendment.

1469 Chairman Smith. The gentleman yields back the
1470 remainder of his time?

1471 Mr. Sensenbrenner. No, I rose in opposition to the
1472 amendment.

1473 Chairman Smith. Okay. The gentleman is recognized.

1474 Mr. Sensenbrenner. Well, I am amazed at the type of
1475 amendments that we are hearing from the other side on this
1476 legislation. Now what the Jackson Lee amendment proposes to

1477 do is to have a statutory rejection of informant testimony
1478 unless it is eyewitness testimony for these types of drug
1479 cases and these types of drug cases alone.

1480 Now, when an informant is put on the stand in a
1481 criminal trial, he is subject to all kinds of cross-
1482 examination, and it is up to the jury to believe that
1483 informant or not. What the gentlewoman from Texas says in
1484 her amendment, if it is adopted, is that you can't believe
1485 an informant, no matter how credible that informant may be.

1486 Now this should be something the jury in each
1487 individual case has to decide when they reach a verdict of
1488 either guilty or not guilty. It is not something that we
1489 should be deciding up here, saying that this class of
1490 informants in this type of a prosecution can't be believed,
1491 per se.

1492 You are saying that every informant in this type of
1493 prosecution is lying under oath and dishonest and shouldn't
1494 be believed as a matter of law. And that goes against the
1495 very principles of our criminal justice system and the role
1496 of the jury in determining the facts of the case. It
1497 micromanages what we are attempting to do in our criminal
1498 justice system and, in fact, has an outcome of what the
1499 jury's verdict would be simply by passing a law.

1500 In law school, I was taught to be respectful of
1501 juries. I hope that every member of this committee was

1502 taught that way in law school if they do have a law degree.
1503 But this type of amendment goes against almost 500 or 600
1504 years of Anglo-American jurisprudence. Parliament shouldn't
1505 be deciding these questions. The jury ought to be deciding
1506 these questions, and that is why we ought to emphatically
1507 reject this amendment.

1508 Mr. Scott. Mr. Chairman?

1509 Chairman Smith. Thank you, Mr. Sensenbrenner.

1510 Mr. Johnson. Would the gentleman yield?

1511 Chairman Smith. The gentleman has yielded back his
1512 time. The gentleman from Virginia, Mr. Scott, is
1513 recognized.

1514 Mr. Scott. Mr. Chairman, strike the last word?

1515 Chairman Smith. The gentleman is recognized for 5
1516 minutes.

1517 Mr. Scott. Mr. Chairman, I would generally agree with
1518 the gentleman from Wisconsin that this is really a jury
1519 determination, but I am supporting the amendment because of
1520 the kind of cases we are actually talking about.

1521 We are talking about convicting someone just based on
1522 testimony that they agreed to something in another country.
1523 It may be legal in that country, and all the evidence is
1524 overseas. All you have got is somebody's word that they
1525 actually agreed -- didn't do anything, just agreed to it.

1526 I would also point out, Mr. Chairman, just for the

1527 information of the committee, that this morning's Wall
1528 Street Journal has an article that starts off, "Supreme
1529 Court Justice Antonin Scalia criticized the expansion of
1530 Federal narcotics laws Wednesday, saying that the large
1531 number of drug cases has diluted the quality of the Federal
1532 justice system." And that is exactly what we are doing a
1533 couple of days, a number of hours after he said it.

1534 I yield to the gentlelady from Texas.

1535 Ms. Jackson Lee. I thank the gentleman for his very,
1536 very reasoned analysis. It is incredulous to hear the
1537 gentleman from Wisconsin. Every time I hear him, I am
1538 literally shocked with his interpretation because there is
1539 no one on this panel that has any disrespect for the jury.

1540 In fact, I know there are a number of prosecutors on
1541 this panel. I know they are contemplating, they are
1542 thinking over their cases how many times they may have used
1543 an informant. And they might understand, as they use an
1544 informant, that they may have also had additional testimony.

1545 This is a very clear and succinct amendment. It does
1546 not reject the idea of an informant's testimony. It
1547 suggests that it should be corroborated because we have so
1548 many instances, as Mr. Scott eloquently stated, of who said
1549 what.

1550 Yes, the jury is the arbiter of the facts. They will
1551 listen to the testimony uncorroborated of the particular

1552 informant. But they will also have other testimony that the
1553 prosecutor can put on and evidence that the prosecutor can
1554 put on that corroborate potentially tainted testimony of
1555 someone who gets a reduced sentence, someone who is shady
1556 from the beginning, and we know these are the characters
1557 that we deal with. No disrespect, as a judge, I have signed
1558 probable cause warrants of undercover police officers who
1559 were dealing with these individuals, and I had no qualms, as
1560 they proceeded to investigate, to do so.

1561 So I think there are those of us who have been on both
1562 sides in terms of understanding the defendant's perspective
1563 and being in a judiciary perspective and understanding the
1564 role of the prosecutor in law enforcement.

1565 I would ask my colleagues to look reasonably at this
1566 that indicates that a question of an uncorroborated
1567 informant's testimony may cause us some trouble to prosecute
1568 cases in the way that they should. And thank you to the
1569 Supreme Court for recognizing that we are bombarding our
1570 courts with drug cases, many of which you cannot prevail.

1571 Now we are adding a new level that has to be fixed.
1572 We may have to fix it because of this court case. But we
1573 need to fix it in the right and sure way.

1574 I ask my colleagues to look reasonably at this
1575 amendment as not one disrespecting the jury, but giving them
1576 enhanced tools and our prosecutors enhanced tools to ensure

1577 that these cases are brought to justice.

1578 Mr. Johnson. Would the gentlewoman yield?

1579 Ms. Jackson Lee. With that, I would be happy to -- it
1580 is the gentleman's time.

1581 Chairman Smith. Thank you, Ms. Jackson Lee.

1582 The gentleman from Virginia, Mr. Scott, has the time.

1583 Ms. Jackson Lee. I would be happy to yield back for
1584 the --

1585 Mr. Scott. I yield to the gentleman from Georgia.

1586 Mr. Johnson. Thank you.

1587 You know, we are talking about an informant, which is
1588 a nice, sterile term to give to that actor and call him an
1589 informant, cloak them in some kind of credibility. But
1590 actually, what we are talking about is a jailhouse snitch in
1591 most cases. A jailhouse snitch who -- within a year after
1592 his or her conviction, who wants to give some credible
1593 information to a U.S. prosecutor so that they can get their
1594 sentence cut. That is what we are talking about.

