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MARKUP OF H.RES. 636, H.RES. ____,
H.R. 3245, H.R. 847, H.R. 3290,
H.J.RES. 26, H.R. 1478, H.R. 984,
H.R. 3327, AND H.R. 2811
Wednesday, July 29, 2009
House of Representatives,
Committee on the Judiciary,
Washington, D.C.

The committee met, pursuant to call, at 10:10 a.m., in Room 2141, Rayburn House Office Building, Hon. John Conyers, Jr. [chairman of the committee] presiding.

Present: Representatives Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler, Cohen, Johnson, Pierluisi, Quigley, Gutierrez, Sherman, Baldwin, Gonzalez, Weiner, Schiff, Sanchez, Wasserman Schultz, Maffei, Smith, Sensenbrenner, Coble, Gallegly, Lungren, Issa, Forbes, King, Franks, Gohmert,

Jordan, Poe, Chaffetz, Rooney, and Harper.

Staff Present: Perry Apelbaum, Staff Director/Chief Counsel; Ted Kalo, General Counsel/Deputy Staff Director; George Slover, Legislative Counsel/Parliamentarian; Sean McLaughlin, Minority Chief of Staff/General Counsel; Allison Halataei, Minority Deputy Chief of Staff/Parliamentarian; and Anita L. Johnson, Clerk.

Chairman Conyers. Pursuant to notice, I call up House Resolution 636, directing the Attorney General to transmit to the House of Representatives all information in the Attorney General's possession relating to transfer or release of detainees in Naval Station, Guantanamo Bay, Cuba, into the United States; and move that it be reported adversely to the House. Without objection, the resolution is considered as read and open to amendment at any point.

[The information follows:]

***** INSERT 1-1 *****

Chairman Conyers. My opening comments are these:

The resolution was introduced by our colleague, Frank Wolf of Virginia, referred to the committee; and under House rules, we are required to report this resolution within 14 legislative days of its introduction, or a privileged motion to discharge the committee could be filed on the House floor.

There are several parts of the resolution requesting information on the alleged release into the United States of Guantanamo detainees. These requests are moot because the recent Defense supplemental appropriations legislation mandates that no such detainee may be released into the United States.

The resolution demands the names of countries that have been contacted by government officials to request their acceptance of detainees currently held at Guantanamo. As a matter of principle, this would seriously undermine the constitutional responsibility of the executive branch to conduct foreign policy, including holding sensitive preliminary discussions on a confidential basis.

In addition, this request would clearly interfere with efforts to close Guantanamo by prematurely disclosing the name of any country even considering accepting detainees. In fact, the Defense supplemental already requires information on the name of each detainee, risk assessment and terms of any agreement with any country to be provided to Congress 15 days before any transfer to another country occurs.

The resolution requests information on any Guantanamo detainee to be transferred to the U.S. for detention or trial, but the Defense supplemental appropriations legislation already requires that information on risk assessment, cost, legal rationale, associated court demands, plans for risk mitigation, and notification to State officials be provided to Congress 45 days before any such transfer occurs.

Additional information is being provided through regular committee oversight and briefings and reports from the administration's Guantanamo-related task forces.

The Defense supplemental also provides that before Guantanamo is closed, the President is to submit to Congress a report describing the disposition or legal status of each detainee.

So, in sum, the demands for information in this resolution are either moot or they are already being satisfied or are harmful to our country. So, accordingly, I recommend that we adversely report this resolution to the House.

And I would now turn to our distinguished ranking member, the gentleman from Texas, Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, we are here today because the President made a rash decision after only 1 day in office to close the Guantanamo Bay Terrorist Detention Facility within 1 year. After 6 months, the administration still has not produced a plan to do so. The absence of a clear reason to close GTMO proves the President's

decision was premature at best and dangerous at worst.

Today, we consider House Resolution 636, a resolution of inquiry introduced by Congressman Frank Wolf of Virginia which would require the Justice Department to give basic information to Congress regarding its GTMO plans. This information includes documents that relate to any preparations for the --

Mr. Nadler. Mr. Chairman, could the gentleman speak into the mike.

Mr. Smith. I will be happy to speak a little bit louder. And maybe we could have a mike check as well, because it is about 2 inches from my mouth here.

This information includes documents that relate to any preparations for the transfer or release into the U.S. of the detainees held at GTMO, the identities of any detainees who have been cleared for release into the U.S., any information about the capture, detention, and threat assessment of those detainees, and relevant guidelines regarding the transfer, detention, or release of GTMO detainees.

I would expect this resolution to be reported out favorably so the full House can vote on it, because Democratic leaders themselves have chided the administration for its failure to produce this and other information related to its plans to close GTMO.

According to Roll Call, "Democratic leaders are indignant that the President has asked for more money before presenting a

plan. In anticipation of receiving a plan for the prison's closure this month, House and Senate leaders had already delayed consideration of their Defense appropriation bills, traditionally one of the first spending measures to see action."

According to the Democratic chairman of the House Defense Appropriations Subcommittee, the administration "will have no money available until we get a plan. It is that simple," end quote.

Speaker Pelosi herself has said we will wait for a plan. And House Appropriations Chairman David Obey said, "So far as we can tell, there is yet no concrete program for closing GTMO. I am not much interested in wasting my energy defending a theoretical program."

Clearly, the administration's program will remain theoretical until we get answers to the basic questions posed in House Resolution 636.

The recent experiment in Bermuda makes clear the need for transparency. After the Department of Justice announced that four detainees had been resettled in Bermuda, the shocked police commissioner there said a preliminary threat assessment of the men found them to be, quote, "high risk." And according to ABC News, the Obama administration put out some seemingly mixed messages on the transfer, saying that their release to Bermuda would make the U.S. safer, while insisting the government would guard against their travel to the U.S.

What sense does it make to say detainees are not a threat when at the same time we take precautions to ensure that those same detainees are prohibited from entering the United States?

Who are the people at GTMO? They are al Qaeda financial specialists, organizational experts, bomb makers, and recruiters. In camp inspections, it has been discovered that detainees were being trained by other detainees in bomb making, weapons handling, and tactics. Serious plots to kill the guards there emerged from even medium-security cell blocks.

Ever wonder what it is like to be a guard at Guantanamo Bay? They receive on average 450 assaults annually. More than half the assaults require some sort of medical attention. Detainees tell guards they will have al Qaeda members rape and murder their families.

Amazingly, the administration has now delayed the deadline to develop a plan for closing GTMO to just days before the final deadline for shutting it down. If we fail to report this resolution favorably, so the full House of Representatives can require the disclosure of this basic information, there will be no time for the American people to voice their opinions, no time for congressional review, and no time to ensure the administration's decisions will not endanger American lives before it is too late.

I urge the committee to support the resolution, which will require a "no" vote on the motion that is pending.

Thank you, Mr. Chairman. I yield back.

Chairman Conyers. Thank you, sir.

Randy Forbes of Virginia.

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

Mr. Chairman, oftentimes we hear, as you just mentioned, that doing nothing perhaps is okay because perhaps we will get these reports before detainees come back.

I was in Guantanamo, not this past Monday, but Monday a week ago; so if there is any member of the committee that has been there since then, I will stop and defer to them. But I don't think there has been.

While we were there, we spoke with the chief prosecutor. Everybody concurs -- Justice Department, Department of Defense -- he is the best we have. He is the guy prosecuting. He said his goal was this: To get justice for the victims of terror and for the U.S. citizens. And he said, If we follow the administration's policy, it will hurt those goals. And here's the reason why.

We have heard a lot already this morning about risk assessments and those kinds of things, but let me focus in on another area about justice. He is prosecuting the five 9/11 codefendants. He has gone through, at this point in time, over 18 months of work. He has had 56 motions that have been resolved. His statement to us was that he believed that he would have a guilty plea from them within 6 months if he could move forward.

He can't move forward because part of the executive order issued by this administration before they ever went down there to

check was to stay all of the prosecutions.

The chief prosecutor has said he has got to go in court in September of this year and request a continuance. But since they have already had some continuances, he said it is far from certain that the judge will give him a continuance. If he doesn't give a continuance, he says he has to dismiss the charges against the 9/11 codefendants. And, if he does, it is questionable whether he can bring them back again.

But if he can bring them back again, he has to start from ground one all over again, which, he says, will last as much as 2 years. And, he says, he runs the risk of speedy trial statutes that could be applied, and he has to dismiss these defendants.

So as we sit here and we talk about terms of justice, the task force that the administration had should have already given us that report. They have now said they are going to be another 6 months. That is putting in jeopardy the prosecution of some of the worst terrorists we have in the world who did and plotted the 9/11 attacks.

And we are sitting here, and if we come back 3 months from now or 4 months from now and that chief prosecutor has had to dismiss those charges and can't bring them back, it lies square on our shoulders because we refused to take any action.

I hope we will follow the ranking member's recommendation and vote "no" on this and have this information come before us so we can make some rational, intelligent decisions in keeping with the

goals of the chief prosecutor to get justice for the victims of terror and for the U.S. citizens.

And I yield back.

Chairman Conyers. Thanks, Mr. Forbes.

Steve King of Iowa.

Mr. King. Thank you, Mr. Chairman.

I wish to endorse the statement made by my friend and colleague, Mr. Forbes, with regard to GTMO. And I did take a trip down to Guantanamo Bay right before Easter with Ranking Member Smith. Their view and analysis on the progress of the prosecution, I think is spot-on accurate. And I stood there and read the executive order on the bulletin board panel in the commons area for the GTMO detainees. It is in English there, 7 pages, and it is also in Arabic there, and it is a promise to them that they will not be in Guantanamo 1 day past January 22 of 2010.

That date looms. And I don't think that the President is going to back up on that, or they wouldn't have hung the promise up on the bulletin board down at Guantanamo Bay. So I am very concerned, having seen judges make decisions that I think were extraconstitutional to spread their jurisdiction beyond the limitations that we have -- we have established in this Congress.

I think they have taken on cases they didn't have jurisdiction over; and I think this thing is on the verge of getting out of hand, and I am concerned that we will end up with an historic mistake by the time we stack up the political opinions

of the people in the country that are being weighed in through this policy.

So I urge also a "no" vote. And I want to report that I am reporting this adversely, and I support my colleagues', Ranking Member Smith and also Mr. Forbes, remarks.

And I yield back the balance of my time.

Chairman Conyers. Thank you very much, Mr. King.

A reporting quorum being present, the question is on reporting the resolution adversely to the House. Those in favor say aye.

And opposed, no.

And a roll call vote is ordered.

The Clerk. Mr. Chairman.

Chairman Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

[No response.]

The Clerk. Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren.

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Delahunt.

Mr. Delahunt. Aye.

The Clerk. Mr. Delahunt votes aye.

Mr. Wexler.

[No response.]

The Clerk. Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson.

[No response.]

The Clerk. Mr. Pierluisi.

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Gutierrez.

[No response.]

The Clerk. Mr. Sherman.

[No response.]

The Clerk. Ms. Baldwin.

Ms. Baldwin. Aye.

The Clerk. Ms. Baldwin votes aye.

Mr. Gonzalez.

[No response.]

The Clerk. Mr. Weiner.

[No response.]

The Clerk. Mr. Schiff.

Mr. Schiff. Aye.

The Clerk. Mr. Schiff votes aye.

Ms. Sanchez.

[No response.]

The Clerk. Ms. Wasserman Schultz.

[No response.]

The Clerk. Mr. Maffei.

[No response.]

The Clerk. Mr. Smith.

Mr. Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Mr. Gallegly.

[No response.]

The Clerk. Mr. Goodlatte.

[No response.]

The Clerk. Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Mr. Issa.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King.

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert.

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Mr. Jordan.

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe.

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz.

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Mr. Rooney.

Mr. Rooney. No.

The Clerk. Mr. Rooney votes no.

Mr. Harper.

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Chairman Conyers. Mr. Weiner.

The Clerk. Mr. Weiner is not recorded.

Mr. Weiner. Yes.

The Clerk. Mr. Weiner votes yes.

Chairman Conyers. Mr. Maffei.

Mr. Maffei. Aye.

The Clerk. Mr. Maffei votes aye.

Chairman Conyers. Ms. Jackson Lee.

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Chairman Conyers. If there are no other votes to be recorded, the clerk will report.

The Clerk. Mr. Chairman, 12 members voted aye, 12 members voted nay.

Chairman Conyers. Mr. Gonzalez.

The Clerk. Mr. Gonzalez is not recorded.

Mr. Gonzalez. Aye.

The Clerk. Mr. Gonzalez votes aye.

Chairman Conyers. Anybody else? The clerk will report.

Mr. Johnson.

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Chairman Conyers. All right. Last call. Anybody else?

Okay. The clerk will report.

The Clerk. Mr. Chairman, 14 members voted aye, 12 members voted nay.

Chairman Conyers. The resolution is agreed to.

Pursuant to notice, I call up H.R. 847 --

The resolution is voted and reported adversely. Members have 2 days to submit views.

Pursuant to notice, I call up H.R. 847, the James Zadroga 9/11 Health and Compensation Act, for purposes of markup, and ask the clerk to report.

[The information follows:]

***** INSERT 1-2 *****

The Clerk. H.R. 847, a bill to amend the Public Health Service Act to extend and improve protections and services to individuals directly impacted by the terrorist act in New York City on September 11, 2001, and for other purposes.

Chairman Conyers. Without objection, the bill is considered read, open for amendment at any point. And I would like to invite Jerry Nadler, chairman of the Constitution Committee and sponsor of this bill, to begin the description of it.

I yield to the gentleman.

Mr. Nadler. Mr. Chairman, I want to first give my thanks to you and to Zoe Lofgren, the Chair of the Judiciary Committee, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, for making today's markup of H.R. 847, the James Zadroga 9/11 Health and Compensation Act of 2009, a reality.

Mr. Chairman, without your commitment and the commitment of Chairwoman Lofgren, as well as the tireless dedication of your staffers -- and especially of her counsel, David Shahoulian -- to providing relief to the women and men still suffering from the terror attacks of September 11th, we could not be here today.

I also want to recognize the fact that we are graced with the presence in the audience today of a number of first responders -- police, firefighters, and other members of the community -- who will be directly impacted by this bill today. And recognize their

presence and thank them for their efforts 8 years ago.

Mr. Chairman, Representative Maloney and I, along with Representatives Pete King and Mike McMahon have introduced this bill to ensure that the living victims of the September 11th terrorist attacks have a right to health care for their World Trade Center-related illnesses and a route to compensation for their economic losses.

In today's markup, this committee will focus on the sections of the bill that would reopen the Federal Victim Compensation Fund. The health care section of the bill is under the jurisdiction of the Energy and Commerce Committee, but we will consider today the reopening of the Victim Compensation Fund, a fund established by Congress in the immediate aftermath of the 9/11 attack to provide compensation to those who suffered an injury, lost their livelihood, or lost a loved one on that terrible day.

By all accounts, the original VCF was an overwhelming success. In the course of the its 33-month existence, it served as an alternative to litigation, which can be a costly and time-consuming endeavor for families and individuals who suffered losses because of 9/11.

Despite its widely acclaimed success, the VCF closed in December 2003, leaving thousands of our heroic first responders, area workers, residents, students, or others whose 9/11-related illness did not manifest itself until after the VCF closed with no

alternative but to pursue litigation to recover losses.

Almost 100 percent of the families who lost loved ones during the attack filed with the fund by the December 22, 2003, application deadline; however, many of those who suffered personal injury did not file mainly because they were unaware of the fund or because their illnesses were in a latent stage and they were unaware of them.

There are potentially thousands of individuals who are just now developing debilitating and even perhaps fatal diseases, but are not eligible to receive assistance because they developed their symptoms after the VCF deadline had passed. Such individuals have been failed by the existing system of Workers Compensation, which has proven inadequate in dealing with the number and scope of claims arising out of the aftermath of 9/11.

The World Trade Center insurance fund has also proven inadequate. It was established with a \$1 billion appropriation, but has spent hundreds of millions of dollars in administrative and legal costs to contest rather than to pay claims filed by first responders and other individuals whom Congress intended to assist. Only a handful of claims have been paid.

Reopening the VCF would ensure fair compensation for those in need. Eight long years after the attacks on 9/11, we have now seen firsthand what we knew would happen: Those exposed to the toxic air at Ground Zero are still getting sick.

The portion of H.R. 847 we will mark up today seeks to reopen

the VCF to again provide a fair and expedited avenue for compensation for those people suffering today because of the events of 9/11. It is important to note that, through a series of good-faith discussions with our colleagues from the minority, we were able to address and work out a number of issues and concerns raised by our friends on the side of the aisle so that we could make progress for the benefit of the heroes of 9/11. I am grateful for their work on this important issue.

As this committee does its work today to mark up the compensation side of H.R. 847, I hope the Energy and Commerce Committee will continue its progress on the medical parts of the bill and bring this important piece of legislation in front of their committee for markup so we can finally establish a long-term, coordinated health program for our heroic first responders, area workers, residents, students, and others affected by the September 11th terror attack.

I see that we have also been joined by the sponsor of the legislation, my colleague from New York, Carolyn Maloney.

Mr. Chairman, Chairwoman Lofgren, again, thank you. I look forward to voting this bill out of committee today.

I yield back the balance of my time.

Chairman Conyers. Thank you, Chairman Nadler.

Will all the visitors in the hearing room who are prospective beneficiaries of this legislation please stand.

[Applause.]

Chairman Conyers. As you can see -- thank you for standing -- the committee feels deeply indebted to all of you and those with you who may not be here who are prospective beneficiaries of the legislation.

I now turn to our ranking member, Lamar Smith of Texas.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, this bill presents a sensitive issue with regard to compensation for those who are actually suffering respiratory ailments as a result of the recovery and cleanup efforts at the World Trade Center site. No doubt there are many with legitimate claims as a result of their efforts at Ground Zero, especially firefighters, and these claims should be addressed.

But this legislation, as written, creates a huge slush fund of billions of dollars paid for by taxpayers that is open to abuse, fraud, and waste. That is because the legislation creates an inexplicable 22-year-long fund that leaves decisions on whether or not to pay claimants at the unreviewable discretion of the Special Master.

The bill's namesake, James Zadroga, is indicative of my concerns. Rather than finding that Detective Zadroga's death was the result of exposure to Ground Zero dust, the New York City medical examiner himself concluded that, "It is our unequivocal opinion, with certainty beyond doubt, that the foreign material in his lungs did not get there as a result of inhaling dust at the

World Trade Center or elsewhere."

And, by the way, the bill had been through a couple of gyrations here, but both of the names of the bill have been found to be not legitimate claimants.

The danger here is not simply the occasional unsupported claim, as is the case of Detective Zadroga, but the creation of a massive and expensive compensation system that will be subject to pervasive problems over the 22 years that it will be open to claimants.