1595 And if we allow testimony from these jailhouse
1596 snitches uncorroborated to serve as the basis for
1597 prosecution under this act, we are just further opening the
1598 doors to a lot of injustice that will continue to occur,
1599 just as we have these jailhouse snitches now under Federal
1600 law who are coming forward within the 12 months after their
1601 conviction to try to get their time cut.

1602 It is just rats jumping out of a barrel, and if it
1603 cannot be corroborated, it should not be relied upon.

1604 Chairman Smith. The gentleman's time has expired.

1605 Mr. Nadler. Mr. Chairman?

1606 Chairman Smith. The gentleman from New York, Mr.
1607 Nadler, is recognized.

1608 Mr. Nadler. Thank you, Mr. Chairman.

1609 Mr. Chairman, I agree with the remarks of the
1610 gentleman from Virginia and ask that his remarks be
1611 incorporated by reference. So I won't repeat them.

1612 But I do want to comment on what the gentleman from
1613 Wisconsin said. We were taught to give great respect to
1614 juries, true. But not absolute respect. And the gentleman
1615 from Wisconsin certainly has great reluctance to trust
1616 juries. What is all our tort reform debates about?

1617 Every time the majority on this committee says let us
1618 restrict awards to pain and suffering, let us have a cap on
1619 consequential damages or on punitive damages, what they are
1620 saying is we don't trust the jury. The juries are awarding
1621 wrong amounts. They are awarding too generous amounts. It
1622 is doing all sorts of harmful things, allegedly.

1623 All right. I don't happen to agree with the majority
1624 on that. But they are saying that we have to put some
1625 limits on the discretion of the jury, and they are right.
1626 The questions are which?

1627 We also have things like hearsay laws. We don't take
1628 every piece of evidence, throw it on the wall in front of
1629 the jury and say, "You figure it out." We say hearsay
1630 evidence is unreliable. So we won't let the jury hear it.
1631 Not because we don't respect the jury, but because we know
1632 of the limitations of the process.

1633 And here, the gentlelady from Texas has offered an
1634 amendment that says, wait a minute, we have a huge amount of
1635 empirical experience, of empirical evidence that testimony
1636 of jailhouse snitches done usually with the hope of reward,
1637 getting their sentence lowered or whatever, or maybe even
1638 just getting into a nicer prison cell or better prison or
1639 whatever, higher class prison, is often unreliable.

1640 We know that in a fairly large percentage of cases
1641 where people have been wrongfully convicted and years later
1642 proven innocent, most of those wrongful convictions were
1643 resulted from three things. There are three causes.

1644 One, erroneous eyewitness identification. People are
1645 human, make mistakes honestly. Two, coerced confessions by
1646 police officers who were just a little too eager to prove
1647 that the man they "know did it" did it. And three,
1648 jailhouse snitches.

1649 And it is true that the defense attorney may be able
1650 to bring out in cross-examination that there is a motive,
1651 but nonetheless, juries often believe a jailhouse snitch.

1652 So this amendment that simply -- when maybe they shouldn't.

1653 So this amendment that simply says that you can't
1654 convict on conspiracy, conspiracy being simply talk, a
1655 meeting of the minds, without even an assessing of an overt
1656 act in drug cases, in conspiracy of drug cases, just talk,
1657 you can't convict on that only with the uncorroborated
1658 testimony of a jailhouse snitch. That seems to me an
1659 elementary prudence if you are looking to convict the guilty
1660 and acquit the innocent.

1661 So it makes sense. And simply to say, gee, we always
1662 respect juries. We don't always respect every aspect of
1663 juries. We limit their judgments because we know they are
1664 human, and we know that we can't allow certain types of
1665 evidence. We don't allow inflammatory evidence that isn't
1666 probative. We don't allow hearsay evidence.

1667 This is another example of something that should not
1668 be relied upon only.

1669 I yield back.

1670 Chairman Smith. Thank you, Mr. Nadler.

1671 The gentleman from South Carolina, Mr. Gowdy, is
1672 recognized.

1673 Mr. Gowdy. Mr. Smith, I am vexed. I am genuinely
1674 vexed. I can't help but think of Rick Samuel, who, by our
1675 colleagues on the other side of the aisle's definition, is a
1676 jailhouse snitch. Mr. Chairman, he was executed because he

1677 had the willingness to testify on behalf of the State of
1678 South Carolina in a drug trial.

1679 I find it bitterly ironic that the phrase "jailhouse
1680 snitch" is used for, in many instances, their former
1681 clients, defense attorneys on the other side of the aisle.
1682 And the notion that they are incapable of testifying
1683 truthfully. That is why we have juries.

1684 Juries can determine credibility. In fact, that is
1685 what they do determine. And the notion that we are going to
1686 exclude a category of evidence and denigrate it by just
1687 saying they are a jailhouse snitch, I can't tell you the
1688 number of murder cases where a cell mate testified because a
1689 confession was made or a false exculpatory statement was
1690 uttered in their presence. And we are going to exclude this
1691 category of testimony?

1692 I can tell you this. What is next? What other
1693 category do we want to exclude?

1694 Mr. Johnson. Would the gentleman yield?

1695 Mr. Gowdy. Why don't we just do away with juries?
1696 Let us just do away with juries.

1697 Mr. Johnson. Would the gentleman yield?

1698 Mr. Gowdy. I will be happy to.

1699 Mr. Johnson. We are not talking about excluding the
1700 testimony of jailhouse snitches. We are talking about
1701 simply corroborating it.

1702 Now what we have with a jailhouse snitch is a person
1703 with a motive to testify falsely. Some people will say and
1704 do anything they can to try to get their own butts out of
1705 jail. They will lie on their own mama. They will lie,
1706 cheat, steal, kill.

1707 Mr. Gowdy. Reclaiming my time, I would say this to
1708 the gentleman from Georgia. No one has more of a motive to
1709 lie than the defendant himself or herself. So why don't we
1710 exclude them from testifying? There is no greater motive.

1711 Mr. Johnson. We are not talking about excluding
1712 testimony.

1713 Mr. Gowdy. No. You said -- you said that we are not
1714 going to allow them to testify because they have a motive to
1715 lie, which is why you have cross-examination. And the
1716 gentleman from Georgia, I know, because he was a very
1717 distinguished attorney, you can cross-examine him. You can
1718 cross-examine him on the fact that the DA promised him
1719 something. You can cross-examine him on the fact that he is
1720 entitled to a Rule 35 or a 5K 1.1 sentence reduction.