The legislation also vastly extends the geographic scope of the fund to cover "routes of debris removal." This will result in the potential for a huge number of additional claimants with tenuous causal connections between their medical problems and the cleanup efforts at Ground Zero.

The bill also allows claims to be filed until the year 2031, an unjustifiable length of time. As Ken Feinberg, Special Master of the original 9/11 fund, stated, "No latent claims need such an extended date." By greatly expanding the fund's eligibility criteria, these proposed changes will not only increase the cost of the fund, but will also present more opportunities for waste, fraud, and abuse.

The purpose of the fund is to provide compensation through an administrative means that does not require lawyers or proof of complex legal concepts such as negligence, product liabilities, or other tort theories, yet the bill allows generous attorney's fees.

What is more, the bill does little, if anything, to limit the special master's unbounded authority. The amount of discretion given the Special Master may have been acceptable under the original 9/11 fund because it was designed to compensate a limited number of claimants with relatively noncontroversial claims. However, this amount of discretion will not work for the 22-year-long fund created by this bill with its larger set of potential claimants who have injuries with more ambiguous causation. If nothing else, this will structure will be an open invitation to fraud.

The original 9/11 fund was unprecedented in its expression of a Nation's compassion and generosity following the deaths of innocent people. It was designed to settle claims of those covered, once and for all. It may be that funds should be reopened to first responders whose injuries were not evident until after the expiration of the initial deadline; and certainly we should protect the construction contractors from the financially ruinous litigation they now face. However, if we are going to reopen the fund, we must do so in a much narrower manner and with far less discretion to the Special Master as provided for in H.R. 847.

It is hard to explain spending billions of additional taxpayer dollars when Special Master Ken Feinberg has emphatically stated that the \$1.5 billion in taxpayer money, charitable contributions, and insurance coverage currently available for

distribution is "more than sufficient to pay all eligible claims as well as lawyers' fees and costs."

I urge my colleagues to oppose passage of this legislation, Mr. Chairman, and I yield back the balance of my time.

Chairman Conyers. Thank you, Mr. Smith. Other members' statements are welcomed into the record.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Turning to amendments, I ask the clerk to report a manager's amendment put together by myself and the gentleman from California, Dan Lungren.

The Clerk. Amendment to H.R. 847 offered by Mr. Conyers and Mr. Lungren.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Without objection, the amendment is considered as read. And I would ask the gentleman from California to describe the manager's amendment.

Mr. Watt. Mr. Chairman, do we have the amendment?

Chairman Conyers. I don't know.

The Clerk. In the upper left-hand corner, it has "manager," underscore, 001.

Chairman Conyers. It is in the packet.

Mr. Lungren. Thank you for the recognition, Mr. Chairman.

For me, it is an honor and a privilege to support this legislation, particularly this manager's amendment. Like for many of us, 9/11 was perhaps the seminal event in our lives, and for me personally it was the reason I decided to return to Congress.

In the days and weeks following this tragic event, there is no doubt we witnessed actions of unqualified heroism. In my estimation, we will remain forever indebted to those who came to this location of this national cataclysm and worked to remove the aftermath of this tragedy.

It is, I believe, a debt which cannot be measured solely in monetary terms. These responders and workers injured by the World Trade Center toxins were there on behalf of all Americans.

One of the reasons we are dealing with this problem today is, we did not know the nature of the problem -- not only the extent of the problem, but we didn't even understand the nature of the

problem of the toxins there that would affect those workers who responded and continued to respond for weeks and even months.

Having said that, the question is what we should do in response to that calamity. The price many of them paid will in some cases burden them for the rest of their lives, and yet many have yet to fully incur the injuries relating to their exposure to this highly toxic environment. We, frankly, don't know all of those who have been affected; and some of their ailments, particularly cancers, will probably not reveal themselves within the next 5 years.

The sacrifice on behalf of all of us simply cannot be measured. And I understand that everybody here, whether they support this bill or not, does not dispute that.

In a recent Mount Sinai Medical Center study of responders and recovery workers, lower respiratory disease was found in 46 percent of those evaluated, upper respiratory health problems, in 64 percent. The study found that nearly 70 percent of the first responders tracked in the study currently suffer from new or worsening respiratory symptoms.

I think the facts are clear, and those facts convey a moral obligation, which has not been diminished by the mere passage of time, for the first responders who suffered from the toxins do so today and others like them which will be discovered in the future. I think we have to try and craft a bill to respond to that.

And my ranking member has said we do. He has some

disagreement with whether or not this does that. I believe this bill does. And I believe the manager's amendment responds to some of the concerns we have raised on this side of the aisle.

Title II of the bill reopens the Victim Compensation Fund and provides compensation for responders, workers, and others injured by the World Trade Centers' toxins. Importantly, I believe it also provides liability protections for the World Trade Center contractors by limiting their liability for all claims.

I know most Members have met with the contractors and some of their employees or representatives of their employees. These are people who responded to the call, and they continued to worked there weeks and months after the tragedy. They knew that there was possible exposure to a danger, but they were willing to do that. They didn't know the extent, we didn't know the extent.

We still don't know the extent of it. And the question is, it seems to me, whether or not we not only allow those individuals to suffer without some compensation on the part of a grateful Nation, but also whether we allow these companies to basically hit bankruptcy, not because they were negligent in a commonsense way, but they frankly did respond even though there were unknown dangers out there and exposed themselves and, in some cases, their employees to that danger. They did that in response to an attack on our homeland.

Now, there have been some legitimate issues raised by this side of the aisle, including some that I raised in the past. In

my view, the legislation responds to that by improvement in the language in the manager's amendment.

Unlike the underlying bill, this amendment would cap attorneys' fees at 10 percent with an exception where the Special Master approved a larger amount where extensive costs have been incurred. And I know there might be some debate on that as to whether that is sufficient and so forth, and I would remind my colleagues that this is in keeping with what we have done when we, on the Republican side, were in the majority and responded to a number of different circumstances with particular assistance acts in which we capped attorneys' fees and in some cases did not cap attorneys' fees. So this is not out of order with that.

Secondly, the manager's amendment would cap the amount available to pay claims at \$8.4 billion. It seems to me that that is an effective way of dealing with it, rather than a timeline. And that is a large amount of money; I happen to be one of those who believe that billion is a lot of money. The damages here are also large. That is why some of the companies are at risk of going into bankruptcy if we do not do something here.

Finally, the manager's amendment would provide additional liability protection to contractors by striking the exception to the cap for claims of gross negligence or other acts which might result in punitive damage awards. Some might think that is unprecedented. I think it is appropriate under these circumstances.

One of the things I recall, that was a subject of debate when we dealt with this in previous time, was, as I recall, language in the bill in the 110th Congress gave assistance for psychological harm. That is not in this bill. So the concerns people had about this going too widely, being something that was incapable of determination, going overboard in response to an appropriate circumstance, I think has been dealt with by the legislation.

I believe the manager's amendment -- well, it assists me and allows me to support this legislation vigorously; and I hope that members on both sides of the aisle would take a look as a good-faith effort to respond to legitimate concerns that were raised by the original bill in the previous Congress. I believe that the underlying bill is an improvement over the previous Congress, but the manager's amendment moves even further to settle concerns that I and others had expressed before it.

Mr. Chairman, this is our opportunity to stand up for the first responders and workers in a way that I believe is responsible. These folks stood in our place when they were called to do so. I would hope that we would do this at this point in time, and would ask my colleagues to join me in supporting this manager's amendment.

I yield back the balance of my time.

Chairman Conyers. Thank you.

The Chair welcomes Peter King of New York, a major sponsor and worker in this effort.

The Chair recognizes, out of order, Lamar Smith.

Okay. You will stay in order, okay.

Then we turn to Zoe Lofgren, who was a major contributor to the effort that brings us here today.

Ms. Lofgren. Thank you, Mr. Chairman. And I am glad that we are able to proceed here today.

We all know, in the days following the attacks of 9/11, Congress pulled together in a bipartisan way to face the terrorists, to adopt the 9/11 Victim Compensation Fund. And that fund was by any account a terrific success; it compensated those who lost their lives or received injuries, it avoided litigation, and it really fulfilled the Nation's pledge to stand with the New Yorkers who had been the subject of the attack.

Despite this incredible success, when we held a hearing with Mr. Nadler's subcommittee pursuant to the claims jurisdiction of the Immigration Subcommittee, we found that there was a second job that had not been done by the Victim Compensation Fund, and that was compensating those who had stepped forward as volunteers to clean the debris, to search for victims, who are now suffering tremendous health problems. And that includes the individuals, the heroes and heroines, that are here with us today.

It also includes companies that stepped forward; and we need to resolve that situation, because the status quo is completely unacceptable. Over 11,000 lawsuits have been filed because there is no other opportunity to receive help. The companies are ready

to go bankrupt. The individuals are suffering and not able to get the care they need. And so this bill, this bipartisan bill before us, is the result.

I would like to give credit certainly to Carolyn Maloney, who has worked so hard on this, and certainly Jerry Nadler who has worked tremendously hard. But I also want to mention the staff. David Shahoulian, a lawyer on the subcommittee, has worked tirelessly on this to bring consensus. And prior to him, Blake Chisam worked on this matter.

And what we have done here with this manager's amendment is to once again come together, as we did after 9/11, to solve the problem. And as Mr. Lungren has said, the points and concerns raised about unbridled costs are addressed in the manager's amendment by capping costs. In sort of a wonderful way, the attorneys who are representing the victims, the volunteers, have agreed to a cap on their compensation. And I have letters here not only from the companies that stepped forward, but also the labor unions that are representing the individuals; and we also know from the attorneys who have been involved, everybody is willing to give a little to make sure that the people who were hurt are treated the right way.

And so I think this is really a very proud moment not only for this committee, but for our country that will never forget that day and will never forget those who stepped forward to do the right thing.

So, Mr. Conyers, I thank you for moving this forward, for Mr. Peter King, who is here, who has been a tremendous player in making this go forward. I think it is a proud moment for our committee and our country. And I strongly support the manager's amendment.

And I yield back.

Chairman Conyers. Thank you, Zoe Lofgren.

The Chair recognizes Lamar Smith, the ranking member of Judiciary.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, while this manager's amendment is an improvement over the underlying bill, it simply does not address the fundamental concerns we should all have with this legislation as it is written.

The manager's amendment caps the overall cost of the funded \$8.4 billion, but all this does is guarantee that \$8.4 billion will be spent. Moreover, it does not stop Congress from raising this cap in the future. It also does not address the fact that Ken Feinberg, Special Master of the original 9/11 fund, has clearly stated that \$1.5 billion, not \$8.4 billion, is sufficient to settle all outstanding claims.

As Ken Feinberg has explained, "More than \$1 billion in public funds is currently available for distribution as part of the initial Federal appropriation earmark for New York City's 9/11 recovery. If you add financial contributions from those

contractors and others involved in the litigation and supplement that with funds from various city charities, a total of at least \$1.5 billion is available to settle the pending lawsuits, more than sufficient to pay all eligibility claims as well as lawyers' fees and costs."

If Mr. Feinberg, who is one of the most knowledgeable experts on these claims, believes that \$1.5 billion is sufficient, why should we set \$8.4 billion as the overall cap?

The manager's amendment also sets a cap on attorneys' fees at 10 percent, with an exception for situations in which the claimant has filed a lawsuit in Federal district court prior to this year. This means we will be handing trial lawyers close to \$1 billion in taxpayers' money.

Seven years ago, when Congress was considering the original 9/11 Victim Compensation Fund, the Association of Trial Lawyers of America sent a letter to Congress. In that letter, the trial lawyers wrote, "ATLA believes that 100 percent of the compensation from the fund should go directly to these families."

So why are we giving the trial lawyers close to \$1 billion to adjudicate claims through in what is a no-fault administrative system? The \$8.4 billion will still be subject to waste, fraud, and abuse; and the special master's discretion will only be limited to the extent that the Special Master may not award more than \$8.4 billion.

The original 9/11 fund was structured to compensate a limited

set of claimants for a limited period of time with relatively uncontroversial claims. The structure of the original fund will not work for a longer, 22-year fund with a substantially larger set of claimants with more ambiguous claims. An \$8.4 billion cap and a limit on attorneys' fees won't change that fundamental flow.

So, Mr. Chairman, I continue to oppose the underlying bill despite the modest improvements contained in the manager's amendment. But I also want to make a couple more points.

The first is, we should not forget that we are talking about the taxpayers' money. Sometimes I think we do forget that. In this particular instance, the \$8.4 billion cap was arrived at in an arbitrary fashion.

The individuals who came up with that amount started off with what the CBO estimated; then they extended it out for 10 or 12 years. They got to \$7.4 billion, and they said, well, we will just add another \$1 billion just in case. That is \$1 billion of the taxpayers' money; that final figure was totally arbitrary.

The other point is on the 10 percent cap on attorneys' fees. Well, it so happens during the hearing all six witnesses, including the majority's witnesses, were asked if they would object to a 5 percent cap because the procedures were not legal, they were primarily medical in nature. None of the witnesses objected to a 5 percent cap, and yet we are stuck with a 10 percent cap here.

The final point to make, and I talk about the fraud and

abuse. This is actual, this is not hypothetical. In the case of the initial claims -- and these claims that are talked about being allowed are much, much, much broader, but in the initial claims, over half of the claims were found to be fraudulent. Over half. Only 5,000 roughly of the 11,000 claims were found to be legitimate.

Now we have a much broader category that is an even more open invitation to fraud, and here we are arbitrarily saying we will spend \$8 billion of the taxpayers' money.

Mr. Chairman, I just don't get it. As I said in my opening statement, there are legitimate claims, particularly with the firefighters. Those should be addressed, they can be addressed, but not in a bill that is so susceptible to misuse and fraud and abuse.

And I will yield back.

Chairman Conyers. Hank Johnson, have you finished enough of your breakfast to take 5 minutes?

Mr. Johnson. I believe that I have enough to put that aside.

Chairman Conyers. The gentleman is recognized.

Mr. Johnson. Thank you, Mr. Chairman.

I find it -- first, I want to say to all of the people who have come down here from the great State of New York to support you, the victims of 9/11, I want to say thank you.

And then I also want to say thank you to all of you who were actually first responders. I want to say thank you. America owes

you a debt of gratitude that we can never repay, because I imagine it has been very difficult, the physical suffering that you have endured since that fateful day.

And I would only be able to imagine the mental suffering that you have had wondering, well, should I have gotten there just a little earlier? Or should I have taken this route to try to save someone? Or did I leave too soon? You know, all of the things that you worry about in second-guessing yourself.

And that is a fate that I don't think anybody would want to have, but yet it was thrust upon you because this was your job and you did what had to be done. Your job is to save people, and you saved a lot of people.

And I am so disappointed that - I am so disappointed that there is a movement here to cut down on your ability to hire a lawyer to deal with your claims. Now, I mean, a \$1 billion claim, hundreds of millions having been spent to deny or contest the claims -- hundreds of millions of dollars -- and then few claims have been actually paid.

And so what it means is that the defense lawyers, who are employed by the Special Master to deal with these claims -- and they get paid on an hourly basis, \$600, \$700, \$800 an hour -- it means that they have made a lot of money. And then the people, the claimants have had to go to an attorney so that they can get justice for themselves and their families.

So when we cut attorneys' fees down to 10 percent and all of

the claimants' lawyers work on a percentage basis, then it means that it lessens the number of people that are financially able to come to you to help you. And so I vehemently disagree with that.

And I would also point out that my defense brethren in the law, their fees are not capped. They will go up and up and up and eat more and more of that money.

So I think that the way to accomplish it is to -- there should be a presumption that if you were anywhere near the World Trade Center on 9/11 and a reasonable period thereafter and you are suffering from certain illnesses, then there should be a presumption that you are entitled to recovery, as opposed to a knee-jerk reaction that we are going to deny the claim and force you to prove it beyond a reasonable doubt before we pay you.

Representative Carolyn Maloney, out of New York, is just a tremendous warrior and advocate for you, and I am happy to support this bill and -- subject, of course, to my thoughts that I have already related to you.

But, once again, I want to say thank you to you for everything that you all have done to help and all that you have endured because of what you did, which was your duty.

I yield back the remainder of my time.

Chairman Conyers. Anybody on my side before Steve King's amendment want to be recognized?

The Chair recognizes Mr. Weiner of New York.

Mr. Weiner. Thank you, Mr. Chairman.

Let me just, if I can, address a couple of the comments made by Mr. Smith about this bill and just remind us a little bit.

You know, the Victim Compensation Fund has been anything but a slush fund. I think that it is hard to quote Mr. Feinberg as an authority and say what good work he did, and then suggest that any further opening of the bill would result in wide-scale fraud and abuse. I think Mr. Feinberg, as the Special Master, satisfied just about everyone possible -- you know, in an impossible situation -- that was able to take a look at cases, hard cases with smart people looking at them, and balance the equities and come up with reasonable accommodations.

All of us in this House -- and forgive me if I don't have the exact number -- supported the Victim Compensation Fund at its inception because it was based around some common principles that we all held in common after September 11th.

One was that we wanted to provide as quickly as possible relief to the victims. We wanted to do it in an extrajudicial way, something that my colleagues on the Republican side have frequently commented that we need to do more frequently. And implicit in it was a 2-year deadline for applications.

Now, if you go back and look at the record, the reason that 2 years was put in there is that no one could conceive that we wouldn't know who the victims were outside a 2-year window. But now, today, there is no disagreement that many people, including some that are in this audience today, are dying because of the

attack on September 11th.

We all agreed we wanted the Victim Compensation Fund to compensate victims of the attack. They are victims of the attack.

Now, in the years since September 11th, we have been able to answer with near medical certitude questions about who was a victim and who was not. If there is anything that we have gotten good at in the long delay in passing this legislation it is that now we have a body of medical evidence that allows some conclusions to be drawn about the toxic dust that existed at Ground Zero, the afflictions that people have.

The one thing we don't know with certitude is how long it takes to manifest itself. That is really the only new thing about the Victim Compensation Fund today than in the dark days of 2001 when we created this law. That was -- the only new piece of information now is whether -- who is dying. And so what Mrs. Maloney and Mr. Nadler and Ms. Lofgren and Mr. King, we, are trying to do, is just essentially fix that bill.

Now, there are a lot of things that have been mentioned. I believe, personally, no lawyer that takes a case for one of these people should take a fee. That is my belief. That is why there is a cap. But it is not saying it has to be 10 percent.

The gentleman is absolutely right; some people said they have no intention of taking fees. So as a way of kind of bridging the gap here and not knowing what might be unexpected, the cap has been put in, and the same way it is with the overall number in the

bill.

We don't know, frankly; sometimes we learn tragically, like in the cases of asbestos victims, that sometimes people frankly perish and they never know. Like my grandfather, bless his memory, who died with asbestos in his lungs, and we didn't know until after he died that his years at the Navy Yard had been killing him.