1721 You can cross-examine him on the plea agreement he had
1722 with the Government. You can make him out to be as dreadful
1723 and horrible a person as you want. But the notion that you
1724 are not going to be able to testify because you happen to be
1725 in jail? I can't tell you the number of witnesses that we
1726 have had not in drug cases, in murder cases.

1727 Ms. Jackson Lee. Will the gentleman yield? Will the
1728 gentleman yield?

1729 Mr. Gowdy. I would be happy to yield.

1730 Ms. Jackson Lee. It is my amendment. First of all,
1731 let me just say I have a great affection for lawyers. I
1732 think we are truly part of the cornerstone of justice.

1733 And I would just say to the gentleman I respect the
1734 work that you have done. Please don't mischaracterize the
1735 amendment. The amendment does not preclude testimony from
1736 informants. It is suggesting that there must be other
1737 corroboration.

1738 That means it could be the defendant getting on the
1739 stand and having a Jesus moment and saying, "I did it." It
1740 could be any other range of talent that you as a prosecutor
1741 would bring up to ensure that you would know that this was a
1742 person that would do it.

1743 Mr. Gowdy. Reclaiming my time --

1744 Ms. Jackson Lee. And that may not be biased --

1745 Chairman Smith. The gentleman from South Carolina has
1746 the time.

1747 Ms. Jackson Lee. -- any kind of faith that they would
1748 say. I yield back to the gentleman.

1749 Mr. Gowdy. Reclaiming my time, when a defendant gets
1750 on the witness stand and says, "I did it," that is not
1751 corroboration. That is a confession. So if the gentlelady

1752 --

1753 Ms. Jackson Lee. It corroborates his guilt. Or her.

1754 Mr. Gowdy. If the gentlelady from Texas would be good
1755 enough to cite me all the examples of corroboration that she
1756 would find sufficient to corroborate the testimony of a so-
1757 called jailhouse snitch, how about a phone record? Is that
1758 enough? How about another jailhouse snitch that testifies
1759 to the same thing?

1760 Mr. Johnson. Could be. Could be.

1761 Mr. Gowdy. Is that enough? How much corroboration do
1762 you have to have?

1763 Mr. Johnson. Some corroboration is what the amendment
1764 asks for.

1765 Ms. Jackson Lee. Absolutely.

1766 Mr. Johnson. And I think no limits on what that
1767 corroboration might be.

1768 Mr. Gowdy. Is there any other category of witness for
1769 which you want this new rule of evidence that requires some
1770 degree of independent corroboration?

1771 Mr. Johnson. Well, there is no --

1772 Mr. Nadler. Would the gentleman yield?

1773 Mr. Gowdy. I would be happy to.

1774 Mr. Nadler. The Constitution of the United States
1775 provides that no conviction for treason may occur without
1776 the testimony of two witnesses to the same act. That is an

1777 example of corroboration.

1778 Chairman Smith. Without objection, the gentleman from
1779 South Carolina is recognized for an additional minute.

1780 Mr. Gowdy. I thank the chairman.

1781 I am thinking back over my 16 years as a drug
1782 prosecutor, and I am trying to think if we ever called a
1783 case where all we had was one single jailhouse snitch with
1784 no corroboration. In this CSI world that we live in, where
1785 juries are already inherently suspicious of law enforcement,
1786 if you can't get out of that case, then the rules of
1787 evidence ain't your problem. You hired a really bad lawyer.

1788 There is not a DA in the United States that would call
1789 a case where all you have is a jailhouse informant with no
1790 corroboration. Not a one.

1791 Mr. Nadler. Would the gentleman yield? Would the
1792 gentleman yield?

1793 Mr. Gowdy. Be delighted to.

1794 Mr. Nadler. Well, number one, I am not so sure that
1795 is true. Some of our prosecutors, that is probably not
1796 true. But second of all, to the extent that what you are
1797 saying is correct, to that extent, you should support the
1798 amendment because you are saying no one would bring a case
1799 and you should not convict simply on a jailhouse snitch or
1800 an informant, whatever you are going to call him, with no
1801 other evidence.

1802 That is all this amendment says.

1803 Mr. Gowdy. No. That is not what I am saying. I am
1804 saying the prosecutors have the ability to exercise their
1805 discretion. And if you have to factor in a probability of a
1806 successful outcome, you are not going to call a case based
1807 on one single eyewitness, whether that is a jailhouse snitch
1808 or whether it is a bank teller.

1809 Mr. Nadler. Would the gentleman yield again?

1810 Chairman Smith. The gentleman's time has expired.

1811 Mr. Nadler. Mr. Chairman, let me just say that again

1812 --

1813 Chairman Smith. The gentleman is recognized for an
1814 additional minute.

1815 Mr. Nadler. Thank you. He thanks you. I thank you.

1816 Again, if you look at the statistics of people who
1817 were convicted of serious crimes who were subsequently
1818 proved to be innocent --

1819 Mr. Gowdy. Actually innocent or legally innocent?

1820 Mr. Nadler. Actually. Actually.

1821 Mr. Gowdy. You are talking about actual innocence,
1822 not legal.

1823 Mr. Nadler. I am talking about both -- actual. It is
1824 true for both categories. Actually innocent, you find that
1825 overwhelmingly the cause was one of three things. One,
1826 erroneous eyewitness testimony. Honest, but erroneous.

1827 Two, improper interrogation by some law enforcement officer.
1828 And three, a false testimony by usually an in-jail informant
1829 who had a motive.

1830 We know that there is a motive. And all we are saying
1831 -- we are not saying what you said before that a jailhouse
1832 snitch or an informant can never be trusted or can never
1833 tell the truth. Obviously, that is not true.

1834 Obviously, very often, it will be truthful testimony.
1835 But obviously, very often, it won't be truthful testimony.
1836 And therefore, we must have at least some corroborating
1837 evidence to safeguard the innocent.