But what we are trying to do here is not create something brand-new. It is to create something that represented the best that this Congress did after September 11th when we came together and said, Let's make sure the victims are compensated.

Let me make one final point. In some instances, September 11th is completely unprecedented, and with God's good grace, it will never happen again, we will never have another attack on American soil.

But if we don't pass this legislation, unfortunately we in Congress are doing something that we said we didn't want to do right after September 11th. We are sending a message to those people who did come in there, whether they be contractors, first responders, citizens on the pile, and we are saying to them you'd better watch out before you follow your best instinct and rush towards these emergencies. You should know that, after a couple of years, Congress kind of forgets about your sacrifices.

That is why this bill is so important, because it is setting an important precedent that we remember not only the month after

something happens, not only the year after something happens, but we keep in mind and honor the sacrifices that people make; and that we are not going to punish somebody just because they learned about their deathly diseases years after the terrible day of September 11th.

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Mr. Weiner. So the idea that this is going to be a slush fund -- it hasn't proven to be that way and, frankly, it is an example of how to do a victims' compensation fund. I have seen very few instances where people have accused Mr. Feinberg of allowing fraudulent claims to go through.

And a way that we know that Mr. Smith is wrong is that it was the special master who has flagged fraudulent cases in many cases and made sure that they were filtered out, that this is not something that is going to be a field day for lawyers. I think many of them are going to take far less than 10 percent, if anything.

And this is not an unprecedented thing we are doing. This is an extension of legislation that we all joined together after September 11th to pass. This is a gap.

And let me conclude with this one thought. If we had heard on September 11, 2001, from anyone saying, by the way, you should know that we are going to have victims of this thing that are going to pop up 10 years later, believe me, you were here, Mr. Ranking Member, you were here Mr. Sensenbrenner, you were here; the guys that were here, the Members of this body know that we would have written it in. No doubt about it, because that was the sentiment that we had at the time. We wanted to make sure the

people who were victims were made whole. That is what this bill seeks to do. It is not going to accomplish it. These people are not going to be made whole, but they are going to have --

Mr. Smith. Would the gentleman yield?

Mr. Weiner. Yes.

Mr. Smith. I would ask unanimous consent to grant the gentleman from New York an additional minute, if I could.

Chairman Conyers. Of course.

Mr. Smith. Let me respond to a couple of things that you have said. I know they weren't intentional misrepresentations of what I said, but I would like to set the record straight.

Number one, my comments were not addressed at the current fund or the past fund. My comments were addressed at the bill that is being considered right now, when I talked about the fraud and abuse.

The second point in regard to the special master, Mr. Feinberg, I quoted him directly and actually, contrary to what you just said, I credit him for determining that over half the claims were fraudulent. I don't hold him responsible for that. I don't blame him for that. I credit him with being able to weed out the fraud and abuse. My concern is with the legislation we are now considering, which is far broader, will be much more difficult to weed out those kinds of fraudulent claims.

But I take Mr. Feinberg at his word. I hope the other members of the committee will as well when he says that

\$1.5 billion is more than adequate to address all the current claims. And, again, I think there are a lot of legitimate claims. Every legitimate claim ought to be addressed, but we shouldn't go beyond those.

Mr. Weiner. If I can reclaim my time.

Mr. Smith, I understood exactly what you were saying, but it has got an inherent inconsistency. How can you say -- if I can reclaim my time. It has an inherent inconsistency. You can't that say that the fund that this extends was handled well, but in the future, it is going to be handled poorly. That is inconsistent.

Mr. Smith. If the gentleman will yield.

Mr. Weiner. Certainly.

Mr. Smith. Again, the reason I can say that is because the legislation that we are considering is much different from the way the original fund was administered.

Mr. Weiner. Reclaiming my time. No, it is not.

Mr. Smith. It is not only more broader; you have more money.

Mr. Nadler. Would the gentleman yield?

Mr. Weiner. Reclaiming my time. Let me respond briefly, Mr. Nadler.

But the gentleman is incorrect that this is different. In the fundamental structure, the Victims Compensation Fund is the same. We are going to have -- if I could, the fundamental structure is the same. We are going to empower an extrajudicial

guy or a woman to come in and make the same types, and if Mr. Feinberg can do it, I am confident there is another American who can do it.

And let me make one final thing. I trust Mr. Feinberg implicitly to do everything except medicine. We need to rely on the medical professionals who are saying to people that this may emerge longer than Mr. Feinberg believes.

But if you say that we found a fund and a special master that did a great job, but there is no way we can extend it because they are going to do a crummy job is just inconsistent.

Mr. Nadler. I would simply say that this is different from the original bill only in that there is a limit in this bill. The original bill has no limit, no monetary limit whatsoever. This bill has a monetary limit based on CBOs projections, and if in fact, if in fact, claimants with legitimate claims do not come forward, then we will spend less than that amount of money .

If they come forward with more than that, we have an arbitrary -- and it is inherently arbitrary -- limit in the bill. Maybe we shouldn't have a limit, but we do. And that is the protection of the taxpayers, and that is the difference in this bill from the original bill.

I yield back.

Mr. Weiner. I yield to the gentleman from Texas.

Mr. Smith. I thank the first gentleman from New York for yielding.

One difference in this bill and the original course, as you all know, is that the categories are much broader. For instance, individuals who might have lived along the coast where the debris might have been carried and so forth, there are a lot of ways --

Mr. Nadler. Would the gentleman yield on that?

Mr. Smith. Let me just finish. We will be able to explore this further in a minute because I am going to give you all an opportunity to vote on an amendment that I am going to offer that will track exactly what the CBO has found in the way of figures and tracked exactly what the special master has recommended. So, to some extent, we will be able to address this in a minute, and I thank the gentleman for yielding.

Mr. Weiner. I request unanimous consent for 30 additional seconds just to respond.

I appreciate the gentleman from Texas. I think he is sincere in trying to perfect this bill.

But let me just say this, it is true the universe of people is different. But what you have critiqued so far in your comments is how the special master is going to work. You have said there is going to be fraud and abuse. Why do you think the special master this time can't weed out like they did last time? It is just inconsistent.

The process we set up in Congress actually worked very well. And I remember, and you remember, Mr. Smith, Mr. Feinberg had the bejesus beaten out of him during this process on all sides. And I

think it turned out he was able to take an excruciatingly difficult process, that we would still be in court on today, and he made some smart, difficult, complicated decisions that left many of us, not satisfied, because there are so many victims in the true sense of the word, but he was able to accomplish it.

All this fund does is take that same mechanism which worked and extend it to cases like those in this room. There is really no, I don't think, intellectually consistent way you can say I want to compensate victims in the 2-year window but not the 2-year-and-1-day window.

Mr. Smith. The brief answer to the gentleman is I trust the special master to come up with the right findings more than I trust Members of the Congress, and I think the American people would as well.

But when we get to my amendment in a minute, you will find out what I am talking about.

Mr. Weiner. Let me just say, before I yield to Mr. Nadler, I agree. I would not want any one of us being a special master for this fund.

Mr. Smith. You will have my amendment momentarily.

Mr. Weiner. That is why none of us, I can say with metaphysical certitude, will be in that position. But let us not take something that worked as well as could be possible -- I don't think you are every going to get anything perfect -- that weeded out fraud, that took delicate cases and dealt with them delicately

and that were as responsive as can be; and why say to someone who was in the 2-year window, you are different than someone who was in the 2-year-1-day window or the 2-year-1-year window, it is just not right and not fair. And the gentleman voted for that.

Mr. Smith. Would the gentleman follow the recommendations of the special master?

Mr. Weiner. Excuse me?

Mr. Smith. Would the gentleman agree to follow recommendations of the special master?

Mr. Weiner. My recommendations are going to come in the form of the impassioned defense of the bill.

Look, I have to tell you something. I defended Mr. Feinberg when he was doing his work, getting criticized by many of my constituents and said that this is a process that is going to be difficult. And I defended him, I wrote an op-ed in my local newspaper defending him, and I took my lumps for doing.

But I think history will show us that this beats the courts as a way of doing it. It sure beats us as a legislative body trying to figure these out case by case. So what we are doing is we are taking a mechanism that works; Mrs. Maloney, Mr. King and Mr. Nadler are saying let's take it and extend it into a logical way.

Now in recognition of the concern about the cost, this manager's amendment says, okay, let's put caps on the areas. I don't know if we are going to hit the caps or not. I don't know

if we won't as a result of the lawyers' fees, but the system seems to work.

Mr. Smith. Real quickly, as I pointed out a while ago, the amount is arbitrary. It is not based upon any recommendation by the special master, which my amendment will offer in just a moment.

And you say it is a logical extension. The problem is, it is based upon arbitrary decisions, and, in my judgment, we should rely upon what the special master recommend, not what Members of Congress arbitrarily --

Mr. Weiner. Hold on a second, with 30 additional seconds. Arbitrary is --

Mr. Smith. Where did the \$8.4 billion --

Mr. Weiner. Hold on for a second.

Mr. Smith. Where did it come from?

Mr. Weiner. Hold on for a second, for a second. I don't believe there should be a cap because I believe that is arbitrary. I agree with you. But the question is not -- the question is, are you questioning the arbitrariness of the special master?

Mr. Smith. No, absolutely not.

Mr. Weiner. Okay. So if the special master you think is reasoned, why have any cap at all?

Mr. Smith. You will find out. In my amendment we are going to do exactly what the special master recommended.

Mr. Weiner. No, I am going to ask you a different question.

Mr. Smith. He recommended the \$1.5 billion cap. He said that would be adequate. Why aren't you willing to follow his recommendation?

Mr. Weiner. No, but I am asking a different question. Why should you put on any cap if you trust the special master --

Mr. Smith. Because it is based upon a CBO estimate. It is not arbitrary. The \$8.4 billion is arbitrary. My cap is not.

Mr. Smith. Would the gentleman yield?

Mr. Weiner. I would just pose one question to the gentleman from Texas, and I would be glad to yield. If you believe that the special master should be trusted to make the decision, why have any cap at all? That is the question.

Mr. Smith. For several reasons. Because of the bill's language, and the opening up of so many different groups, and the lack of standards, there is going to be -- that were present in the first fund -- this is totally different. In addition to that again, the special master himself has made recommendations which we will vote upon momentarily.

Mr. Weiner. Somewhere between my no-cap and your \$1 billion cap is like \$8.4 billion.

I yield to the gentleman.

Mr. Watt. I just wanted to ask the gentleman a question because I didn't understand the question about the cap. I thought we were an authorizing committee. Does this money still have to be appropriated by somebody? We are not appropriating any money

here.

We are just saying it can't exceed this amount. So that is why most of us choose to sit on these authorizing committees that deal with the substance of issues, rather than the money of issues. Sometimes we don't choose. Maybe you all ought to go over and apply to be on the Appropriations Committee.

But all this bill does is authorize not more than -- we haven't spent a dime.

Mr. Nadler. Would the gentleman yield?

Mr. Watt. Yes.

Mr. Nadler. I just have to clarify. We don't need an appropriation because this is not an appropriation; this is an entitlement. We will need an offset under the PAYGO, and that will, the Ways and Means will have to deal with later.

Mr. Watt. I appreciate the gentleman clarifying it, because that helps me understand what we are talking about. But in any event, we are not setting amounts in this bill, I presume.

Mr. Nadler. The gentleman is quite correct.

Chairman Conyers. The Chair recognizes Steve King for his amendment.

Mr. King. Thank you, Mr. Chairman.

I have an amendment to the amendment at the desk. It is undesignated as to number.

Chairman Conyers. Clerk will report the amendment.

The Clerk. Amendment to amendment to the amendment to H.R.

847 offered by Mr. King of Iowa, page 3, line 19, strike 10 and insert 5.

Chairman Conyers. Wrong amendment.

The Clerk. Amendment to the manager's amendment to H.R. 847 offered by Mr. King of Iowa, page 3, strike line 21 through page 4, line 12.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Without objection, the gentleman is recognized in support of his amendment.

Mr. King. Thank you, Mr. Chairman.

My amendment to the manager's amendment just goes in and strikes the exceptions to the 10 percent cap that is there on attorney fees.

I would bring the committee's attention to the manager's amendment, line 21, it lays out the exceptions and essentially says that if a case has been filed prior to January 1, 2009, and if the special master believes that the attorney fees would be warranted to be increased above that 10 percent, it grants the special master the authority to raise that amount from 10 percent up to any amount that the special master may decide.

And so it says special master may, this is the manager's amendment, in his or her discretion award as reasonable compensation an amount greater than that allowed for in the 10 percent of paragraph 1. It says such fee award will be final, binding, and nonappealable. That is pretty broad license to grant those attorney fees.

And so what my amendment does is it strikes that exception section of the manager's amendment, and it would then put all attorney fees underneath a 10 percent cap that is defined within the underlying manager's amendment.

And the reason I do that is because I think that one thing to

point out is that all the attorney fees are -- excuse me, all the attorneys in the first Victims Compensation Fund did their work pro bono. And if the attorneys are still sincere about the victims that we have from the 9/11 calamity, then I would think their sentiment would be equal to what it was several years ago.

And I actually would encourage that they work pro bono. And I heard Mr. Weiner say that he believes that these fees won't actually go up to 10 percent in many cases. That is encouraging to me, but I would seek to eliminate the exception so that at least they do not go above 10 percent for a series of reasons, but that is the essential one.

And I want to point out also, while I do have the floor, Mr. Chairman --

Mr. Johnson. Mr. King, would you yield for just one question.

Mr. King. I see that the clock is moving at just the right speed, so I would yield.

Mr. Johnson. Does your amendment cap the amount of fees charged by defense lawyers?

Mr. King. My amendment doesn't cap, it just simply strikes the exceptions for the cap.

Mr. Johnson. Why would we penalize trial lawyers and not penalize the defense lawyers, who are the ones that are wracking up the \$800 to \$1,000-an-hour claim to deny these folks their claims. Why would we cut down on the number of attorneys who

would be financially able to handle these claims?

Mr. King. Reclaiming my time, Mr. Johnson. This is an \$8.4 billion fund that is no-fault claims. These applications, other than whatever works, has gotten us to this point, these applications can be handled in a relatively routine fashion. I believe there will be software written, if it is not written now, to process these claims in an efficient fashion.

And the fees should not be that -- and, it is actually -- I would prefer that they would be pro bono. And I am not seeking that we go there with this. But there were more dollars in those victims compensation funds, and those dollars then go to the victims. So this would be an amendment that would get more dollars in the pockets of the victims.

Mr. Johnson. Would the gentleman yield?

Mr. King. I would yield.

Mr. Johnson. Why not force the defense lawyers to work for free on this?

Mr. King. If you can get them to do that, Mr. Johnson. I haven't explored that thought, but I would be open to an amendment, and I would hope that we could delay this process until could you offer such a thing.

Mr. Gohmert. Would the gentleman yield?

Mr. King. I yield to the gentleman from Texas for a question.

Mr. Gohmert. A question, are the defense attorneys being

compensated under this fund?

Mr. King. Not to my knowledge.

Mr. Gohmert. That was my understanding.

Mr. Nadler. Would the gentleman yield?

Mr. King. I control the time, but I would yield to the gentleman from New York.

Mr. Nadler. Yes, the defense attorneys have been compensated, mostly by the taxpayers. The City of New York has spent over \$200 million so far in defense fees.

Mr. Gohmert. But it doesn't come out of this fund.

Would the gentleman yield? Do any defense fees come out of this fund?

Mr. Nadler. No, the defense fees that the city spent came out of the captive, which was set up by Congress, and which has been used, instead of for its proper use of compensating victims, it has been used to fight claims by victims to the tune of over \$200 million so far.

Mr. Gohmert. But none of this fund would be used for defense attorneys?

Mr. Nadler. No, no. No.

Mr. King. Reclaiming my time. I appreciate the dialogue.

And if I could take this back to the subject matter of this amendment. The bottom line for this amendment is it preserves more of this \$8.4 billion fund for victims, and it does cap attorneys' fees at 10 percent as it is in the underlying manager's

amendment, and I would just make the point that we had many attorneys that work pro bono in order to help get those funds for the first Victims Compensation Fund recipients. And so this moves us closer to that, and I understand that there was a significant amount of work that was put into this in the beginning to build these cases, and we are going to measure now whether that was done for altruistic reasons or whether, perhaps, that there might have been some other motives that went along with it.

But I would ask that we recognize at least a level of altruism and say, you have done this for a good cause and a cap on the underlying manager's amendment is 10 percent. Let's eliminate the exception to that that gives the special master all of that authority to award whatever percentage of attorney fees he may decide to do. And there isn't a limitation on it being beyond even the amount of that that goes to the victims.

Now, I trust Mr. -- our special master as well. And he has impressed me with this. And I would point out also that our witnesses all talked about pro bono and that the cap we have, the cap we have in this bill is pretty high at 10 percent. But this brings it down to 10 for everybody and it doesn't set up a special fund that helps attorneys make a lot of money. It holds it for the victims.

And so that is my argument, and I would urge adoption of this amendment.

And I would yield back the balance of my time.

Chairman Conyers. Thank you. The Chair recognizes Jerry Nadler and then Zoe Lofgren.

Mr. Nadler. Thank you, Mr. Chairman. I rise in opposition to the amendment.

Mr. Chairman, the original VCF, which was passed in a Republican-controlled Congress in 2001 contained no cap on attorneys' fees. Due to Republican concerns about attorneys' fees, this bill contains a 10 percent cap, in most circumstances.

Now, with one exception, all the federally funded compensation schemes passed by Congress in the last 20 years have had a general 10 percent cap.

The committee's longstanding rules of procedure for private claims bills, which also caps attorney fees at 10 percent, has an exception where extraordinary services have been rendered.

We believe that the special master should have the discretion to award a higher percentage in previously filed cases where the attorney has done an extraordinary amount of work. And because we are talking now about passing this bill now 8 years after the fact, and tremendous work has been done by attorneys in the courts for these plaintiffs, some of them will need or may need, up to the discretion of the special counsel, of the referee, more than 10 percent.

This additional discretionary power of the special master is because of the unique circumstances; unlike the original VCF or other compensation schemes, this occurs after substantial

litigation has taken place. Indeed, many of today's spending cases have been in litigation already for more than 6 years.

Plaintiffs' attorneys have incurred tremendous costs and expenses. And it bears noting, as I said, that the City of New York and contractors have already spent more than \$200 million in Federal funds on defense fees fighting the plaintiffs' attorneys.

This money was provided for various reasons. Let me give you one example of the work already done by one firm which represents 367 clients. The firm has already filed over 600 initial and supplemental complaints with detailed information about each claim in the Southern District Court; commenced over 230 New York State court proceedings; filed countless briefs and legal memoranda; argued two separate appeals to the Second Circuit; taken nearly 100 depositions, et cetera, et cetera, et cetera.