1838 Mr. Gowdy. But I don't see a list of what that
1839 corroborating evidence would be. I mean --

1840 Mr. Nadler. Well, that is up to the judge.

1841 Mr. Gowdy. -- is it enough that two jailhouse
1842 snitches tell you the same thing? Is that corroboration?

1843 Chairman Smith. The gentleman's time has expired.

1844 Mr. Nadler. If I were the --

1845 Chairman Smith. The gentleman's time has expired.

1846 Is there anyone else who wishes to comment on this
1847 amendment?

1848 The gentleman from Puerto Rico is recognized.

1849 Mr. Pierluisi. Thank you, Mr. Chairman.

1850 I yield my time to the gentleman from Virginia.

1851 Mr. Scott. Yes, Mr. Chairman, I just wanted to point

1852 out that an August 2, 2011, article cites, "Governor Brown
1853 in California signed important new legislation requiring
1854 corroboration before a jailhouse informant can testify. The
1855 law requires corroboration of the cell mate's testimony.
1856 California joins Texas, Illinois, Massachusetts, Idaho, and
1857 several other States that require safeguards to counteract
1858 the well-documented unreliability of jailhouse snitch
1859 testimony."

1860 I thank the gentleman for yielding.

1861 Chairman Smith. Does the gentleman from --

1862 Ms. Jackson Lee. Sir, could you just yield for a
1863 moment?

1864 Chairman Smith. The gentleman from Puerto Rico has
1865 control of the time.

1866 Mr. Pierluisi. Yes. I yield to the gentlelady from
1867 Texas.

1868 Ms. Jackson Lee. I want to be clear to cite my State,
1869 since it gets cited for so many other things, that Texas has
1870 joined that line of States. But more particularly, to
1871 answer the distinguished gentleman from South Carolina, that
1872 is the very question. It is the talent and intuitiveness of
1873 the legal presenter of the case, possibly a prosecutor, that
1874 would have the opportunity for corroboration.

1875 If you read the amendment, there are no limitations.
1876 But it is a fair amendment on its face, and it addresses the

1877 question of ensuring that the case that we present stands up
1878 and is able to be pursued.

1879 I yield back and ask my colleagues to vote for the
1880 amendment.

1881 Chairman Smith. And does the gentleman from Puerto
1882 Rico yield back his time?

1883 Mr. Pierluisi. I yield back.

1884 Mr. Gowdy. I was going to ask if the gentleman would
1885 just yield 30 seconds, the gentleman from Puerto Rico?

1886 Mr. Pierluisi. I will.

1887 Mr. Gowdy. If this is true, if the studies cited by
1888 the gentleman from Virginia, whose integrity is unassailable
1889 and unimpeachable, are true, then why don't we extend this
1890 to all categories of cases, not just drug cases? Let us do
1891 it in all -- bank robberies, child sex cases, murder cases.
1892 Do it in all of them. Not just drug cases.

1893 Mr. Scott. If the gentleman would yield?

1894 Chairman Smith. The gentleman from Puerto Rico has
1895 the time.

1896 Mr. Pierluisi. I will yield to the gentleman from
1897 Virginia.

1898 Mr. Scott. The reason this is appropriate in this
1899 case is all you are talking about is testimony about words.
1900 You could have somebody saying that the best man at a
1901 wedding agreed to go buy some marijuana in Amsterdam in a

1902 wedding in Amsterdam and distribute it to the wedding party,
1903 which would be totally legal in Amsterdam. But if he
1904 decided to talk about it in the United States, that would be
1905 a crime.

1906 To have that entire case based on some jailhouse
1907 snitch trying to reduce his time, to say -- and it could be
1908 uncontroverted. That is what happened. He went and got the
1909 marijuana, gave it to all the guys, everybody got high.
1910 Legal in Amsterdam. But if you can get somebody to say they
1911 actually talked about it in the United States, you can -- if
1912 you can make that case, you can charge them, and the
1913 jailhouse snitch can get some time.

1914 The whole thing is so unreliable that in this case,
1915 you ought not bring a case. Now you suggested in no case
1916 would you bring it. In this case particularly, it is
1917 particularly odious to have someone busted on this kind of
1918 case on this kind of evidence.

1919 I yield back.

1920 Mr. Pierluisi. I yield back.

1921 Chairman Smith. The gentleman from Puerto Rico yields
1922 back his time.

1923 The question is on the amendment. All in favor, say
1924 aye.

1925 [A chorus of ayes.]

1926 Chairman Smith. Opposed, nay.

1927 [A chorus of nays.]

1928 Chairman Smith. In the opinion of the chair, the nays

1929 have it, and the amendment is not agreed to. A roll call

1930 vote has been requested, and the clerk will call the roll.

1931 Ms. Kish. Mr. Smith?

1932 Chairman Smith. No.

1933 Ms. Kish. Mr. Smith votes no.

1934 Mr. Sensenbrenner?

1935 Mr. Sensenbrenner. No.

1936 Ms. Kish. Mr. Sensenbrenner votes no.

1937 Mr. Coble?

1938 [No response.]

1939 Ms. Kish. Mr. Gallegly?

1940 Mr. Gallegly. No.

1941 Ms. Kish. Mr. Gallegly votes no.

1942 Mr. Goodlatte?

1943 Mr. Goodlatte. No.

1944 Ms. Kish. Mr. Goodlatte votes no.

1945 Mr. Lungren?

1946 [No response.]

1947 Ms. Kish. Mr. Chabot?

1948 Mr. Chabot. No.

1949 Ms. Kish. Mr. Chabot votes no.

1950 Mr. Issa?

1951 [No response.]

1952 Ms. Kish. Mr. Pence?
1953 [No response.]
1954 Ms. Kish. Mr. Forbes?
1955 [No response.]
1956 Ms. Kish. Mr. King?
1957 Mr. King. No.
1958 Ms. Kish. Mr. King votes no.
1959 Mr. Franks?
1960 Mr. Franks. No.
1961 Ms. Kish. Mr. Franks votes no.
1962 Mr. Gohmert?
1963 [No response.]
1964 Ms. Kish. Mr. Jordan?
1965 [No response.]
1966 Ms. Kish. Mr. Poe?
1967 [No response.]
1968 Ms. Kish. Mr. Chaffetz?
1969 [No response.]
1970 Ms. Kish. Mr. Griffin?
1971 Mr. Griffin. No.
1972 Ms. Kish. Mr. Griffin votes no.
1973 Mr. Marino?
1974 Mr. Marino. No.
1975 Ms. Kish. Mr. Marino votes no.
1976 Mr. Gowdy?

1977 Mr. Gowdy. No.
1978 Ms. Kish. Mr. Gowdy votes no.
1979 Mr. Ross?
1980 Mr. Ross. No.
1981 Ms. Kish. Mr. Ross votes no.
1982 Mrs. Adams?
1983 Mrs. Adams. No.
1984 Ms. Kish. Mrs. Adams votes no.
1985 Mr. Quayle?
1986 Mr. Quayle. No.
1987 Ms. Kish. Mr. Quayle votes no.
1988 Mr. Amodei?
1989 Mr. Amodei. No.
1990 Ms. Kish. Mr. Amodei votes no.
1991 Mr. Conyers?
1992 [No response.]
1993 Ms. Kish. Mr. Berman?
1994 [No response.]
1995 Ms. Kish. Mr. Nadler?
1996 Mr. Nadler. Aye.
1997 Ms. Kish. Mr. Nadler votes aye.
1998 Mr. Scott?
1999 Mr. Scott. Aye.
2000 Ms. Kish. Mr. Scott votes aye.
2001 Mr. Watt?

2002 [No response.]

2003 Ms. Kish. Ms. Lofgren?

2004 [No response.]

2005 Ms. Kish. Ms. Jackson Lee?

2006 Ms. Jackson Lee. Aye.

2007 Ms. Kish. Ms. Jackson Lee votes aye.

2008 Ms. Waters?

2009 [No response.]

2010 Ms. Kish. Mr. Cohen?

2011 [No response.]

2012 Ms. Kish. Mr. Johnson?

2013 Mr. Johnson. Aye.

2014 Ms. Kish. Mr. Johnson votes aye.

2015 Mr. Pierluisi?

2016 Mr. Pierluisi. No.

2017 Ms. Kish. Mr. Pierluisi votes no.

2018 Mr. Quigley?

2019 [No response.]

2020 Ms. Kish. Ms. Chu?

2021 Ms. Chu. Aye.

2022 Ms. Kish. Ms. Chu votes aye.

2023 Mr. Deutch?

2024 Mr. Deutch. Aye.

2025 Ms. Kish. Mr. Deutch votes aye.

2026 Ms. Sanchez?

2027 [No response.]

2028 Chairman Smith. The gentleman from Michigan?

2029 Mr. Conyers. Aye.

2030 Ms. Kish. Mr. Conyers votes aye.

2031 Chairman Smith. The gentleman from North Carolina?

2032 Mr. Watt. Aye.

2033 Ms. Kish. Mr. Watt votes aye.

2034 Chairman Smith. The gentlewoman from California, Ms.

2035 Waters?

2036 Ms. Waters. Aye.

2037 Ms. Kish. Ms. Waters votes aye.

2038 Chairman Smith. The gentleman from Virginia, Mr.

2039 Forbes?

2040 Mr. Forbes. No.

2041 Ms. Kish. Mr. Forbes votes no.

2042 Chairman Smith. The gentleman from California, Mr.

2043 Issa?

2044 Mr. Issa. No.

2045 Ms. Kish. Mr. Issa votes no.

2046 [Pause.]

2047 Chairman Smith. The clerk will report.

2048 Ms. Kish. Mr. Chairman, 9 Members voted aye; 17

2049 Members voted nay.

2050 Chairman Smith. A majority having voted against the

2051 amendment, the amendment is not agreed to.

2052 Are there any other amendments? If not, a reporting
2053 quorum being present, the question is on reporting the bill,
2054 as amended, favorably to the House. Those in favor, say
2055 aye.

2056 [A chorus of ayes.]

2057 Chairman Smith. Those opposed, no.

2058 [A chorus of nays.]

2059 Chairman Smith. The ayes have it, in the opinion of
2060 the chair. And the bill, as amended, is ordered reported
2061 favorably.

2062 A roll call vote has been requested, and the clerk
2063 will call the roll.

2064 Ms. Kish. Mr. Smith?

2065 Chairman Smith. Aye.

2066 Ms. Kish. Mr. Smith votes aye.

2067 Mr. Sensenbrenner?

2068 Mr. Sensenbrenner. Aye.

2069 Ms. Kish. Mr. Sensenbrenner votes aye.

2070 Mr. Coble?

2071 [No response.]

2072 Ms. Kish. Mr. Gallegly?

2073 Mr. Gallegly. Aye.

2074 Ms. Kish. Mr. Gallegly votes aye.

2075 Mr. Goodlatte?

2076 Mr. Goodlatte. Aye.

2077 Ms. Kish. Mr. Goodlatte votes aye.
2078 Mr. Lungren?
2079 [No response.]
2080 Ms. Kish. Mr. Chabot?
2081 Mr. Chabot. Aye.
2082 Ms. Kish. Mr. Chabot votes aye.
2083 Mr. Issa?
2084 Mr. Issa. Aye.
2085 Ms. Kish. Mr. Issa votes aye.
2086 Mr. Pence?
2087 [No response.]
2088 Ms. Kish. Mr. Forbes?
2089 Mr. Forbes. Aye.
2090 Ms. Kish. Mr. Forbes votes aye.
2091 Mr. King?
2092 Mr. King. Aye.
2093 Ms. Kish. Mr. King votes aye.
2094 Mr. Franks?
2095 Mr. Franks. Aye.
2096 Ms. Kish. Mr. Franks votes aye.
2097 Mr. Gohmert?
2098 [No response.]
2099 Ms. Kish. Mr. Jordan?
2100 [No response.]
2101 Ms. Kish. Mr. Poe?

2102 [No response.]
2103 Ms. Kish. Mr. Chaffetz?
2104 [No response.]
2105 Ms. Kish. Mr. Griffin?
2106 Mr. Griffin. Aye.
2107 Ms. Kish. Mr. Griffin votes aye.
2108 Mr. Marino?
2109 Mr. Marino. Aye.
2110 Ms. Kish. Mr. Marino votes aye.
2111 Mr. Gowdy?
2112 Mr. Gowdy. Aye.
2113 Ms. Kish. Mr. Gowdy votes aye.
2114 Mr. Ross?
2115 Mr. Ross. Aye.
2116 Ms. Kish. Mr. Ross votes aye.
2117 Mrs. Adams?
2118 Mrs. Adams. Aye.
2119 Ms. Kish. Mrs. Adams votes aye.
2120 Mr. Quayle?
2121 Mr. Quayle. Aye.
2122 Ms. Kish. Mr. Quayle votes aye.
2123 Mr. Amodei?
2124 Mr. Amodei. Aye.
2125 Ms. Kish. Mr. Amodei votes aye.
2126 Mr. Conyers?