Because of the 6 years of so far uncompensated work, it may be necessary to give -- it is necessary to give the special master discretionary provision to take these cost and expenses into account when awarding attorneys' fees. This authority would only be available for cases filed prior to the start this Congress and would require a showing by the plaintiffs attorneys that an award of 10 percent would not provide adequate compensation for services rendered in connection with these claims because of the substantial amount of legal work provided on behalf of the claimant before this bill passes.

And any award of attorneys' fees above 10 percent, obviously,

would not be automatic, aside from requiring a showing from the attorney, it would be entirely at the discretion of the special master, whose main concern is the provision of justice to 9/11 victims.

We expect that departures from the 10 percent cap would happen only in exceptional circumstances.

I am told that, in the original VCF, where there was no cap at all, 10 percent was exceeded in less than -- in fewer than 5 cases. I, therefore, oppose the amendment, and I would yield.

Mr. King. Would the gentleman yield --

Ms. Lofgren. If the gentleman would yield. I just want to reemphasize how we ended up with this manager's amendment.

I know how much the gentleman from Iowa honors the precedents of the subcommittee in the private bill arena, and I think that would include the claims element of the Immigration and Claims Subcommittee, where he serves as ranking member.

The committee's rules, the rules of procedure for private claims bills, caps attorney fees at 10 percent and provides for an exception where extraordinary services have been rendered.

So what this manager's amendment does is take the rules and the precedents that guide the committee and apply them to this bill. And I think that that should be the end of the discussion here. This is the way we always do it, and it is the way we should do it in this case.

And I thank the gentleman from New York for yielding.

Mr. King. Would the gentlewoman yield?

Mr. Nadler. Yes, sir.

Mr. King. I thank the gentleman from New York and the gentlelady from California, but in the previous statement made by the gentleman from New York about a Republican-passed legislation that has to deal with victims compensation, can the gentleman point out a case where there were exceptions for attorney fees that went above any caps that were established? And I know the gentleman said that there were, in 3 percent of the cases, there were exceptional fees.

Mr. Nadler. Excuse me, I said fewer than 5 cases; I didn't say 3 percent.

Mr. King. Okay. Thanks for correcting me on that. That would be a number probably pretty close.

But can the gentleman answer the question as to whether Republicans have passed any legislation that provided for exceptions to contingency fees that were capped?

Mr. Nadler. The first 9/11 bill, as I said, had no cap whatsoever. That is the obvious, that is this bill that we are trying to reopen. It had no cap whatsoever.

By this manager's amendment, we are putting in the first cap.

Mr. King. And if the gentleman would further yield, is the gentleman from New York aware of what the top percentage of attorney fees was, and we are dealing with most of this work being done pro bono?

Mr. Nadler. Well, I don't know what the top was in any given case, but as I said, a lot of it was done pro bono. Most of it was done under the 10 percent; fewer than 5 cases were over 10 percent -- although I don't know what those figures were. But again remember the distinction was those cases, except for those five, I assume for some reason, which I am not familiar with the details, were pretty straightforward.

They were, someone was injured and you had to deal with it, and it was done pretty quickly within 2 years. Here we are dealing with cases, many of which have been pending for 6 years while over \$200 million has been spent of taxpayers' money opposing them. So it may be, and I don't know, and that is why we are giving discretion to the special master that a very small number will be legitimate and fair and to exceed 10 percent.

Mr. King. Would the gentleman further yield?

Mr. Nadler. Yes.

Mr. King. I thank the gentleman.

Would the gentleman agree that the amounts that would be paid in excess of the 10 percent that is in the manager's amendment would come from the fund that would otherwise go to victims?

Mr. Nadler. Yes, it would.

Mr. King. I thank the gentleman, and I appreciate his yielding.

Mr. Nadler. I yield back.

Chairman Conyers. Let's see. We go to this side.

Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, I support the gentleman from Iowa's amendment. And some of the comments we heard about those cases, although there are not many when the amount may actually go above 10 percent, is yet another reason to support this amendment.

I want to go back to the letter that I quoted from a few minutes ago that was written to Congress by the Association of Trial Lawyers of America.

This is a direct quote from the letter, it says, ATLA believes that 100 percent of the compensation from the fund should go directly to these families.

Now, why don't we do what the trial lawyers themselves said they wanted us to do if they really meant what they said? Admittedly, 5 percent is more than nothing, but it is a step in the right direction. And this amendment, if it passes, will actually mean more money in the pockets of the families, and that should be our goal.

The other point to make here is that the reason we can either zero out or reduce to 5 percent the attorneys' fees is that this is not an adversarial type of situation. We have a special master who is going to make the determination, and the determination will be made on the basis of health records, on the basis of a medical condition, not on the basis of some legal theory, and that is why you don't necessarily have to have lawyers involved. And, in

fact, in most cases they should not be involved.

Mr. Nadler. Would the gentleman yield?

Mr. Smith. Let me make my final point, and then I will.

Lastly, as I mentioned a while ago, when we had the hearing on this, there were six witnesses. Most were the majority witnesses. And none of them, none of the six opposed reducing the attorneys' fees to 5 percent. So we can go along with the witnesses. We can go along with the trial lawyers themselves, or at least what they wrote Congress. We can go along with getting more money to the families themselves.

All of that will be accomplished by supporting this amendment.

I yield to the gentleman from New York.

Mr. Nadler. Thank you.

I would again point out. I could read, but I won't bother, the list of bills that we have passed compensating people for injuries from atmospheric nuclear testing, for being interned by North Vietnam, being burned while working for the National Park Service and various others, and all of which we have allowed attorneys fees at 10 percent.

And the rules of the committee, where we allow attorneys' fees for claims cases at 10 percent and extraordinary -- and above that for extraordinary cases at discretion. But the key point I want to make bears repeating.

The gentleman said, the gentleman from Texas said that these

are straightforward cases with medical, et cetera, and hopefully they will be from this point on. But you can't ignore the 6 years that have happened until now where attorneys were representing the victims in adversary proceedings and finally -- and incurred tremendous expenses for that.

And if we don't provide for attorneys' fees that are adequate, next time, God forbid, we have a disaster, you are likely to find that it is very difficult to find attorneys who will represent the victims. And for the exact -- it is exactly the same reason that we are providing, as well as fundamental justice, that we are providing indemnity here for the contractors because we don't want a situation where, next time there is a national disaster, contractors say, I can't get involved.

Mr. Smith. Let me reclaim my time. A couple of points to address the comments by the gentleman from New York.

First of all, there are going to be instances where you want to have an attorney involved. I hope that they are rare. Unfortunately, you have a situation where many attorneys will, sort of, shall we say impose themselves on others or make others feel that attorneys are necessary when that might not be the case.

In any case, when you are still talking about attorneys getting close to \$1 billion under the underlying manager's amendment, that should be more than adequate compensation. In fact, as I said, I think it is too much and should not be allowed.

Lastly, how do you respond to the trial lawyers themselves

saying that 100 percent of the funds ought to go to these families? We talked about pro bono today. Most attorneys attribute or hopefully contribute 10 percent of their time to pro bono activities. The trial lawyers themselves have said, they believe 100 percent of the compensation should go to families. Why do we want to do something other than the lawyers themselves want to do. Why do we want to take more money away from their families and --

Mr. Nadler. Would the gentleman yield?

Mr. Smith. And say they shouldn't get it.

I will yield to the gentleman from New York.

Mr. Nadler. Well, again, it is a cap. No one is saying that attorneys should get 10 percent. Many will take pro bono. Many will take 2 percent or 3 or whatever. This caps it at 10 percent, except in extraordinary cases. And the answer is, ideally, ideally, everybody should do everything as a volunteer in a case like this, and 100 percent should go to the victims.

But, I don't think you can expect people who have worked for 6 years and have laid out substantial sums of money, which some attorneys have done, to be uncompensated for that.

Mr. Smith. Reclaiming my time, do you think that the Trial Lawyers Association that wrote that letter did not mean what they said? Is there an asterisk there?

Mr. Watt. Will the gentleman yield? I want to request a copy of the letter that the gentleman is referring to.

Mr. Smith. Okay. We will get you a copy of the letter.

Mr. Watt. Can I see it right now? I mean, you obviously are quoting from a letter that nobody has seen other than you.

Mr. Smith. I think we will be able to get it to you momentarily. I am told it is in the Congressional Record, but we will still provide you with a copy, the gentleman from North Carolina.

Mr. Johnson. Would the gentleman yield?

Mr. Smith. Yes, I will be happy to yield to the gentleman.

Mr. Johnson. Thank you.

I believe that the trial lawyers wanted to step up and do what they could do to assist in this situation pro bono. And so, but they had no way of knowing at the outset how much fight these claimants would have in trying to establish the claim.

And, so, therefore, that changed, and simple as that, conditions change.

Chairman Conyers. Time has expired.

Zoe Lofgren.

Ms. Lofgren. Mr. Chairman, I just wanted to make a couple of points on this amendment.

First, as I mentioned when Mr. Nadler yielded to me, the rules of the committee governing private claims, which is basically what this is, say that attorneys' fees are capped at 10 percent and that there is an exception where extraordinary services have been rendered.

I would like to note that those committee rules were unanimously adopted by every member of the subcommittee, including Mr. King and Mr. Smith. We all adopted the rules that are now being applied to this claims bill. So I think that should carry some weight, number one.

Number two, when we adopted the Victims Compensation Fund without any caps at all in the days following the attack, we did not know that there would be thousands of individuals whose health was so severely impaired when they volunteered at the site.

And as a consequence of that, we did not provide for that. And as a consequence of that, we have had some 11,000 lawsuits have been filed, because that was the only way to deal with this. We didn't intend to do a wrong thing, but that is how this unfolded.

And so now we have got a situation where the fund that we set up for the City of New York to pay damages has, instead, spent \$200 million defending damage claims. I mean, \$200 million defending damage claims, and for example, one of the law firms that is representing victims in New York has commenced over 230 New York State court proceedings.

They have taken over 100 depositions of State and city and Federal personnel. They have defended 120 plaintiffs in over 50 hours of hearings. They have provided interrogatories, detailed ones, for 340 cases. They have obtained and disclosed in excess of 2,200 sets of medical records. They have received

6.5 million documents in discovery. And so that is a lot of work. That is a lot of work that has been incurred. They are proceeding for the victims, and New York spent \$200 million defending.

And that is why our rules, that we are now trying to apply to this case, allow for exceptions in extraordinary circumstances. I don't know whether this law firm will fit the extraordinary circumstances, but that is why our rules exist as they do.

I think it is important, especially in a case such as this, which tugs at us, as patriots and as human beings, to see these heroes here and what they have gone through to try and have the regular order imposed here, and that is what we are doing in this case.

I would implore my colleagues on the other side to not try to change the rules in the middle of this situation. I think that does great damage to what I hoped and believed would be a bipartisan effort, certainly Mr. King, who is sitting in the front row has participated and Mr. Lungren, and I would hope others.

So I would just plead for the regular order here. And I would yield to my colleague, Ms. Jackson Lee, for comments that she may have.

Chairman Conyers. I am going to recognize the gentlewoman from Houston.

Ms. Lofgren. Then I would yield back, Mr. Chairman.

Chairman Conyers. Sheila Jackson Lee.

Ms. Jackson Lee. Let me thank the chairman very much and

allow me to thank the proponents of the legislation, Mr. King, Mr. Nadler, Mrs. Maloney and Mr. McMahon.

I think it is important, and I appreciate my dear friend from Iowa, but allow me to reflect on a very sad memory lane. I don't want to exaggerate, but my recollection is that some of us were able to go to Ground Zero even as the area was still smouldering. It was a stark and devastating experience.

And on this day, in 2009, we may have faded memories; we may be able to battle between lawyers and discuss whether we should cap fees at 5 percent or not have a 10 percent cap, as the manager's amendment and the bipartisan effort has suggested. But I think it is important for my good friend from Iowa to realize what we are talking about here.

Over 3,000 lives lost and this legislation simply allows those whose toxic conditions were not discovered at the time of the VCF to have their day of reckoning after the psychological, emotional, and physical damage has already been done, and it may be continuing.

And for me, the experience of going to Ground Zero will never, ever be carved out of my psyche.

And anyone that was involved or watched over the couple of days of bodies being carried out, or family members being given bone parts or family members never being given the remains of their loved one. For those who survived, who had to go and clean the debris, who were moving around even some of the smouldering

debris that was still left, if they were there as early as some of us expected that they were, this is a reasonable response to the thousands and thousands of dollars of salaries that those of the VCF have received, the millions of dollars they have utilized to fight the cases of these victims.

And I would argue with my friend from Iowa, who is raising this amendment and beginning to join with my other friend from Texas about what trial lawyers have written and not written, these individuals may not use a lawyer. Obviously, this is a difficult challenge.

But as Mr. Nadler said, if this was a matter of going and presenting the details of your medical care, if you could testify before this board, this authority, and simply say, I am sick, I would not see any reason to even engage in this structure. But it is already documented that millions of dollars have gone to fight the victims who now live. And the memory of those who are in charge of this fund is a faded memory, because apparently they didn't walk among the ashes. They didn't go to Ground Zero. They didn't read the newspaper articles. They haven't seen the hardship. They don't know the conditions of these people.

So I think the manager's amendment that has bipartisan support and has a simple provision that says if the special master views the catastrophic needs of this particular case are so high; the lawyers are doing so much, the fight is so strong, we can consider raising the cap on the attorneys' fees, only a fair

balance to what these individuals have gone through.

Might I say, Mr. Chairman, as I understand it, the doors were closed on these individuals. So those who are sitting here today, even though their disease might have come about, some may have filed, the deadline closed on December 22, 2003. Today is 2009, July 29. They have been waiting 6 years. They have been getting sicker. Their family members are getting worse in terms of their conditions, their economic conditions. And lo and behold, we are in such a bad time right now.

To deny these people the opportunity for relief and to have lawyers that would work, I believe, would put them in jeopardy of their lives.

And so as they sit here today, I want them to know that my memory has not faded. I believe this is an amendment that will undermine the very constructive construct that the manager's amendment brings about. But, more importantly, let us get our memory clocks better, dial it back to 9/11/01, watch these people go forward to do their jobs and look at them now 6 years later suffering without relief -- and we have the opportunity to do today.

And I would ask my colleagues to consider that as we look at the construct that is fair and balanced and will get us to where we need.

With that, Mr. Chairman, I yield back.

Chairman Conyers. Thank you. Before we go to a vote, we are

going to recognize Greg Harper of Mississippi and then Mr. Quigley briefly, and then we are going to vote on the King amendment.

The gentleman from Mississippi, Gregg Harper .

Mr. Harper. Mr. Chairman, I would yield my time to Mr. King.

Chairman Conyers. All right.

Mr. King. I thank the gentleman from Mississippi. I appreciate him seeking to be recognized to strike the last word and yielding his time to me.

I think it is important that I respond to a couple of things. One is, you know, the very idea that people are going to die if we don't pay attorneys 40 percent on this. That is going to be taken care of -- that was a statement of the gentlelady from Texas, and this is going to be -- we are sitting in a 10 percent contingency fee, and we are dealing with a history of pro bono attorney fees.

And so when you look at this and you think that attorney fees could go to a billion dollars on this, and easily it could, if you raise the 10 percent. I just look at a number that was presented by Mr. Nadler of 367 clients. I did write that number down. It is an accurate one.

If those clients each ended up a claim of \$1 million that would be \$367 million going to victims. However, of that, if it is 10 percent at the cap that is in the underlying manager's amendment, the attorney fees would be \$36.7 million. If it is 40 percent, the attorneys' fees would be \$146.8 million. So, short math, \$90 million more for the victims if my amendment

passes --

Mr. Maffei. Would the gentleman from Iowa yield, please?

Mr. King. Who is asking?

Mr. Maffei. Mr. Maffei of New York.

Mr. King. I would yield to the gentleman from New York.

Mr. Maffei. I do have one question. Would you also support similar amendments that would limit health insurance company administrative fees, or pharmaceutical company prices for medications? I mean, those would also take money away from the compensation fund.

Mr. King. Reclaiming my time. That is an interesting question and is something that bears dialogue. But within the text of this amendment, I would prefer not to respond and yield to the gentleman from Texas.

Mr. Smith. I would just like to make it clear those are entirely different situations. And here, the case at hand, we are talking about a special master that will oftentimes take the place of the judge, take place of attorneys.

The attorneys will have a lot less if they have anything to do at all. And in instances where the gentleman, where the gentleman has posited, those are not instances where there is a special master. Those are adversarial situations and very unlike the one at hand.

I will yield back.

Mr. King. Reclaiming, and I appreciate the gentleman from

Texas and New York for raising their points. And within the other context, I would like to go into that debate. I am be very interested in it.

But I would I want to make this point that this amendment that strikes the exceptions to the 10 percent cap on attorneys' fees necessarily gets more dollars into the hands of the victims. The equation can only work that way unless the exceptions that are written into the underlying manager's amendment has no value and would never be utilized. That is the only scenario by which more dollars --

Mr. Nadler. Would the gentleman yield in a moment?

Mr. King. In a moment. I will make my point. But it is the only scenario by which more money would not go to the victims if my amendment passes.

And I make that point again that, if it is 367 clients, each with a million dollars in claims; if it is 10 percent, 36.7 million go to the attorneys' fees, if it is 40 percent, it is \$146.8 million; that means, under my amendment, \$90 million more dollars go to victims under that simple equation.

And I must also respond to the statements that have twice been made by the gentlelady from California and I didn't adequately respond to that on the question as to, if something is written in the subcommittee rules as to attorney fees at 10 percent and exceptions to that, as the gentlelady from California has noted on a couple of occasions, are we, as members

of this committee, bound by a rule written that was passed as a -- essentially a general guideline for the activities of the subcommittee? When we come before this subcommittee and we are talking about specific issues of anomaly cases, hopefully anomaly cases, I think this committee has the responsibility to review it from a broad perspective. And we should not be bound by a general rule that happened to have been passed before the subcommittee of the broader full Committee of the Judiciary.

That does make my point, and I will yield to whomever has the seniority.

Mr. Nadler, if it is fine, I yield to the gentlewoman from California.

Ms. Lofgren. I just wanted to respond.

I mean, if we believe in the rule of law, we apply the rules. And the rules that we adopted unanimously will lay to claims, the claims calendar. And this is part of the claims calendar, and they are always unusual cases. I mean, that is why they end up in the claims jurisdiction. They are anomalies where we need to compensate people.

And so, yes, I think if we believe in the rule of law, we apply the rules that we unanimously adopted to the claim legislation before us, as was intended when we adopted the rules, and I thank the gentleman.

Mr. King. Reclaiming, and I thank the gentlelady. And I would just point out that the rule is not, in my view, the law.

If we pass something here and it goes to the President's desk, it will be a law.