2127 Mr. Conyers. No.

2128 Ms. Kish. Mr. Conyers votes no.

2129 Mr. Berman?

2130 Mr. Berman. Aye.

2131 Ms. Kish. Mr. Berman votes aye.

2132 Mr. Nadler?

2133 Mr. Nadler. Aye.

2134 Ms. Kish. Mr. Nadler votes aye.

2135 Mr. Scott?

2136 Mr. Scott. No.

2137 Ms. Kish. Mr. Scott votes no.

2138 Mr. Watt?

2139 Mr. Watt. No.

2140 Ms. Kish. Mr. Watt votes no.

2141 Ms. Lofgren?

2142 [No response.]

2143 Ms. Kish. Ms. Jackson Lee?

2144 Ms. Jackson Lee. No.

2145 Ms. Kish. Ms. Jackson Lee votes no.

2146 Ms. Waters?

2147 Ms. Waters. No.

2148 Ms. Kish. Ms. Waters votes no.

2149 Mr. Cohen?

2150 [No response.]

2151 Ms. Kish. Mr. Johnson?

2152 Mr. Johnson. No.

2153 Ms. Kish. Mr. Johnson votes no.

2154 Mr. Pierluisi?

2155 Mr. Pierluisi. Yes.

2156 Ms. Kish. Mr. Pierluisi votes yes.

2157 Mr. Quigley?

2158 [No response.]

2159 Ms. Kish. Ms. Chu?

2160 Ms. Chu. Aye.

2161 Ms. Kish. Ms. Chu votes aye.

2162 Mr. Deutch?

2163 Mr. Deutch. Aye.

2164 Ms. Kish. Mr. Deutch votes aye.

2165 Ms. Sanchez?

2166 [No response.]

2167 Mr. Nadler. Mr. Chairman? Mr. Chairman?

2168 Chairman Smith. The gentleman from New York?

2169 Mr. Nadler. Mr. Chairman, how am I recorded, please?

2170 Ms. Kish. Mr. Nadler is recorded as voting aye.

2171 Mr. Nadler. Please record me as voting no.

2172 Ms. Kish. Mr. Nadler votes no.

2173 Mr. Nadler. Thank you.

2174 Chairman Smith. The clerk will report.

2175 Ms. Kish. Mr. Chairman, 20 Members voted aye; 7

2176 Members voted nay.

2177 Chairman Smith. Okay. The ayes have it, and the
2178 bill, as amended, is ordered reported favorably.

2179 Without objection, the bill will be reported as a
2180 single amendment in the nature of a substitute,
2181 incorporating amendments adopted, and the staff is
2182 authorized to make technical and conforming changes.
2183 Members will have 2 days to submit views.

2184 We will now to go H.R. 2471, the video privacy bill.

2185 Mr. Sensenbrenner. [Presiding] Pursuant to notice,
2186 the chair calls up H.R. 2471, which the clerk will report by
2187 title.

2188 Ms. Kish. H.R. 2471, to amend Section 2710, Title 18,
2189 United States Code, to clarify that a videotape service
2190 provider may obtain a consumer's informed, written consent
2191 on an ongoing basis and that consent may be obtained through
2192 the Internet.

2193 Mr. Sensenbrenner. Without objection, the bill will
2194 be considered as read and open for amendment at any point.

2195 [The information follows:]

2196

2197 Mr. Sensenbrenner. The chair will insert at this
2198 point an opening statement by the chairman of the full
2199 committee, Mr. Smith.

2200 [The statement of Chairman Smith follows:]

2201

2202 Mr. Sensenbrenner. And the chair will give his own
2203 opening statement at this point.

2204 I am pleased to be a cosponsor of this legislation,
2205 which makes a minor common sense change to update the Video
2206 Privacy Protection Act. The Video Privacy Protection Act
2207 prohibits video stores from disclosing certain personally
2208 identifiable information of their customers.

2209 In the event of an unauthorized disclosure, an
2210 individual may bring a civil action for damages. The law
2211 permits the disclosure of personally identified information
2212 in limited circumstances. For example, information may be
2213 disclosed in response to a court order, or video service
2214 providers may sell mailing lists that do not disclose the
2215 actual rental or purchase selection of their customers. The
2216 law also allows disclosure with a prior written consent of
2217 the customer.

2218 H.R. 2471 does not alter the prohibition on the
2219 disclosure of personal information or expand the limited
2220 circumstances in which disclosure is authorized. It does
2221 not change the requirement for informed, written consent by
2222 a consumer. It simply allows the consumer to consent once
2223 before using new social media program to share their movie
2224 or TV show precedence.

2225 Although well-intentioned, the Video Privacy
2226 Protection Act singled out consumer information sharing only

2227 with regards to video services. Similar restrictions do not
2228 exist for sharing consumers' preferences in music, books,
2229 news articles, and the like.

2230 Rather than dramatically alter the existing provision,
2231 H.R. 2471 keeps the vast majority of the act in place and
2232 simply modernizes the way in which consumers can give their
2233 informed consent.

2234 I urge my colleagues to support this legislation, and
2235 I yield back the balance of my time.

2236 The gentleman from Michigan, Mr. Conyers, is
2237 recognized to make an opening statement.

2238 Mr. Conyers. Thank you, Chairman Sensenbrenner.

2239 I move to introduce my statement into the record.

2240 Mr. Sensenbrenner. Without objection.

2241 [The statement of Mr. Conyers follows:]

2242

2243 Mr. Conyers. And I will yield back the balance of my
2244 time.

2245 Mr. Sensenbrenner. The chair now recognizes the
2246 gentleman from Virginia, Mr. Scott, to make an opening
2247 statement.

2248 Mr. Scott. Thank you, Mr. Chairman.

2249 Mr. Chairman, the Video Privacy Protection Act was
2250 enacted in 1988 out of concerns arising from well-publicized
2251 incidences of videotape rental records of consumers being
2252 released by video rental stores. Much has changed since
2253 then in the way we obtain videos electronically and over the
2254 Internet.

2255 H.R. 2471 amends Section 2710(b)(2) of the criminal
2256 code by specifying that informed, written consent for
2257 disclosure may include consent through electronic means
2258 using the Internet. Additionally, instead of restricting
2259 the disclosure at the time it is sought, as under current
2260 law, this measure allows for the consumers to grant consent
2261 at either the time of disclosure is sought or in advance for
2262 a period of time until such consent is withdrawn.