So, however we might differ on that guideline of the committee, that is the subcommittee; this is the full Committee of the House Judiciary Committee, and I think we have a responsibility to review our rules, too. And we could change these rules along the way. If they were an impediment for us to doing the right thing, we could amend the rules of the subcommittee, and we could do so right here. I yield back to the chairman, and I thank him for his indulgence on my amendment.

Chairman Conyers. Thank you.

Mike Quigley from Chicago, Illinois, to close out our discussion.

Mr. Quigley. Thank you, Mr. Chairman.

I want to thank the sponsors for their efforts on this matter.

Listening to these discussions this morning, I am struck with what Shakespeare wrote: First, let's kill the lawyers.

I would remind people he was being facetious.

I get it. It is tough to disagree with what we are trying to do here today, so let's create a tangent. And I would just suggest that it is disingenuous in the manner in which it is done and the manner -- in these circumstances.

I wanted an opportunity, though, to thank those in the room and others who served on 9/11 in the days, weeks, months and even

years afterwards. I was struck with one image that day more than any others. Obviously, the exact circumstances of that day are the most obvious. But, for me, it was the photos of people leaving Ground Zero walking away, obviously in shock, covered with ash. At the exact same time, they were being passed in the street by people going back into the carnage, and for that, and for all of those who served afterwards, my deepest thanks. Take care.

Mr. Smith. Would the gentleman from Illinois yield briefly?

Mr. Quigley. Mr. Chairman, I am completed.

I yield back.

Mr. Smith. Mr. Chairman, I ask unanimous consent for an additional 15 seconds --

Mr. Watt. Mr. Chairman, I ask to be recognized so that I can yield to the gentleman.

Chairman Conyers. The gentleman is recognized.

Mr. Watt. I move to strike the last word and yield to the gentleman.

Mr. Smith. I thank the gentleman from North Carolina, Mr. Watt.

I was simply going to say, after what I have said, you might find it surprising that I would come down on the side of the lawyers. But if you look at that Shakespeare quote in context, Shakespeare is actually saying, we will have chaos in our society if we don't have lawyers.

And so the gentleman can use that as he wishes, and I will

yield back.

Mr. Quigley. If I might respond, Mr. Chairman.

Mr. Watt. I yield to the gentleman.

Mr. Quigley. I said Mr. Shakespeare was being facetious, so I got the point.

Chairman Conyers. We are now going to vote on the Steve King amendment. All in favor of the King amendment say aye.

All those opposed say no.

Noes have it.

The amendment is unsuccessful.

Are there any further amendments?

Mr. Smith has an amendment.

Mr. Smith. Mr. Smith, I have an amendment at the desk.

Chairman Conyers. This is on the manager's amendment.

Mr. Smith. I will withdraw that amendment.

Chairman Conyers. The amendment is withdrawn.

We will now vote on the manager's amendment. All in favor say aye. All opposed say no.

Ayes have it.

And the amendment is successful.

Chairman Conyers. Now I recognize Mr. Smith for a further amendment.

Mr. Smith. Mr. Chairman, I have an amendment at the desk.

Chairman Conyers. Clerk will report.

The Clerk. Amendment to H.R. 847, offered by Mr. Smith.

Mr. Smith. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman Conyers. Without objection, and the gentleman is recognized in support of his amendment.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, let me say to my colleagues that I hope that this is as straightforward an amendment as we will see. It is based entirely on the recommendations of the special master, and it is based entirely on a figure that is recommended by the special master as well, as well as the Congressional Budget Office.

Ken Feinberg was the special master who administered the September 11 Victims Compensation Fund that Congress created in the weeks following the 9/11 terrorist attacks. Mr. Feinberg has been praised in every quarter by Members on both sides of the aisle for his fair administration of the original 9/11 fund. Mr. Feinberg has said that, in hindsight, it would be unfair to fail to compensate first responders to the 9/11 attacks who were unable to apply to the 9/11 fund solely because their injuries did not manifest themselves until after December 23, 2003, determination date of the fund.

I agree with him, and I hope my colleagues will as well.

However, H.R. 847, as amended, would go well beyond correcting that injustice and, in doing so, would create injustices of its own that threaten to overturn well-settled and fair distributions of our limited financial sources.

There is a better way. Special Master Ken Feinberg has recommended that the fund be reopened for the purpose of

compensating first responders who were unable to apply to the 9/11 fund solely because their injuries did not appear in time to be eligible for the original fund. That approach, which is the approach taken by this amendment, would serve the interest of justice regarding those first responders.

But it would also serve the interest of fairness to others and to future generations who may draw on the Nation's limited financial resources in time of need. Special Master Feinberg has testified before this committee that, "any attempt to reenact and extend the 9/11 fund should be initiated with the understanding that there would be no changes in the rules and regulations governing the original fund, that the new law would simply be one-line reaffirmation of the law, which established the original 9/11 fund."

He has also said that any extension of the fund only needs to be for a limited time period and has suggested a 5-year reopening. With regard to the 22-year reopening of the fund contained in H.R. 477, he has said, "no latent claims need such an extended date. "

My amendment encompasses Special Master Feinberg's recommendation. It would reopen on its original terms the 9/11 fund for a limited 5-year period to compensate those whose injuries did not become apparent until the 9/11 fund closed in December 2001.

This amendment, based upon the Congressional Budget Office's cost estimate, which is very generous, caps payouts under the fund

at \$5.5 billion. If Mr. Weiner is in the room, and I see that he is, perhaps this is the middle ground that he alluded to a few minutes ago.

This amendment, Mr. Chairman, would correct the injustice of not compensating those first responders whose injuries did not appear until after the closing date and would also do so in a generous manner that is more responsible than the approach taken by the bill.

It does not rewrite the terms of the original fund, and it ensures that the fund is not left open for an inexplicably long 22-year period.

I will yield back, Mr. Chairman.

Chairman Conyers. Thank you.

Jerry Nadler.

Mr. Nadler. Thank you, Mr. Chairman.

Mr. Chairman, I oppose this amendment.

It would gut the purpose of the bill. Besides the obvious limitation to 5 years so that anyone who gets sick after 5 years whose symptoms become apparent, I should say, after 5 years, which is many, unfortunately, would not be eligible for any kind of compensation, and that is simply morally wrong.

In addition to which, it caps it at \$5.5 billion, and there is no support for that figure. The \$8.4 billion figure, which we didn't go into, comes from CBO, and we can go into that in detail if necessary.

But, secondly, it makes, and by eliminating a number of pages of the bill and substituting only a couple of paragraphs, it eliminates a number of key changes. For example, it would make ineligible for compensation under this bill anyone who got sick, any of the first responders that got sick as a result of working on debris removal.

Now, that debris removal, which is defined on page 101 of the bill, but which definition would be removed by this amendment, defines -- says debris removal means rescue and recovery, removal of debris, clean up, remediation response during the immediate aftermath of the terrorist-related aircraft crashes of September 11 with respect to a crash site, and goes into other things.

The point is, so someone who worked on the barge, for instance, the barge taking the toxic material away from the World Trade Center site to dumping in Staten Island and who got sick as a result of that would not be eligible. Someone who worked at the fresh kills landfill where all this toxic stuff was taken, and they worked there for months depositing the toxic landfill and got sick as a result of that would not be eligible.

So this cuts down on the number of eligible people so that many of the heroes who worked for months on removing the debris, breathing in the toxic fumes -- unless they happened to work right near the World Trade Center, a couple of blocks -- if they worked on the barge, they worked on the other means of removal, they

worked at fresh kills -- they worked, for that matter, cleaning up toxic debris at the crash site in Pennsylvania where that plane crashed, would not be eligible. There is no reason for that.

This also says the immediate aftermath. The bill says 2 years. This comes back to about 2 weeks.

In other words, people who arrived not within 2 weeks of September 11th, but came down 2 and a half weeks later and worked on the site for months and breathed in the toxic stuff that was unfortunately there for months, and, therefore, got sick, would not be eligible.

This is an entirely destructive, and I would add mean-spirited amendment, and I urge its sound rejection.

Mr. Weiner. Would the gentleman yield the last few moments to me?

Mr. Nadler. Yes, I would yield.

Mr. Weiner. I guess I am puzzled, and again, I think that the gentleman from Texas is sincere. But I am not quite sure which direction we are going.

Are we going to the viewpoint that we should let someone besides us decide whether people are sick from September 11, or should we arbitrarily set who is and who isn't?

We learned one thing from the creation of the Victims Compensation Fund that I don't think anyone can dispute at this point, and that is that 2 years was wrong, that there were people who were sick and dying well beyond that.

What is magical about 5 years? The reason that a time limit was put in at all was out of trying to accommodate some concerns about open-endedness. But I, frankly, don't understand what you believe about someone who becomes sick in 5 years and 1 day. How are they less -- why are they less entitled to projection? And it just doesn't make any sense.

Mr. Nadler. Reclaiming my time, first of all, let me say, in the excitement of the moment, I shouldn't have said mean-spirited amendment. I don't believe it is mean-spirited, but it is wrong. It is wrong, and it is destructive, and it will hurt many, many people.

And I would point out, because there is a little confusion here, there are two time limits in the bill. The original bill, from 2011, said that you had to work on the pile -- you had to start working on the pile there within 2 weeks. This bill says you had to start working there within 2 years.

And as we know, many people came in a month or 2 months and or 3 months or 5 months or a year later when the site was still toxic, worked there, and got sick subsequently. So that is one time limit which this amendment would bring back to 2 weeks for no reason at all.

The other time limit is, how long can this fund be open for? In other words, for how long, if you discover that you are sick as a result of your work at the pile, and you discover this 6 years later, 8 years later, 10 years later, how long should this remain

open? And the amendment says only 5 years. We say, this bill says up to 20 years, because we are told by medical authorities that for cancers, for instance, they will not -- the latency period for cancers are 15, 16 and 17 years. So we expect, unfortunately, we know that we are seeing increasing numbers of people getting sick with respiratory illnesses now.

We expect, we hope to God it doesn't happen, but we expect that 5 and 6 years and 7 years from now, we are going to start seeing cancer cases as a result of this. We don't want to exclude that.

This amendment would exclude any, all of that, and it would exclude all people who got sick even a year later if they didn't work on the pile within 2 weeks, and none of that makes any sense.

Ms. Lofgren. Would the gentleman yield?

Mr. Nadler. I would be happy to yield.

Ms. Lofgren. I would just -- I agree with what the gentleman has said and would note, in working with Mr. Lungren in particular and dealing with the issues, the legitimate issues raised by the minority, we chose to cap the amount of the fund rather than the life of the fund so that we would not disadvantage individuals who got sick in year 6 or year 7.

And I think that is the appropriate way to make sure that the costs are controlled, not to arbitrarily eliminate someone who could develop lung cancer in the year 6. And I thank the gentleman for yielding.

RPTS JURA

DCMN HOFSTAD

[12:07 p.m.]

Mr. Nadler. And I thank the gentlelady. And she is quite correct; you control the cost by putting a limit on the costs, not an arbitrary limit on the length at 5 years.

I yield back.

Mr. Coble. Mr. Chairman?

Chairman Conyers. Howard Coble.

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

Chairman Conyers. The gentlemen is recognized.

Mr. Coble. And I move yield to the distinguished ranking member.

Mr. Smith. I thank the gentleman from North Carolina for yielding.

Let me respond to some of the things that have been said. But, at the outset, let me say that I don't take any of those adjectives personally. Adjectives were used where "this is destructive," "this is wrong." The adjective "mean-spirited" was withdrawn, which is appreciated. The reason I don't take all those personally is because they were addressed not toward me but toward the special master, Ken Feinberg, because these are his ideas and his suggestions, not mine.

In regard to the situation where there are instances that supposedly might not be covered under my amendment, that is up to

the special master. They can make that determination whether something is covered or not. And the same thing goes for whether there are additional cases that might be determined, cancer and so forth, in the coming years. Congress can always reopen the fund. But the 22-year extension simply cannot be justified.

The 5 years that is contained in the amendment really allows us 14 years. You have the 9 years from 9/11 to now, or thereabouts, plus another 5-year extension. And, again, I pose the question, who do we trust more, who should the American people trust more between the special master and our arbitrary notions as to what is needed or not needed? The special master has said that this time period is more than adequate to address all the medical claims that might come up, in his opinion. And it does give us a total of those 14 years. Again, let's trust the special master. Let's trust some of the witnesses that we had at our hearing, not any arbitrary notions that we might come up with.

Lastly, the gentleman said that the \$5.5 million was out of thin air. At least, I believe he said it. That \$5.5 million figure is actually from the Congressional Budget Office if we used an expanded group of individuals who might have legitimate claims and extend it out for the other 5 years that is in this amendment itself.

So that is the purpose of the amendment, to track what the special master recommends. And I realize that might be an affront to some Members of Congress who think they have better ideas, but

I trust the special master and I think the American people would, as well.

As far as the amount goes, again, not an arbitrary figure, like the 8.5. This is a figure that the Congressional Budget Office has determined would be adequate and sufficient for the next 5 years. That is the point of the amendment, to come up with a commonsense solution based upon real facts.

Carl Sagan had a quote many years ago, the famous astronomer, that, "Better the hard truth than the comforting fantasy." Let's get to the hard truth today. Let's get to the real facts, the real figures, do what is right for these families who have legitimate claims. But let's not go beyond that to where we are costing the taxpayers unnecessary billions of dollars.

Mr. Coble. I will reclaim and yield back.

Chairman Conyers. Ladies and gentlemen, there is an emergency meeting called by the Energy and Commerce Committee. We are now running very much out of time.

We call now the vote on the Smith amendment.

All in favor, say, "Aye."

All opposed, say, "No."

The noes have it.

Mr. Smith. Mr. Chairman, I would like a recorded vote.

Chairman Conyers. Wonderful. A recorded vote is required.

The Clerk. Mr. Conyers?

Chairman Conyers. No.

The Clerk. Mr. Conyers votes no. Mr. Berman?

[No response.]

The Clerk. Mr. Boucher?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no. Mr. Scott?

Mr. Scott. No.

The Clerk. Mr. Scott votes no. Mr. Watt?

Mr. Watt. No.

The Clerk. Mr. Watt votes no. Ms. Lofgren?

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no. Ms. Jackson Lee?

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no. Ms. Waters?

[No response.]

The Clerk. Mr. Delahunt?

[No response.]

The Clerk. Mr. Wexler?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no. Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no. Mr. Pierluisi?

[No response.]

The Clerk. Mr. Quigley?

Mr. Quigley. No.

The Clerk. Mr. Quigley votes no. Mr. Gutierrez?

[No response.]

The Clerk. Mr. Sherman?

[No response.]

The Clerk. Ms. Baldwin?

Ms. Baldwin. No.

The Clerk. Ms. Baldwin votes no. Mr. Gonzalez?

Mr. Gonzalez. No.

The Clerk. Mr. Gonzalez votes no. Mr. Weiner?

Mr. Weiner. No.

The Clerk. Mr. Weiner votes no. Mr. Schiff?

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no. Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no. Ms. Wasserman Schultz?

[No response.]

The Clerk. Mr. Maffei?

[No response.]

The Clerk. Mr. Smith?

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Sensenbrenner?

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye. Mr. Coble?

Mr. Coble. Aye.

The Clerk. Mr. Coble votes aye. Mr. Gallegly?

[No response.]

The Clerk. Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no. Mr. Issa?

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye. Mr. Forbes?

Mr. Forbes. Aye.

The Clerk. Mr. Forbes votes aye. Mr. King?

Mr. King. Aye.

The Clerk. Mr. King votes aye. Mr. Franks?

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye. Mr. Gohmert?

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye. Mr. Jordan?

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes. Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Rooney?

Mr. Rooney. No.

The Clerk. Mr. Rooney votes no. Mr. Harper?

[No response.]

Chairman Conyers. Okay. The clerk will report -- wait a minute. Mr. Pierluisi?

The Clerk. Mr. Pierluisi is not recorded.

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

Chairman Conyers. Mr. Sherman?

The Clerk. Mr. Sherman is not recorded.

Mr. Sherman. No.

The Clerk. Mr. Sherman votes no.

Chairman Conyers. Mr. Wexler?

Mr. Wexler. No.

The Clerk. Mr. Wexler votes no.

Chairman Conyers. Mr. Maffei?

Mr. Maffei. No.

The Clerk. Mr. Maffei votes no.

Chairman Conyers. Anyone else?

The clerk will report.

The Clerk. Mr. Chairman, nine members voted aye, 21 members voted nay.

Chairman Conyers. The amendment fails.

Steve King, for the last amendment.

Mr. King. Mr. Chairman, I have an amendment at the desk.

Chairman Conyers. The clerk will report it.

The Clerk. Amendment to the amendment to H.R. 847 offered by Mr. --

Chairman Conyers. Wait a minute. Did you ask to have the amendment withdrawn?

Mr. King. Well, Mr. Chairman, under this intense deliberation that we are under here and the signals that are going back and forth, I can determine that that might be a wise course on my part. So I would ask unanimous consent to withdraw this amendment and move to the final vote on this bill.

Chairman Conyers. I thank the gentleman's perception very much. That is very helpful.

Okay. We have a quorum present, and so the question is on reporting the bill, 847, as amended.

Those in favor, say, "Aye."

Those opposed, say, "No."

The ayes have it.

And a recorded vote is requested. The clerk will call the roll.

The Clerk. Mr. Conyers?

Chairman Conyers. Aye.

The Clerk. Mr. Conyers votes aye. Mr. Berman?

[No response.]

The Clerk. Mr. Boucher?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye. Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye. Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye. Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye. Ms. Waters?

[No response.]

The Clerk. Mr. Delahunt?

[No response.]

The Clerk. Mr. Wexler?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye. Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye. Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye. Mr. Gutierrez?

[No response.]

The Clerk. Mr. Sherman?

Mr. Sherman. Aye.

The Clerk. Mr. Sherman votes aye. Ms. Baldwin?

Ms. Baldwin. Aye.

The Clerk. Ms. Baldwin votes aye. Mr. Gonzalez?

Mr. Gonzalez. Aye.

The Clerk. Mr. Gonzalez votes aye. Mr. Weiner?

Mr. Weiner. Aye.

The Clerk. Mr. Weiner votes aye. Mr. Schiff?

Mr. Schiff. Aye.

The Clerk. Mr. Schiff votes aye. Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye. Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz votes aye. Mr. Maffei?

Mr. Maffei. Aye.

The Clerk. Mr. Maffei votes aye. Mr. Smith?

Mr. Smith. No.

The Clerk. Mr. Smith votes no. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Sensenbrenner?

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner votes no. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble votes no. Mr. Gallegly?

[No response.]

The Clerk. Mr. Lungren?

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye. Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa votes no. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no. Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no. Mr. Poe?

Mr. Poe. Yes.

The Clerk. Mr. Poe votes yes. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no. Mr. Rooney?

Mr. Rooney. Yes.

The Clerk. Mr. Rooney votes yes. Mr. Harper?

[No response.]

Chairman Conyers. Mr. Wexler?

Mr. Wexler. Yes.

The Clerk. Mr. Wexler votes yes.

Chairman Conyers. Mr. Gonzalez?

Mr. Gonzalez. I voted aye, sir.

Chairman Conyers. Anyone else?

The clerk will report.

The Clerk. Mr. Chairman, 22 members voted aye, nine members voted nay.

Chairman Conyers. Thank you very much. H.R. 847 is passed.

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

We ask the clerk, pursuant to notice, we call up the resolution directing the House general counsel to apply to the District Court for an order conferring use immunity on witnesses for testimony and information provided to the committee under the compulsion and connection with the impeachment inquiry regarding Judge Porteous.

The clerk will report the resolution.

The Clerk. "House Committee on the Judiciary Resolution to direct House general counsel to apply for immunity orders relating --"

Chairman Conyers. Without objection, the resolution is considered as read, open for amendment at any point.

[The information follows:]

***** INSERT 3-1 *****

Chairman Conyers. I will put my statement in the record.

Following a criminal investigation by the Justice Department, a disciplinary investigation by the Fifth Circuit Judicial Conference that certified that the consideration of the impeachment of Judge Porteous may be warranted, the matter was referred to this committee. And as part of the task force, staff has sought to interview and depose several witnesses, and some of these individuals have asserted their fifth amendment right. And so we have this resolution before us.

I ask to put the remainder of my statement in the record and invite Mr. Smith for his comments.

[The statement of Chairman Conyers follows:]

***** COMMITTEE INSERT *****

Mr. Smith. Thank you, Mr. Chairman. My statement will be brief.

I support this resolution, which authorizes the House counsel to seek formal immunity under title 18, United States Code 6005, for eight individuals in connection with the ongoing impeachment inquiry of George Porteous.

To date, the task force, through its staff, has taken numerous investigative steps in connection with assembling the evidence in what is a complex case. Mr. Chairman, my understanding is that the testimony of these eight individuals is very much needed. Five of the individuals have been granted immunity in the past; three of the individuals are new to being granted immunity. But all are necessary in order for us to move expeditiously on this investigation and reach a reasoned conclusion. The impeachment inquiry has reached a critical stage, and these are essential witnesses that very much are needed.

Mr. Chairman, I will ask unanimous consent that the rest of my opening statement be made a part of the record, and I will yield back.

[The statement of Mr. Smith follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. I thank the gentleman.

And everyone else's statements will be put in the record.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Statutory requirements call for a two-thirds vote of the members to pass this resolution, and we must do it by roll call vote. So when your name is called, if you favor the resolution, say, "Aye." All opposed say, "No."

The clerk will call the roll.

The Clerk. Mr. Conyers?

Chairman Conyers. Aye.

The Clerk. Mr. Conyers votes aye. Mr. Berman?

[No response.]

The Clerk. Mr. Boucher?

[No response.]

The Clerk. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye. Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye. Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye. Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye. Ms. Waters?

[No response.]

The Clerk. Mr. Delahunt?

[No response.]

The Clerk. Mr. Wexler?

Mr. Wexler. Aye.

The Clerk. Mr. Wexler votes aye. Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye. Mr. Johnson?

[No response.]

The Clerk. Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye. Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye. Mr. Gutierrez?

[No response.]

The Clerk. Mr. Sherman?

Mr. Sherman. Aye.

The Clerk. Mr. Sherman votes aye. Ms. Baldwin?

Ms. Baldwin. Aye.

The Clerk. Ms. Baldwin votes aye. Mr. Gonzalez?

Mr. Gonzalez. Aye.

The Clerk. Mr. Gonzalez votes aye. Mr. Weiner?

[No response.]

The Clerk. Mr. Schiff?

Mr. Schiff. Aye.

The Clerk. Mr. Schiff votes aye. Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye. Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz votes aye. Mr. Maffei?

[No response.]

The Clerk. Mr. Smith?

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Sensenbrenner?

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye. Mr. Coble?

Mr. Coble. Aye.

The Clerk. Mr. Coble votes aye. Mr. Gallegly?

[No response.]

The Clerk. Mr. Lungren?

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye. Mr. Issa?

[No response.]

The Clerk. Mr. Forbes?

Mr. Forbes. Aye.

The Clerk. Mr. Forbes votes aye. Mr. King?

Mr. King. Aye.

The Clerk. Mr. King votes aye. Mr. Franks?

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye. Mr. Gohmert?

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye. Mr. Jordan?

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes. Mr. Poe?

Mr. Poe. Aye.

The Clerk. Mr. Poe votes aye. Mr. Chaffetz?

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye. Mr. Rooney?

Mr. Rooney. Yes.

The Clerk. Mr. Rooney votes yes. Mr. Harper?

[No response.]

Chairman Conyers. Any members -- Mr. Maffei?

Mr. Maffei. Aye.

The Clerk. Mr. Maffei votes aye.

Chairman Conyers. Mr. Pierluisi?

Mr. Pierluisi. Haven't I already voted?

The Clerk. Mr. Pierluisi is noted as voting aye.

Chairman Conyers. Anyone else? Hank Johnson?

Mr. Johnson. Yes.

The Clerk. Mr. Johnson votes yes.

Chairman Conyers. Anyone else?

The clerk will report.

The Clerk. Mr. Chairman, 30 members voted aye, with zero members voting nay.

Chairman Conyers. Two-thirds of the committee members having

voted in the affirmative, the resolution is adopted.

And, pursuant to notice, I call up H.R. 3245, the "Fairness in Cocaine Sentencing Act," and ask the clerk to report the bill.

The Clerk. "H.R. 3245, a bill to amend the Controlled Substances Act --"

Chairman Conyers. Without objection, the bill is considered as read and open for amendment.

[The information follows:]

***** INSERT 3-2 *****

Chairman Conyers. And I recognize the Chair of the Crime Subcommittee, Bobby Scott.

Mr. Scott. Thank you, Mr. Chairman.

Mr. Chairman, under current Federal law, possession of a mere five grams of crack cocaine will result in the same 5-year mandatory minimum sentence as selling 500 grams of powder cocaine.

More than 20 years after this Federal law was enacted, people across the political spectrum acknowledge that there is neither scientific, medical, nor public policy rationale that supports punishing crack cocaine offenders 100 times more harshly than those convicted of powder cocaine offenses.

After extensive study of the issue over the last 20 years, scientific and medical research has found that crack and powder cocaine have essentially the same pharmacological and physiological effects on a person.

While there are no real differences between crack and powder cocaine, the distinction between the penalties of the two drugs have very real consequences. More than 80 percent of the people convicted in Federal court for crack cocaine offenses are African American, although the crack data, use data, has consistently reflected that more than 60 percent of crack users are white.

Crack offenders are serving extremely long sentences, while people who have committed more serious drug offenses or serious violent crimes involving powder cocaine are serving shorter

sentences. Under the current law, a drug kingpin who is convicted of selling 499 grams of powder cocaine would get a shorter sentence than someone caught with five grams of crack cocaine, and everybody knows that this is just absurd, particularly when you consider that the drug kingpin is handling powder while the low-level dealer converts it into crack.

Such perceived injustices cause some to lose confidence in our criminal justice system. While it is true, as some point out, that African Americans, like other citizens, demand that illegal drug peddlers be removed from their communities, these same African Americans are strongly in favor of removing the disparate sentencing between crack and powder.

The bill that would be marked up in committee today, H.R. 3245, the "Fairness in Cocaine Sentencing Act," eliminates the disparity between crack and powder by eliminating the crack distinction from the Code. Therefore, under the bill, all cocaine, in whatever form, would be punished at the current level of powder cocaine.

Even with this change in the law, crack offenders who use weapons, commit violent acts, or use children to sell drugs will be subjected to sentencing enhancements under the sentencing guidelines. These offenders could receive sentences even longer than the 5- or 10-year mandatory minimums, depending on their conduct. H.R. 3245 will give judges the ability to sentence an offender based on that individual's conduct, not just a

one-size-fits-all congressional mandate.

Many organizations, including the Federal Judicial Conference, have urged Congress to remove unfair mandatory minimum sentences, and the most frequently mentioned irrational mandatory minimum sentence is the 5-year mandatory minimum sentence for mere possession of five grams of crack. Crack is the only illegal substance for which there is a mandatory minimum sentence for mere possession.

Also, the United States Sentencing Commission has studied the crack and powder cocaine disparity extensively over the last 15 years. And in each of the four reports on cocaine and Federal sentencing policy the Sentencing Commission has submitted to Congress, it has urged Congress to reform the cocaine sentencing laws. This legislation will do just that. It does away with the disparity between crack and powder.

Many people have worked for years to correct this injustice. This bill is narrowly drawn to address the critical issue that, whatever the justification was about the distinction when the distinction was made years ago, the years of experience has proven that that distinction is now considered irrational.

I would like to specifically thank the chairman, Mr. Conyers, and Representatives Maxine Waters, Mel Watt, and Sheila Jackson Lee of this committee, and Representative Charlie Rangel, for their long commitment and tireless efforts to end this disparity in the cocaine sentencing laws.

I strongly support the bill and urge my colleagues to join in removing this unintended injustice from our sentencing laws.

And I would like unanimous consent to introduce into the record a series of letters endorsing the bill, most of which ask that it be passed without amendment.

Chairman Conyers. Without objection, so ordered.

[The information follows:]

***** INSERT 3-3 *****

Chairman Conyers. Thank you, Mr. Scott.

Lamar Smith?

Mr. Smith. Thank you, Mr. Chairman.

The bill before us today, H.R. 3245, removes crack cocaine from the Federal drug laws, and so eliminates any distinction between penalties for crack and powder cocaine trafficking offenses.

The bill sends the wrong message to drug dealers and those who traffic in ravaging human lives. It sends the message that Congress does not take drug crime seriously.

Twenty-five years ago, crack was cheap, simple to produce, easy to buy, and highly profitable. Never before had any form of cocaine with such a high purity been available at such low prices. This potent drug caused increased violence by both users suffering the effects of the drug and dealers sparring for control of lucrative drug markets.

Crack's popularity spread across the country with lightning speed and produced new waves of violence by those who distributed the drug. Crack cocaine trafficking strangled many communities, especially inner-city communities, where residents lived in fear of dealers who controlled the street corners. How can we forget all that?

In 1986, the Democratic-controlled Congress responded to this epidemic by rightly enacting tough Federal drug sentencing

policies, including different penalties for crack and powder cocaine trafficking. And these drug sentencing policies have reduced drug-related violence in our cities. Crack and powder cocaine use has dropped by almost two-thirds in the last 20 years, from 5.8 million users in 1985 to 2.1 million users in 2007.

The substantial increase in violence in the mid- and late 1980s has been attributed to the introduction of crack cocaine in 1985. Today, crime rates, particularly for violent crime, are at their lowest in 30 years, thanks in large part to the enactment of tough penalties for drug trafficking and other crimes.

To eliminate crack cocaine penalties from the Federal drug trafficking laws would be to surrender after winning the war. That is why organizations including the Fraternal Order of Police, the National Sheriffs Association, the International Association of Chiefs of Police, the National Narcotics Officers Association Coalition, and the National District Attorneys Association all oppose eliminating the sentencing ratio between crack and powder cocaine.

Sentencing Commission data shows that crack cocaine is associated with violence to a greater degree than most other controlled substances. Last year, 28 percent of all Federal crack offenders possessed a weapon, compared with 17 percent of powder cocaine offenders. Crack offenders were also more likely to have prior convictions than cocaine offenders.

We cannot ignore the severity of crack addiction or ignore

the differences between crack and powder cocaine trafficking. We should worry far more about the victims than about the criminals.

The proposal before us threatens to return America to the days when crack cocaine decimated a generation and destroyed communities. Why do we want to go back to those deplorable times?

I cannot support legislation that ignores the violent and devastating crack cocaine epidemic of the past and the horrible effects of crack cocaine on our neighborhoods and communities nationwide. I urge my colleagues to oppose this legislation.

I yield back the balance of my time.

Chairman Conyers. Thank you, Mr. Smith.

No further statements. They will all be introduced in the record.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Who has got amendments?

Mr. Issa. Mr. Chairman, I have an amendment at the desk.

Chairman Conyers. Mr. Issa's amendment is recognized.

Mr. Scott. Mr. Chairman, I reserve a point of order.

Chairman Conyers. A point of order is reserved by Mr. Scott to the amendment.

Mr. Issa. Can we wait until the desk finds it? Do you have it? Does the gentleman with the point of order have a copy of it?

Mr. Scott. No.

Mr. Issa. So your point of order is you don't have a copy?

Mr. Scott. No, the point of order is reserved, because if you start speaking on it, the point of order will be untimely. So I have to reserve a point of order if I am going to make one at all.

Mr. Issa. Okay. Then I won't speak until it has been distributed, if you don't mind, Mr. Chairman, under our new rule of let people at least have it, maybe even read it before they comment on it.

Chairman Conyers. Oh, gosh. Reading it is very important in the Congress.

Mr. Issa. We will need less time to read.

Chairman Conyers. Could I ask the gentleman to suspend for just a moment? I didn't ask Mr. Gohmert, Judge Gohmert, if he wanted to make an opening comment.

Do you, sir?

Mr. Gohmert. Well, I understood the Chair to say we will waive any other statements. I did have one.

Chairman Conyers. Well, you are the ranking member, though, of the committee.

Mr. Gohmert. A lot of people say I am very rank, but --

Chairman Conyers. The gentleman is recognized.

Mr. Gohmert. Thank you, Mr. Chairman.

The Anti-Drug Abuse Act of 1986 did create a 100:1 ratio for the quantities of powder cocaine and crack cocaine triggering a mandatory minimum penalty. And I will ask that the overall written statement be submitted for the record and just summarize.

It does seem a bit extreme to have that kind of ratio. But, as President Reagan congratulated Charlie Rangel and other Members here, like my friend Mr. Lungren from California, who were here at the time, saying they were told, if you want to stamp out crack cocaine that was doing such damage to our African American communities, this bill needed to be passed; it needed to be tougher on crack cocaine.

And so, just to completely invalidate those who say that the disparity in the 100:1 ratio was for racial purposes, it wasn't at all. It was done at the request of people like our friend, Chairman Rangel, who wanted, and the intent was, to do great assistance to African American communities, where crack had taken such a strong stand. In fact, the vast majority of the data shows

that African American Members back in 1986 supported this bill, were cosponsors of it.

But, as a judge who has seen the effects of both powder cocaine and crack cocaine, it is clear that there are great problems with both. And I have wrestled with this idea of just equalizing them completely.

But, apparently, though, if it is done and put on an even penalty scale, even though crack cocaine gives a quicker high for a shorter period and actually contains more cocaine, gets into the bloodstream quicker, apparently if we pass this bill as it is proposed, somebody would have to have approximately 2,500 rocks of crack cocaine as it is normally sold in order to -- or basically a pound of crack cocaine -- to get a similar sentence or to make it a felony. And that seems a little over the top when crack cocaine is a problem.

Chairman Rangel was right in 1986. The disparity was probably a little extreme, but I would hate to see these equalized completely when they are different. And someone shouldn't have to have 2,500 rocks of crack in order to make it a felony.

And so, again, I ask unanimous consent to have this --

Mr. Scott. Will the gentleman yield?

Mr. Gohmert. Yes, sir.

Mr. Scott. Is not the possession and sale of any amount a felony? It is just the trigger levels we are talking about are for the mandatory minimum, not whether or not it is a felony.

Mr. Gohmert. Well, okay. Reclaiming my time, the mandatory minimum, if it is not there, then it basically can be an extremely low considered misdemeanor. That is the concern I have. If there is not a low threshold, a bottom threshold to what the sentence would be -- called a mandatory minimum around here; back home it is called the low end of the range -- and the range is down clear to nothing, basically you can treat anything less than 2,500 rocks as a misdemeanor. And that is my concern.

But I would ask unanimous consent to have the written statement submitted for the record. And, hopefully, the chairman will say "without objection" and that will be admitted. But, anyway, I appreciate the time in summarizing these remarks.

[The statement of Mr. Gohmert follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Thank you, Judge Gohmert.

Now back to the Issa amendment.

Mr. Issa. Thank you, Mr. Chairman. And thank you for the opportunity for everyone to read this two-page document.

In short, Mr. Chairman, if what we seek to do is to eliminate this disharmony, then, as Mr. Gohmert has been wrestling with, this amendment does that. It simply lowers the pound for mandatory minimum, the 500 grams, down to five grams.

Now, I strongly suspect that people are going to find a way not even to have a vote on this, that we are going to say, "Well, it is not about this. It is about that." Well, look, if what we want to do is normalize these two dissimilar chemicals, then let's do it on the side of making sure that our streets are safer, not less safe. If we care about that, then rather than raising to a pound of crack what you can carry without being seen as a trafficker, I think you have to go the other way and lower.

I would be happy to work with the chairman on any number of other areas between 500 and five. But it seems like, since the goal clearly in the chairman's opening statement is, in fact, to eliminate the disparity, my amendment eliminates the disparity.

Having said that, I remember not too long ago that there was a terrible tragedy, which the chairman will remember, in which child's heparin accidentally was substituted for adult heparin. Of course, you know, it causes death or close to it, in most

cases. And it is a terrible thing, because the exact same substance in two different formulas can be dramatically different. And what can, in fact, save a child's life in the child's version of heparin can kill a child if they receive the adult version.

So I would hope that the chairman would consider that this bill is not ripe in either format, but that if you are going to err, err on the side of protecting the streets and communities by lowering the powder cocaine to the level of crack, not by simply saying that you can carry around a pound of crack plus before you are a dealer.

With that, I yield back.

[The information follows:]

***** INSERT 3-4 *****

Chairman Conyers. I thank you, Mr. Issa.

Does Mr. Scott insist upon his point of order?

Mr. Scott. Yes, Mr. Chairman.

The underlying bill deals just with crack; it eliminates crack from the Code. This changes the penalties for, on page 2, line 4, any controlled substance described in that subsection, which is outside of the scope of the original bill and, therefore, is not germane.

Chairman Conyers. Do you have a response, Mr. Issa?

Mr. Issa. Yeah, I believe that since the clear intent and the clear discrimination here is between crack and powder, that it is well within the reasonable intent. And the Chair would certainly have the prerogative of ruling that this is within the scope of exactly what we are talking about.

And I think the chairman's opening statement makes it very clear: We are talking about crack versus powder. We are not talking about crack in a vacuum. And I would hope that the chairman would use his discretion in order to set aside the point of order and allow a fair vote on this.

Chairman Conyers. Well, the chairman, in all his fairness, can't follow along with your great recommendation, sorry to say.

Mr. Issa. Mr. Chairman, I appeal the ruling of the Chair.

Chairman Conyers. Well, I will put -- is there a motion to table?