2263 It makes sense to update the statute to allow for
2264 electronic consent to be given by consumers for the
2265 authorized release of their records. However, we must
2266 ensure that their consent is truly informed.

2267 Too often, companies seek agreement to various terms

2268 and conditions of consumers by burying these requests in
2269 long, complicated forms that a consumer feels they must
2270 agree to in order to obtain the basic service. Now a number
2271 of amendments will be offered today to deal with these
2272 privacy concerns, and I hope that we will be able to improve
2273 this bill before it passes.

2274 And I yield back the balance of my time.

2275 Mr. Sensenbrenner. The gentleman from Virginia, Mr.
2276 Goodlatte, the author of the bill, is recognized for an
2277 opening statement for 5 minutes.

2278 Mr. Goodlatte. Thank you, Mr. Chairman.

2279 Mr. Chairman, today I am pleased that we are
2280 considering a bipartisan bill to update the Video Privacy
2281 Protection Act of 1988. This bill will ensure that a law
2282 related to the handling of videotape rental information is
2283 updated to reflect the realities of the 21st century.

2284 It has the support of 10 of my colleagues on this
2285 committee, including the distinguished ranking member and
2286 the distinguished presiding chairman.

2287 The VPPA was passed by Congress in the wake of Judge
2288 Robert Bork's 1987 Supreme Court nomination battle, during
2289 which a local Washington, D.C., newspaper obtained a list of
2290 videotapes the Bork family rented from its neighborhood
2291 videotape rental store. This disclosure caused bipartisan
2292 outrage, which resulted in the enactment of the VPPA.

2293 The commercial video distribution landscape has
2294 changed dramatically since 1988. Back then, the primary
2295 consumer consumption of commercial video content occurred
2296 through the sale or rental of prerecorded videocassette
2297 tapes. This required users to travel to their local video
2298 rental store to pick a movie. Afterward, consumers had to
2299 travel back to the store to return the rented movie.

2300 Movies that consumers rented and enjoyed were
2301 recommended to friends, family, through face-to-face
2302 conversations. This bill updates the VPPA to allow
2303 videotape service providers to facilitate the sharing of
2304 social media -- on social media networks of the movies
2305 watched or recommended by users. Specifically, it is
2306 narrowly crafted to preserve the VPPA's protections for
2307 consumers' privacy while modernizing the law to empower
2308 consumers to do more with their video consumption
2309 preferences, including sharing names of new or favorite TV
2310 shows or movies on social media in a simple way.

2311 However, it protects the consumer's control over his
2312 information by requiring consumer consent before any of this
2313 can occur, and it makes clear that a consumer can opt in to
2314 the ongoing sharing of his or her favorite movies or TV
2315 shows without having to provide consent each and every time
2316 a movie is rented. It also makes clear that written
2317 informed consent can be provided through the Internet and

2318 can be withdrawn at any time.

2319 This amendment does not change the scope of who is
2320 covered by the VPPA, the definition of "personally
2321 identifiable information," or the privacy standard adopted
2322 by Congress when the VPPA was first enacted. Specifically,
2323 it preserves the requirement that the user provide informed,
2324 written consent.

2325 It is time that Congress updates the VPPA to keep up
2326 with today's technology and the consumer marketplace. This
2327 bill does just that, and I hope my colleagues will join me
2328 in supporting this important piece of legislation.

2329 Mr. Sensenbrenner. The gentleman yield back the
2330 balance of his time?

2331 Mr. Goodlatte. I do yield back.

2332 Mr. Sensenbrenner. Without objection, other Members'
2333 opening statements will be placed in the record at this
2334 point.

2335 [The information follows:]

2336

2337 Mr. Sensenbrenner. The bill is open for amendment at
2338 any point. And the chair is prepared to recognize the
2339 gentleman from North Carolina, but the last time I
2340 recognized somebody out of order on the amendment roster,
2341 there was an objection that was raised for me doing that.

2342 So, without prejudice to the gentleman from New York
2343 offering the two amendments that are ahead of his on the
2344 roster, for what purpose does the gentleman from North
2345 Carolina arise?

2346 Mr. Watt. Mr. Chairman, I have absolutely no
2347 objection to your proceeding in whatever order you want to
2348 on the amendments. I was told that you all preferred to
2349 have me go first, and I do have an amendment at the desk.
2350 But it can wait.

2351 Mr. Sensenbrenner. The clerk will report the
2352 amendment, without prejudice to the gentleman from New York.

2353 Mr. Nadler. I will remember that.

2354 [Laughter.]

2355 Ms. Kish. Amendment in the nature of a substitute to
2356 H.R. 2471 --

2357 Mr. Sensenbrenner. Without objection, the amendment
2358 is considered as read and open for amendment at any point.

2359 [The information follows:]

2360

2361 Mr. Sensenbrenner. The gentleman is recognized for 5
2362 minutes.

2363 Mr. Watt. Thank you, Mr. Chairman.

2364 This amendment is offered as an amendment in the
2365 nature of a substitute, although it does not completely
2366 eradicate the bill. It would modernize the Video Privacy
2367 Protection Act by providing the necessary flexibility to
2368 businesses to obtain electronic consent from consumers while
2369 protecting the consumers' privacy interests by maintaining
2370 the requirement in the Video Privacy Protection Act that
2371 such consent be provided at the time the disclosure is
2372 sought.

2373 While there may be other more precise and effective
2374 means to balance these objectives, I believe my substitute
2375 offers the more measured alternative before the committee
2376 today, and I urge my colleagues to support it.

2377 The committee report for the Video Privacy Protection
2378 Act, which H.R. 2471 would amend, opens with the following
2379 words. "The Video Privacy Protection Act follows a long
2380 line of statutes passed by the Congress to extend --"

2381 Mr. Sensenbrenner. Will the gentleman from North
2382 Carolina yield?

2383 Mr. Watt. Yes, sir.

2384 Mr. Sensenbrenner. It is the desire of the real
2385 chairman, unlike the fake chairman here, to try to wrap this

2386 up before we have to go to vote. The gentleman from North -
2387 -

2388 Mr. Watt. Is the gentleman taking back my 5 minutes
2389 that he gave me?

2390 Mr. Sensenbrenner. The gentleman is making a
2391 suggestion that we can either get this done before we have
2392 to go vote, or we don't. Your choice.