Mr. Scott. So moved, Mr. Chairman.

Chairman Conyers. You don't want a record vote?

Mr. Issa. Yes, I do, Mr. Chairman.

Chairman Conyers. All right.

Mr. Issa. The kids on the streets of America deserve that vote.

Chairman Conyers. Oh, that is very considerate of you.

Mr. Issa. I care about the kids, Mr. Chairman.

Chairman Conyers. Yeah.

Mr. Issa. But I will be quick about it.

Chairman Conyers. The clerk will call the roll.

The Clerk. Mr. Conyers?

Chairman Conyers. Aye.

The Clerk. Mr. Conyers votes aye. Mr. Berman?

[No response.]

The Clerk. Mr. Boucher?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye. Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye. Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye. Ms. Waters?

[No response.]

The Clerk. Mr. Delahunt?

[No response.]

The Clerk. Mr. Wexler?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye. Mr. Johnson?

[No response.]

The Clerk. Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye. Mr. Quigley?

[No response.]

The Clerk. Mr. Gutierrez?

[No response.]

The Clerk. Mr. Sherman?

[No response.]

The Clerk. Ms. Baldwin?

[No response.]

The Clerk. Mr. Gonzalez?

[No response.]

The Clerk. Mr. Weiner?

[No response.]

The Clerk. Mr. Schiff?

Mr. Schiff. Aye.

The Clerk. Mr. Schiff votes aye. Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye. Ms. Wasserman Schultz?

[No response.]

The Clerk. Mr. Maffei?

[No response.]

The Clerk. Mr. Smith?

Mr. Smith. No.

The Clerk. Mr. Smith votes no. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble votes no. Mr. Gallegly?

[No response.]

The Clerk. Mr. Lungren?

[No response.]

The Clerk. Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa votes no. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

Mr. King. No.

The Clerk. Mr. King votes no. Mr. Franks?

Mr. Franks. No.

The Clerk. Mr. Franks votes no. Mr. Gohmert?

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no. Mr. Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no. Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no. Mr. Chaffetz?

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no. Mr. Rooney?

Mr. Rooney. No.

The Clerk. Mr. Rooney votes no. Mr. Harper?

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Chairman Conyers. Mr. Lungren?

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Chairman Conyers. Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Chairman Conyers. Mr. Nadler?

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Chairman Conyers. Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz votes aye.

Chairman Conyers. Randy Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. Scott. Mr. Chairman, can you tell me how I am recorded, please?

Chairman Conyers. How is he recorded?

The Clerk. Mr. Scott votes aye.

Mr. Schiff. Mr. Chairman, how am I recorded?

Chairman Conyers. How is the gentleman from California recorded?

The Clerk. Mr. Schiff voted aye.

Ms. Waters. Mr. Chairman, how am I recorded?

Chairman Conyers. I don't know, frankly.

The Clerk. Ms. Waters voted aye.

Mr. Watt. Mr. Chairman, how am I recorded?

The Clerk. Mr. Watt votes aye.

Mr. Watt. Change my vote to no, please.

Chairman Conyers. Ms. Schultz?

Ms. Wasserman Schultz. How am I recorded?

The Clerk. Ms. Wasserman Schultz votes aye.

Ms. Lofgren. Mr. Chairman, how am I recorded?

Mr. Issa. Mr. Chairman, could we have the water examined to see if we have a problem with a substance here?

Chairman Conyers. Mr. Wexler?

Mr. Wexler. Aye.

The Clerk. Mr. Wexler votes aye.

Chairman Conyers. The clerk will report.

Mr. Watt. Mr. Chairman, I am still unsure about how I am recorded.

Mr. Issa. Better decide soon; you have got the votes. You can switch now, Mr. Watt.

Mr. Watt. Aye.

Chairman Conyers. Mr. Watt votes aye.

The Clerk. Mr. Watt votes aye.

Chairman Conyers. Mr. Delahunt?

Mr. Delahunt. Aye.

The Clerk. Mr. Delahunt votes aye.

Chairman Conyers. The clerk will please report.

The Clerk. Mr. Chairman, 14 members voted aye, 13 members voted nay.

Chairman Conyers. Thank you. The amendment succeeds.

The committee will stand in recess. And I thank all the members for their stamina in this very long hearing. We are coming back after the vote, so enjoy lunch.

[Recess.]

RPTS CASWELL

DCMN HOFSTAD

[2:18 p.m.]

Chairman Conyers. The committee will come to order.

When we recessed for floor votes, we had just considered a motion to table an appeal of the Chair's ruling, unfortunately, on the amendment by Darrell Issa. There was a roll call vote, and the motion to table was agreed to.

And we are now coming together to consider if there are any further amendments.

If there are none, a reporting quorum being present --

Ms. Jackson Lee. Mr. Chairman?

Chairman Conyers. Yes?

Ms. Jackson Lee. I move to strike the last word.

Chairman Conyers. Oh, the gentlelady is recognized.

Ms. Jackson Lee. Mr. Chairman, I had a number of amendments. But let me strike the last word and thank the chairman and the ranking member for holding this markup on H.R. 3245. I thank the chairman of the subcommittee, Chairman Scott, and the ranking member for the subcommittee markup, as well.

It is a historic day because of the historic step that we are taking. It is well-known that there have been enormous disparities in Federal sentences for distribution and importation of crack and powder cocaine, which was the reason that I introduced H.R. 265. Under current law, possession of five grams

of crack cocaine, the size of a candy bar, will result in the same 5-year mandatory minimum sentence as selling 500 grams of powder cocaine.

More than 20 years after this Federal law was enacted, experts and lay people alike acknowledge that there is no significant public policy rationale that supports punishing crack cocaine offenders 100 times more harshly than those convicted of powder cocaine offenses.

The supply of cocaine entering the country remains plentiful, and the demand for drugs continues in our communities. We need a plan to fight drugs that curbs addiction by providing comprehensive treatment to people who cannot afford them and offers employment alternatives for young people who feel compelled to sell drugs on our streets. So I do believe there is an important role for grants in the effort that we are making, so that this effort of treatment could be considered.

Long prison terms have not solved the drug problem. In the Southern Federal District Court of Texas, which includes my hometown of Houston, approximately 44 percent of Federal cases involve 25 grams or less of crack cocaine. Individuals convicted for possessing such a small amount of this drug comprise a significant population of the inmates who take up space in our Federal detention centers in Houston and elsewhere around the country.

Such low-level offenders find themselves incarcerated by the

Federal Government due to Federal mandatory minimum sentences. Yet the record before this committee clearly demonstrates that mandatory minimum sentences has not enhanced public safety as Congress intended when it passed the crack cocaine sentencing over 20 years ago.

While I don't condone any of these crimes, how can the Federal Government justify exhausting much-needed resources to prosecute these offenses at a time of spiraling budget deficits, as is pointed out by many in this body? Many of us have worked very hard, along with the very able advocacy groups who supported H.R. 265 over the years, over at least the 4 years that it has been submitted, that we needed to do something.

These kinds of cases can easily be handled by the State criminal justice system, while Federal prosecutors should pursue the imposters and international traffickers who bring drugs into the country. However, it is important to have a framework as we are discussing today. As a former municipal court judge, I know the competency of our judges in dealing with some of these issues, but I do think we need to help them on the other issues.

It is important to note that, in the 110th Congress, I introduced 4545; that was the "Drug Sentencing Reform and Cocaine Kingpin Trafficking Act." In this present Congress, we introduced 265. And the bill was intended to eliminate the unjust and unequal Federal crack cocaine sentencing disparity in America. To be sure, there were several approaches to achieve this same end,

and we have one here today. And I am glad to join on the bill.

I believe my bill was unique. It has had over 51 cosponsors and had the support of the ACLU, the NAACP, and the ABA.

So we continue to try to make work and progress going through. As we know, the Senate is moving forward on its legislation and will be emphasizing the 1:1. It means that if that bill passes out of the Senate, we will have a conference.

I want to make good on my promise to all of those who are incarcerated, all of those who have families that are sick by their incarceration, to find a way to eliminate this horrible disparity. Now is the time for us to collaborate and work together.

We need to be part of directing the U.S. Sentencing Commission to review and amend, if appropriate, its sentencing guidelines for trafficking in a controlled substances to reflect the use of a dangerous weapon or violence, at some point, which we may review. We may need to do something like directing the Attorney General to assess how drug treatment impacts or how grants may impact or how to utilize treatment grants, if you will, for offenders in prisons, jails, and juvenile facilities.

So, Mr. Chairman, I am looking forward to the opportunity to work, as we go forward, to provide an opportunity to constructively impact this legislation.

Mr. Chairman, I would like to yield to inquire as to our ability to work together as we make our way to the floor. As you

may know, I have about nine amendments. But I believe it is important for us to speak to those volumes of those who are now suffering, either incarcerated or their families, so that, in essence, we can make good on the promise that justice is really real here in the United States.

I would yield to the chairman.

Chairman Conyers. Well, look, you and I have always had a great relationship, so nothing has changed. Bobby Scott has been a great subcommittee chairperson, almost always reasonable as a person could be. So everything is -- everything is okay.

Ms. Jackson Lee. Well, reclaiming the time, if you would allow me an additional 1 minute, I did have an opportunity to talk with Chairman Scott. And I appreciate inquiring of the chairman the opportunity to work with him as we make our way to the floor.

Chairman Conyers. But we always work together. I don't know why you have to ask him that.

Ms. Jackson Lee. Well, I guess I have to ask him because I think it is important that we do have the opportunity to be collegiate and work on some of the issues that many of us are discussing and raising.

Mr. Scott. If the gentlelady would yield?

Ms. Jackson Lee. I would be happy to yield.

Mr. Scott. Yes.

Ms. Jackson Lee. Mr. Chairman, I think it would be valuable to have a manager's amendment. I will put that on the record.

I think it will be valuable to try and increase the numbers who will be supporting this legislation. I will put that on the record.

And I hope, as we go forward, there will be some other items that we will be able to work on.

[The information follows:]

***** INSERT 4-1 *****

Chairman Conyers. Thank you, ma'am.

Dan Lungren?

Mr. Lungren. Thank you very much, Mr. Chairman, who is almost always reasonable. I appreciate that.

The observation was once made that you never want to witness either sausage being made or laws being made. And while I like sausage and I am honored to be part of this body, this observation is certainly relevant to the crack cocaine provisions we are talking about now that were originally contained in the 1986 drug bill.

As a member of the subcommittee and the committee at that time, I can say that it was not the doing of the minority. The May 27, 2008, issue of Washington Post Magazine reported this, said, "In Congress, then-House Speaker Tip O'Neill, a Democrat whose Boston constituents couldn't stop talking about Len Bias's death, saw a political opportunity. Throughout the 1980s, the Federal Government had waded deeper into the war on drugs, part of a trend spawned by the turmoil of the 1960s and 1970s. Bias's death offered a perfect chance to capitalize on the growing public outcry, especially over crack. 'The Speaker realizes if the Democrats take the lead on this and we play it right, maybe we can win the Senate back,'" according to a former attorney for this committee at that time.

I remember being present at the creation. I can recall

vividly the subcommittee in which this was brought up. And I remember the chairman of the subcommittee, Bill Hughes from New Jersey, at the time coming in and saying that he had heard the outcry from the African American community in his district and that we had to do something dramatic, substantial, we had to do something that really sent a message to those who were putting the African American communities at risk, victimizing them in ways that many of us could not understand who did not see the terrible tragedy being visited upon the inner-city.

And I recall Charlie Rangel, who was chairman of the Select Committee on Drug Abuse, I believe it was called at the time, testifying before our committee and holding press conferences saying we absolutely had to act at this time.

When we were considering it, rather than, frankly, considering it for the political purposes suggested in that article, we tried to weigh the relative damage being done in the inner-city as a result of this type of cocaine, this crack cocaine, versus other cocaine. It was not, as sometimes seems to be suggested here, a punishment to the African American community. It was viewed as an effort to try and stop this terrible scourge of violence that was being visited on communities across the country but particularly the inner-city, and that there was something particularly destructive about this trade as it was being plied in these communities.

And it is true the Len Bias death shook this place up, not

only because he was going to be a star with the Boston Celtics, but he had been a star here at the University of Maryland, within the Beltway. And I remember Steny Hoyer coming to the floor and talking about the terrible tragedy that occurred at that time.

So there was a reason we did this. And it was to try and calibrate the greater damage done to communities in our country by crack cocaine versus the others.

Now, I am not averse to addressing the disparity in sentencing between crack cocaine and powder. I never believe that everything we do is perfect and that we have created the perfect law. But my difficulty with what we are doing here is, as I understand it, we are saying that the 100:1 ratio was necessarily arrived at in an arbitrary fashion. And, therefore, that logically leads to the conclusion that there should be no difference in the punishment levels relating to the actual differences in the facts.

It is not entirely clear to me that treating powder cocaine and crack cocaine in exactly the same fashion -- it is not clear to me whether or not this will produce unintended consequences.

Ms. Jackson Lee. Would the gentleman yield?

Mr. Lungren. I will yield for a short comment.

Ms. Jackson Lee. Thank you very much.

Let me just say that Mr. Bias's death was certainly devastating, and it did provoke an action and a reaction. But I would just say to you is it backfired. It did not do what it was

supposed to do. It put thousands upon thousands and incarcerated them with no return, if you will.

So I would just suggest to you that the structure, the focus is to try to remedy that, at the same time prosecuting those who are engaged in drug use and drug trafficking. But it is to reorder the backfiring of the heavy emphasis on African Americans and others. It has not done what it was supposed to do.

I yield back to the gentleman.

Mr. Lungren. I appreciate the gentlelady's comments. And I would ask the indulgence of the Chair for another 3 minutes. Without objection, so ordered.

Chairman Conyers. All right.

Mr. Lungren. I understand what the gentlelady said.

However, my experience has been that this is still a scourge in our communities; that, as mentioned by our ranking member, we have seen a reduction in crime and in violence, at least as articulated by the statistics that have been produced on the national and the State levels.

I just wonder if what we are doing here is saying, "Look, you did 100:1 back in 1986; we are going to do 1:1." I am trying to parse that out. Is there no scourge left in crack cocaine in our communities? What do I say to the representatives of those communities who used to come to me when I was attorney general saying, "You have to help save our communities. You have to understand what this is doing to our communities. You have to

understand what happened"?

Ms. Waters. Who are they? Unanimous consent, will the gentleman yield?

Mr. Lungren. Well, I will in just a moment.

And so, if we overreacted back in 1986, how do we make sure we don't overreact now? What basis are we doing this to say it is going to be 1:1? Is this where we want to end up?

I have been reaching for years and years trying to find the solutions to these problems. And I am concerned, as I say, that we could overreact here in the opposite direction of where people suggest we overreacted in 1986. I wish we could sit down and figure out what a proper ratio would be rather than just saying this is absolutely wrong.

I understand the comments of the gentlelady from Texas and previous comments I have heard from the gentlelady from California that there are young men, primarily, incarcerated for extensive periods of times that you think are unfair. And that may be true, and we ought to look at that.

On the other hand, if we have had some beneficial effect on communities by stopping, at least in part, this trade and the way that it is conducted, which impacts so directly on these communities, then I would hope that we would not undercut that as well.

So I would be happy to yield to the gentlelady from Los Angeles.

Chairman Conyers. Could you let her get her own time? I have Adam Schiff and her.

Mr. Lungren. Oh, I am sorry. Would you like me to yield back?

Chairman Conyers. Well, if you feel inclined.

Mr. Lungren. Being usually reasonable, I will yield back at this time, Mr. Chairman. Thank you.

Chairman Conyers. Thank you very much.

Adam Schiff?

Mr. Schiff. Thank you, Mr. Chairman.

And, at the outset, I want to agree with the chairman in large part. I think Bobby Scott is almost always very reasonable to work with.

I want to compliment my colleague, Mr. Scott, on this bill. I was in the U.S. attorney's office more than 20 years ago when this law first was taking effect, and I recall the sense of urgency about dealing with the crack cocaine problem. It is a sense of urgency that we still feel keenly today, not just in terms of crack, but in terms of powder cocaine and methamphetamine and the whole series of terrible substances that ruin so many lives throughout the country.

But flash-forward now more 20 years, we have a lot of experience under our belt about how this law has been applied, and we know a lot more about crack cocaine and its effects physiologically, and powder cocaine. And a lot of the suspicions

that we had in terms of whether it was more addictive than powder cocaine, now science has pretty conclusive answers. And the answers are that, in terms of its addictive capability, its effect on people, its propensity to cause people to commit violence, it is effectively the same as powder cocaine. It gets in the bloodstream more quickly but has no greater addictive capacity, it has no greater propensity for violence, in terms of users.

So a lot of the things that we thought were true about crack at the time have proved over time and through medical research not to be true. That doesn't make it any less of a problem, but it does mean that the continuing justification for such a tremendous disparity between how we treat one substance and the other doesn't make the same sense that it did 20 years ago.

The Sentencing Commission, having analyzed this for years now, and more than a decade ago, recommended that they be treated as equivalent. And that is essentially what this bill would do. For that reason, I support it.

And it doesn't mean that our efforts to stop the use of crack and stop the use of powder cocaine and other controlled substances are going to be any less. They shouldn't be. They can't be. But it does mean that, now that we have the benefit of experience and science, we know that it doesn't make sense to treat these two chemically equivalent substances in a different way.

And, with that, Mr. Chairman, I yield back.

Chairman Conyers. Thank you, Adam.

Maxine Waters?

Ms. Waters. Thank you very much, Mr. Chairman.

I appreciate all of the support that you have given to our subcommittee Chair, Mr. Scott, on this issue and his hard work. He has had a terrific job of trying to figure out what we do with this. I had a bill, Sheila Jackson Lee had a bill, he had a bill. We were all interested in getting rid of mandatory minimum sentencing in some way, and what he had to do was figure out how to move on this issue based on all of the harm that was being caused by the way it was being handled in the criminal justice system, and do it in such a way that it could gain support for those who were concerned about it and try and get it out of this committee, onto the floor, and onto the President's desk eventually. And that has not been an easy task, and I recognize that.

And I would like to say to my friends on the opposite side of the aisle, I know that some of you are sympathetic. I have talked with some Members on the opposite side of the aisle who are on this committee and some who are not, and I have heard from them that they are somewhat sympathetic. They are hesitant, sometimes, to come to a conclusion about what should be done, based on the politics of it all.

But what I would like to encourage Congressman Lungren and others to do is, just as you took the advice of African American leadership when you adopted the law, I would like you to take the

advice of African American leadership in rectifying the mistakes that have been made.

I appreciate that Mr. Rangel, whose name is always mentioned when we have this debate as someone who supported mandatory minimum sentences, he does not anymore.

I would like to point out that maybe there were those in local communities all over this country who were concerned about crack cocaine who said, "Do something." They didn't say, "I want you to create mandatory minimum sentencing that will act, in some ways, more harsher on African American communities than anyplace else." They didn't say that. What they said was, "We have a problem. We need some help. Help us to do something."

Now, I am not going to spend time criticizing the mandatory minimum law that was adopted, except to say we have discovered a lot. We have discovered that it is unfair, that the African American community is targeted, and that 84.7 percent of all the crack cases are brought against African Americans.

We know that young people, many of whom have never committed a crime, come from great families, what have you, at the wrong place at the wrong time, have ended up being harshly sentenced under these mandatory minimums.

We know that that is not the answer. The answer involves doing a lot more, including prevention, et cetera, et cetera. And we are asking you to take our recommendations and our leadership now just as you did when you took the recommendations for this

harsh response to crack cocaine.

So, whether you are talking to the NAACP or Congressman Rangel or local church leadership, you will find that there is a strong consensus for righting this wrong of mandatory minimum sentences as it relates to crack cocaine. And I would appreciate it if you would not only take the advice of all of those but your colleagues, who sit here with you day-in and day-out trying to correct some of the problems of our society.

Mr. Lungren. Will you yield?

Ms. Waters. And I will yield to the gentleman from Long Beach.

Mr. Lungren. Ah, thank you. Formerly from Long Beach. My hometown always from Long Beach, but now from Gold River.

If, in fact, there is a -- and I wish the gentleman who spoke a little earlier was still here, because I would like to pose this question to him, as well. But if, in fact, the impact on the user of crack cocaine is different than powder cocaine, such that the abuse is, on average, far greater with a crack cocaine user as opposed to a powder cocaine user -- that is, according to NIDA, that the crack user is likely to consume between 3.3 to 16 grams a week or between 13.2 grams and 66 grams per month, as opposed to someone who uses powder cocaine that consumes about two grams per month -- and that the exposure to either causes deleterious effect, and the more you are exposed to it, the worse it is for you, therefore crack cocaine causing a greater difficulty, and,

because of the nature of it -- that is, delivery to the brain quicker, with a high faster, although of a shorter duration -- which psychologically causes the individual to go back for another hit and another hit; and therefore it doing greater damage to the user, if that is true -- and I just posit, if that is true -- would not it make sense to have at least some disparity, in terms of the penalty, for one who is possessing for purposes of distribution crack cocaine versus powder cocaine?

Ms. Waters. To whom is the gentleman raising that question?

Mr. Lungren. Well, it is your time, so I was asking you whether that --

Ms. Waters. The answer is no.

Mr. Lungren. Okay.

Chairman Conyers. We are kind of running short of time here. There are going to be votes pretty soon. Are there any further amendments?

If not, we will hold the votes -- oh, wait a minute. I was going to recognize Mel Watt. Sorry.

Mr. Watt. Mr. Chairman, I will be brief.

I have such respect for Mr. Lungren that anytime he speaks I know he is speaking with a degree of sincerity. And I think he has been responded to in several ways, but I want to respond to him personally in this way.

I actually am going to affirmatively, publicly, as I have before, plead guilty to buying into a philosophy that has not

worked.

In large cities, most of which are the ones you were referring to, that led to the political decision in this body -- I wasn't here then -- large cities, you were hearing that argument. I will tell you that, in the South, a number of us -- I was practicing law, at the time, in a law firm that did a substantial amount of criminal law, although I did not personally do it, and heard this debate taking place: What is this doing to our communities?

But the driving force, really, in the South for mandatory minimums was taking discretion away from judges who were exercising that discretion in racially biased ways in the South. And our belief was that setting mandatory minimums would take that bias, or the opportunity for bias, away from racially biased judges.

We were wrong there because, if you look at the statistics, what really happened was it took that bias away from judges and delivered it down the chain to other people. And if you look at the statistics: Drug use, no real difference between black and white; stops, the police were exercising discretion so you get a jump in African Americans being stopped; police were driving white kids home who were high on powder cocaine, taking black kids to jail who were high on crack. So you get an arrest disparity.

Then you get a prosecution disparity. Then you get a sentencing disparity even after that, because, in a lot of these

cases, the judges just wiped out -- or the prosecutors, the U.S. attorneys, in some cases, just wiped out the charges against some elements who came into the court.

It did not work. We were wrong. You know, and I have said this before in this committee. I mean, this is not the first time I have acknowledged that we were wrong in this policy.

And so you end up with alarming, disturbing disparities about who is in jail versus who is in college. We have more black men in jail, in the age range, than we do in college because of these decisions that have been made throughout the process.

Now, if you want somebody who will plead guilty, I was part of that discussion; I am pleading guilty to being part of the discussion. We were wrong. We were wrong.

Now, let me address the second part of what you are saying. We overreacted in the wrong direction, and your fear is that we will overreact in the wrong direction this time. The only thing worse than leaving this the way it is, which we know is wrong, might be to overreact in the opposite direction in a way that might be wrong. And if we are wrong that way, we can come back and correct it. Hopefully, it won't be 20 years down the road, with devastating impacts. But we are always trying to do what is a responsible position, not trying to be soft on crime. All we are trying to do is get justice in our criminal justice system.

And so, you know, I am not even saying you are wrong about the overreaction in the other direction. I am just telling you

that that would not be as bad as leaving it like it is now, which we all in this committee know is wrong.

Mr. Lungren. Would the gentleman yield?

Mr. Watt. I am happy to yield to the gentleman.

Mr. Lungren. I really do appreciate this. And I understand where the gentleman is coming from.

One of the terrible things in this society is the disparity of victimization between African Americans and the general public, or whites. I mean, if you look at victimization of crime, particularly violent crime, it is far higher in the African American community than the other communities. And that has been something that we have to address.

So I tried to look at the statistics to see what has happened in terms of violent crime in which African Americans were victimized. And that rate, other than murder, that rate fell by two-thirds between 1987 when we put these policies in effect and 2004, from 33.8 victims per 1,000 population to 11.2.

Now, victimization of violent crime, other than murder, fell in the white community by 60 percent, but even greater percentage in the African-American community. So while there are still variations that we ought to be concerned about, there was some success in bringing down the victimization rate.

Mr. Watt. Let me just reclaim my time long enough to say, Mr. Lungren, what you are pointing out is that criminal justice and criminal justice policy is not a science. It is multifaceted.

And, you know, we can debate these numbers and statistics all day.

What we do know unequivocally is that all of us -- whoever made this decision when it was made back when you all voted on it, for whatever reason, whatever motivation, we were wrong, you were wrong. And we need to correct that and move this policy in a different direction.

Ms. Waters. Will the gentleman yield?

Mr. Watt. I am really out of time. I think the chairman is ready to move this bill. And but for the amount of respect for Mr. Lungren and needing to say publicly that we don't always get these things right, but that is not an excuse for doing nothing.

I yield back.

Chairman Conyers. Could I grant Maxine Waters 1 minute before we move on?

Ms. Waters. Thank you very much.

In line with the discussion that I started and Mr. Watt continued, talking about whatever happened may have happened and people who may have supported it really did ask for some help and thought perhaps they might be doing the right thing, Mr. Chairman, I can recall my trying to urge Janet Reno to help change these policies and what she said to me at the time.

She said that she had been convinced by Eric Holder that mandatory minimum sentencing was the right way to go because of the violence and the harm that was caused to our communities.

Today, you will find that Eric Holder is supporting the kind

of bill that is being put forth here today, because he no longer believes that we should have the kind of mandatory minimum sentencing for crack cocaine that is so different than powder cocaine.

So I thought that was important to put on the record.

Chairman Conyers. It is, and I thank you very much.

We don't have a recording quorum sufficient.

But we would like to move to our next bill, 2811, Python imports, which I call up now, to amend title 18 to include constrictor snakes of the species of Python genera as an injurious animal, for purposes of markup.

And I invite the clerk to report the bill.

The Clerk. "H.R. 2811, a bill to amend title 18, United States Code, to include constrictor snakes of the species Python genera as an injurious animal."

Chairman Conyers. Without objection, the bill is considered as read and open for amendment.

[The information follows:]

***** INSERT 4-2 *****

Chairman Conyers. And I would like to invite Chairman Bobby Scott to initiate the discussion.

Mr. Scott. Thank you, Mr. Chairman. I think by "initiate" you mean offer my statement for the record.

Chairman Conyers. Oh, that would be even better, absolutely.

Mr. Scott. Mr. Chairman, this bill involves the problem of snakes in Florida. And I would ask unanimous consent to introduce my statement for the record.

Chairman Conyers. Without objection.

[The statement of Mr. Scott follows:]

***** COMMITTEE INSERT *****

Mr. Smith. Mr. Chairman, I have a brief statement.

Chairman Conyers. Yes, and Lamar Smith.

Mr. Smith. Mr. Chairman, thank you. I have a brief statement.

The purpose of H.R. 2811 is to amend the Federal criminal code to include all Pythons as injurious animals that cannot be imported into the United States.

Pythons are often imported as exotic pets. The release or escape of these animals can have disastrous effects. According to media reports, at least 12 people have been killed by pet Pythons since 1980. In a tragedy involving an exotic pet that occurred earlier this month in the State of Florida, a 9-foot pet Burmese Python escaped its aquarium encasement inside of a home and strangled a 2-year-old girl in her bedroom. This bipartisan bill will help ensure that similar accidents do not occur in the future.

I understand that an amendment will be offered to narrow the scope of this bill, which is an improvement. And I would like to thank our colleague on the committee, Mr. Rooney, for his initiative on this particular issue. I support this legislation as it will be amended and urge my colleagues to do the same.

I yield back, Mr. Chairman.

Chairman Conyers. Thank you very much, Lamar.

Mr. Rooney of Florida is recognized.

Mr. Rooney. Mr. Chairman, I have an amendment at the desk.

Chairman Conyers. The clerk will report the amendment.

The Clerk. "Amendment to H.R. 2811, offered by Mr. Rooney of Florida. Beginning in line 6, strike '; of the constrictor snake of the species Python genera' and insert '; of the Burmese Python of the species Python molurus bivattatus; of the African Rock Python of the species Python sebae.'" "

Chairman Conyers. Without objection, the amendment will be considered as read.

[The information follows:]

***** INSERT 4-3 *****

Chairman Conyers. And the distinguished gentleman is recognized.

Mr. Rooney. Thank you, Mr. Chairman.

I am honored to be a cosponsor of the underlying bill, and I am offering the amendment today to narrow the scope of the bill to two Pythons that we know pose a real threat to human safety and specifically to the South Florida Everglades restoration, the Burmese Python and the African Rock Python.

The Federal Government, in partnership with the State and local interests, has dedicated billions of dollars towards restoring the American Everglades in south Florida. As many of you know, the Everglades is home to an extraordinary variety of birds, fish, and other wildlife that are threatened or endangered. We are working tirelessly to save this threatened habitat to ensure the survival of the native wildlife.

But, sadly, an invasive predator threatens all of the progress we have made. The Burmese Python has no natural predators in the Florida Everglades. They even prey on native adult alligators. There is a very famous picture you may have seen of a huge Python that attempted to eat a six-foot alligator. This is the reality that we are facing in south Florida today.

There are estimates of over 100,000 Burmese Pythons currently living in the Everglades. These vicious predators can grow six to eight feet in a single year and prey on wading birds and other

wildlife we are working so diligently to save. They thrive on our subtropic climate and abundant food resources.

In 2006, South Florida Water Management District filed a petition with the U.S. Fish and Wildlife to have the Burmese Python listed as an injurious species under the Lacey Act. Just so that I am clear, they petitioned for this 3 years ago in June. In that time, thousands more Burmese Pythons have been imported into the United States and more damage has been done to the ecosystem of south Florida.

Not only are these deadly predators wreaking havoc on the Everglades, but only a few weeks ago a 2-year-old was strangled in her crib while she slept by a, quote, "pet" Burmese Python. And just this past week, a 14-foot Python was found in Bradenton, Florida, just yards away from a daycare facility.

These snakes pose a true and real threat to health and human safety and should be listed under the Lacey Act. We have been waiting for 3 years for Fish and Wildlife to issue a decision. Three years is too long, and we can't wait anymore.

My fellow delegation member, Kendrick Meek, introduced H.R. 2811 to legislatively do what we have been waiting for 3 years for Fish and Wildlife to do: ban further importation of these snakes. H.R. 2811 will help fight the growing problem of Burmese Pythons at the source, keeping any more from entering our country. It is a piece of the solution, a very important piece.

In addition, I recently introduced a bill to allow for

hunting Pythons in the Everglades. My amendment will specify that Burmese and African Rock Pythons will be listed. There is no controversy that these two types of snakes pose a real threat to health and human safety. While I continue to support the underlying bill, this amendment addresses the concerns of many that listing all Pythons is too broad and may include snakes that don't pose a threat.

I ask for your support of this amendment and the underlying bill.

Thank you, Mr. Chairman. I yield back.

Chairman Conyers. And thank you very much.

All in favor of the amendment, say, "Aye."

All opposed?

The ayes have it, and the amendment is carried.

The Chair makes a point of order. A quorum isn't present, so we can't vote for final passage.

I call for quorum. Clerk, quorum call. Clerk will call the role.

The Clerk. Mr. Conyers?

Chairman Conyers. Present.

The Clerk. Mr. Berman?

[No response.]

The Clerk. Mr. Boucher?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Present.

The Clerk. Mr. Watt?

Mr. Watt. Present.

The Clerk. Ms. Lofgren?

Ms. Lofgren. Present.

The Clerk. Ms. Jackson Lee?

Ms. Jackson Lee. Present.

The Clerk. Ms. Waters?

[No response.]

The Clerk. Mr. Delahunt?

[No response.]

The Clerk. Mr. Wexler?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Quigley?

[No response.]

The Clerk. Mr. Gutierrez?

[No response.]

The Clerk. Mr. Sherman?

[No response.]

The Clerk. Ms. Baldwin?

[No response.]

The Clerk. Mr. Gonzalez?

[No response.]

The Clerk. Mr. Weiner?

[No response.]

The Clerk. Mr. Schiff?

Mr. Schiff. Present.

The Clerk. Ms. Sanchez?

Ms. Sanchez. Yes.

The Clerk. Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Present.

The Clerk. Mr. Maffei?

[No response.]

The Clerk. Mr. Smith?

[No response.]

The Clerk. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. Present.

The Clerk. Mr. Lungren?

Mr. Lungren. Yes.

The Clerk. Mr. Issa?

Mr. Issa. Yes.

The Clerk. Mr. Gallegly?

Mr. Gallegly. Aye.

The Clerk. Mr. Forbes?

[No response.]

The Clerk. Mr. King?

[No response.]

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

[No response.]

The Clerk. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Rooney?

Mr. Rooney. Yes.

The Clerk. Mr. Harper?

[No response.]

Mr. Shiff. Mr. Chairman, I am present after all.

Chairman Conyers. Mr. Schiff is present after all.

The Clerk. Mr. Chairman, 19 members --

Chairman Conyers. Just a minute. I think there are more coming in the door. Hang on.

Mr. Poe?

Mr. Poe. Present.

Chairman Conyers. Mr. Weiner?

Mr. Weiner. Present.

Chairman Conyers. One more member, then we are all set.

Mr. Forbes?

Mr. Forbes. Present.

Chairman Conyers. Thank you, Mr. Forbes.

All right, let's -- Ms. Waters?

Ms. Waters. Present.

Chairman Conyers. We are now able, with a reporting quorum being present, to report on H.R. 3245, and that is the crack cocaine disparity bill.

All those in favor, indicate by saying, "Aye."

All those opposed, indicate by saying, "No."

And a recorded vote is requested. The clerk will call the roll.

The Clerk. Mr. Conyers?

Chairman Conyers. Aye.

The Clerk. Mr. Conyers votes aye. Mr. Berman?

[No response.]

The Clerk. Mr. Boucher?

[No response.]

The Clerk. Mr. Nadler?

[No response.]

The Clerk. Mr. Scott?

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye. Mr. Watt?

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye. Ms. Lofgren?

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye. Ms. Jackson Lee?

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye. Ms. Waters?

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye. Mr. Delahunt?

[No response.]

The Clerk. Mr. Wexler?

[No response.]

The Clerk. Mr. Cohen?

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye. Mr. Pierluisi?

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye. Mr. Quigley?

Mr. Quigley. Aye.

The Clerk. Mr. Quigley votes aye. Mr. Gutierrez?

[No response.]

The Clerk. Mr. Sherman?

Mr. Sherman. Aye.

The Clerk. Mr. Sherman votes aye. Ms. Baldwin?

[No response.]

The Clerk. Mr. Gonzalez?

[No response.]

The Clerk. Mr. Weiner?

Mr. Weiner. Aye.

The Clerk. Mr. Weiner votes aye. Mr. Schiff?

Mr. Schiff. Aye.

The Clerk. Mr. Schiff votes aye. Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye. Ms. Wasserman Schultz?

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz votes aye. Mr. Maffei?

[No response.]

The Clerk. Mr. Smith?

Mr. Smith. No.

The Clerk. Mr. Smith votes no. Mr. Goodlatte?

[No response.]

The Clerk. Mr. Sensenbrenner?

[No response.]

The Clerk. Mr. Coble?

Mr. Coble. No.

The Clerk. Mr. Coble votes no. Mr. Gallegly?

Mr. Gallegly. No.

The Clerk. Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no. Mr. Issa?

Mr. Issa. No.

The Clerk. Mr. Issa votes no. Mr. Forbes?

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no. Mr. King?

[No response.]

The Clerk. Mr. Franks?

[No response.]

The Clerk. Mr. Gohmert?

[No response.]

The Clerk. Mr. Jordan?

[No response.]

The Clerk. Mr. Poe?

Mr. Poe. No.

The Clerk. Mr. Poe votes no. Mr. Chaffetz?

[No response.]

The Clerk. Mr. Rooney?

Mr. Rooney. No.

The Clerk. Mr. Rooney votes no. Mr. Harper?

[No response.]

Chairman Conyers. Mr. Wexler?

Mr. Wexler. Yes. May I be recorded yes, please?

The Clerk. Mr. Wexler votes aye.

Chairman Conyers. Jim Jordan?

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Chairman Conyers. The clerk will report.

The Clerk. Mr. Chairman, 16 members voted aye, nine members voted nay.

Chairman Conyers. The measure is agreed to. And, without objection, the bill will be reported. And the staff is authorized to make technical and conforming changes, and the Members will have 2 days to submit views.

We will now vote on the Python measure.

A reporting quorum being present, all who support the bill, as amended, will indicate by saying, "Aye."

All those opposed, say, "No."

Ayes have it. And the bill, as amended, is ordered to be reported favorably. And the staff is authorized to make technical, conforming changes. Members will have 2 days to submit views.

And I want to thank the members of the committee for their stamina. We are going to adjourn and are not coming back. And thank you all again.

[Whereupon, at 3:10 p.m., the committee was adjourned.]