2393 Mr. Watt. Mr. Chairman, just as I have no preference
2394 as to the order of the amendments, I have no preference as
2395 to whether we do them now or tomorrow or after we vote or
2396 next week. So --

2397 Mr. Sensenbrenner. The gentleman is recognized.

2398 Mr. Watt. All right. I appreciate the gentleman's
2399 generosity, and there are a number of amendments. So I
2400 don't know what the rush is.

2401 As I was trying to say before I was so generously
2402 interrupted, the committee report for the Video Privacy
2403 Protection Act, which this bill would amend, says at the
2404 very outset, the very first sentence.

2405 "The Video Privacy Protection Act follows a long line
2406 of statutes passed by the Congress to extend privacy
2407 protection to records that contain information about
2408 individuals." In each instance, Congress has expanded and
2409 given meaning to the right of privacy. That is why the bill
2410 was called the Video Privacy Protection Act.

2411 Because I am concerned that the bill before us
2412 restricts rather than expands our cherished rights to
2413 privacy, my substitute seeks to strike a different balance
2414 between keeping pace with innovation on the one hand and
2415 maintaining the confidentiality of personal information
2416 without informed consent by the consumer on the other hand.

2417 Mr. Goodlatte and the proponents of this legislation
2418 should be commended for their efforts to provide legitimate
2419 online streaming services to a marketplace which,
2420 admittedly, is increasingly technologically sophisticated.
2421 But we are asked to report this bill without the benefit of
2422 hearings or subcommittee process to examine the important
2423 competing, yet not incompatible interests at hand.

2424 Privacy and liberty go hand-in-hand and, through
2425 considered action, may be advanced by technology. Let us
2426 not here compromise privacy in the interest of expediency.
2427 The stated purpose of the underlying bill is to respond to
2428 the new commercial video distribution landscape by
2429 empowering "consumers to do more with their video
2430 consumption preferences, including sharing names of new or
2431 favorite TV shows or movies on social media in a simple
2432 way."

2433 The bill contemplates a one-time agreement by the
2434 consumer to have his or her viewing history shared on an
2435 ongoing basis with others. Although there is an opt-out

2436 provision in the bill, I do not believe that it will
2437 adequately address the realities of privacy in this age of
2438 instant and widespread information distribution and
2439 consumption.

2440 At one level, my concern might be characterized as a
2441 generalized concern. Facebook, the social media network,
2442 boasts 800 million users, with the average user having 120
2443 friends. Because Facebook is dynamic and one's roster of
2444 friends ever changing, a consumer's consent today to allow
2445 access to their viewing history is clearly not informed by
2446 who will be their friend tomorrow.

2447 Today, when online bullying of teens and young adults
2448 can lead to depression or even suicide, when online
2449 predators can look into what Senator Simon called during the
2450 Video Privacy Protection Act debate "the window into our
2451 loves, likes, and dislikes," we should be more deliberative
2452 about how widely we open the privacy window.

2453 But my concerns extend well beyond something that can
2454 be characterized as generalized. Many online video service
2455 providers are subscription services, and there are no
2456 safeguards in the underlying bill to account for the privacy
2457 rights of children who may have access to their parents'
2458 accounts and may unwittingly open the door to information
2459 about themselves or their families through their connections
2460 with social media.

2461 Finally, as indicated in the articles I have
2462 distributed about one online video service provider, which
2463 each member of the committee now has, but something that is
2464 applicable to all, a member's movie data exposes a member's
2465 personal interest and/or struggles with --

2466 Chairman Smith. [Presiding] The gentleman's time has
2467 expired.

2468 Mr. Watt. I ask unanimous consent for 1 additional
2469 minute.

2470 Chairman Smith. Without objection, the gentleman is
2471 recognized for an additional minute.

2472 Mr. Watt. That is the minute that Mr. Sensenbrenner
2473 took from me, by the way.

2474 Chairman Smith. Well, the gentleman was already over
2475 by more than a minute as well. So let us call it a wash.

2476 Mr. Watt. Members' movie data exposes a member's
2477 personal interest and/or struggles with various highly
2478 personal issues including sexuality, mental illness,
2479 recovery from alcoholism and victimization from incest,
2480 physical abuse, domestic violence, adultery, and rape. So
2481 the stakes are high here in the passage of this bill that
2482 really has not gone through a subcommittee and not been
2483 considered, the privacy aspects of it.

2484 And this is a more modest approach to it. We still
2485 allow people to give their consent online but require them

2486 to do it on a case-by-case basis rather than giving it carte
2487 blanche and not knowing what will happen with the
2488 information afterwards.

2489 Chairman Smith. Thank you, Mr. Watt.

2490 The gentleman from Virginia, Mr. Goodlatte?

2491 Mr. Goodlatte. Thank you, Mr. Chairman.

2492 And I will be brief. There are two amendments, I
2493 understand, pending. One will address not all -- by any
2494 means, all of Mr. Watt's concerns, but part of it, and that
2495 is the amendment offered by Mr. Nadler, which we are
2496 prepared to accept. What Mr. Nadler's amendment does is
2497 require that it be a separate independent authorization when
2498 you first agree that you want to have your movies put up
2499 online.

2500 This amendment, however, really eviscerates the intent
2501 of the legislation. While it certainly allows you to do
2502 this on the Internet, which the legislation does, it
2503 requires you to do it each and every single time that a
2504 movie is rented by you.

2505 We don't require that for books. We don't require
2506 that for music. Those also have the same types of
2507 implications the gentleman suggests. This is not forward
2508 looking. It is not consistent with the way people interact
2509 and communicate online today. It promotes inefficiencies
2510 for consumers and businesses like.

2511 And under the way the bill is written, consumers will
2512 always have the ability to withdraw consent at any time they
2513 desire. The bill allows all consumers to consider their
2514 privacy at all times and allows them to make their privacy
2515 decisions at any time they choose.

2516 Mr. Chairman, I urge my colleagues to reject this
2517 amendment, and we look forward to accepting Mr. Nadler's
2518 amendment.

2519 Chairman Smith. Thank you, Mr. Goodlatte.

2520 Let me ask the gentleman from North Carolina, whose
2521 amendment we are discussing, if he intends to get a recorded
2522 vote or not on this?

2523 Mr. Watt. Yes. I suspect I will.

2524 Chairman Smith. Okay. In that case, in the interest
2525 of time and because there is an ongoing vote, the committee
2526 will be adjourned, and we will continue our markup of this
2527 bill next week.

2528 We stand adjourned.

2529 [Whereupon, at 1:59 p.m., the committee was
2530 adjourned.]