RPTS JURA

DCMN SECKMAN

MARKUP OF:

H.R. 1478, THE "CARMELO RODRIGUEZ MILITARY MEDICAL ACCOUNTABILITY ACT OF 2009";

H.R. 42, THE "COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF LATIN AMERICANS OF JAPANESE DESCENT ACT";

H.R. 1425, THE "WARTIME TREATMENT STUDY ACT";

H.R.1110, THE "PHONE ACT OF 2009"; AND

H.R. 3237, TO ENACT CERTAIN LAWS RELATING TO NATIONAL AND COMMERCIAL SPACE PROGRAMS AS TITLE 51, UNITED STATES CODE, "NATIONAL AND COMMERCIAL SPACE PROGRAMS"

Wednesday, October 7, 2009

House of Representatives,

Committee on the Judiciary,

Washington, D.C.

The committee met, pursuant to call, at 2:29 p.m., in Room 2141, Rayburn House Office Building, Hon. John Conyers, Jr.

[chairman of the committee] presiding.

Present: Representatives Conyers, Berman, Boucher, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Wexler, Cohen, Johnson, Pierluisi, Quigley, Sherman, Gonzalez, Weiner, Schiff, Sanchez, Wasserman Schultz, Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Lungren, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe, 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. The committee will come to order. Pursuant to the rule, I call up H.R. 1478, the Carmelo Rodriguez Military Medical Accountability Act, for purposes of markup, and invite the clerk to report the bill.

The Clerk. H.R. 1478, a bill to amend chapter 171 of title 28, United States Code, to allow members of the Armed Forces to sue the United States for damages for certain injuries caused by improper medical care, and for other purposes.

Chairman Conyers. The bill as reported by the subcommittee is considered original text for purposes of amendment, is considered as read, and is open for amendment at any point.

[The information follows:]

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

Chairman Conyers. And I would invite Steve Cohen, the Chair of Commercial and Administrative Law Subcommittee, to describe the majority position on this matter.

Mr. Cohen. Thank you, Mr. Chairman, members of the committee. While Congress gave servicemembers the right to seek justice when it enacted the Federal Tort Claims Act of 1946, the Supreme Court took that right away 4 years later in Feres v. United States. The Supreme Court held then that active duty servicemembers cannot bring claims under that act. The court reasoned that Congress must have intended the act to exclude suits by servicemembers, even though nowhere in the text does that exclusion exist. The Court's holding has become to be known as the Feres doctrine.

The Court then and now has offered several reasons for its conclusion, primarily that Congress must have believed that tort lawsuits by servicemembers would interfere with, "military discipline" and put civilian courts in the business of second-guessing military decision making.

The Feres doctrine has been the subject of criticism within the Supreme Court itself. Current Justices Stevens and Scalia have both condemned it. Nevertheless, the Court has stood by this doctrine for almost 60 years. Nearly all legal commentators agree with Justice Scalia's assessment that "Feres was wrongly decided." For example, just last year, the American Bar Association weighed

in with an unopposed resolution urging Congress to repeal the Feres doctrine.

H.R. 1478, the Carmelo Rodriguez Military Medical Accountability Act of 2009, would in fact repeal the Feres doctrine by amending the Federal Tort Claims Act to allow servicemembers injured or killed as a result of military medical malpractice to bring suit. This is exactly what Justice Scalia has argued for.

The Commercial and Administrative Law Subcommittee held a hearing in March and, in May, reported the bill favorably with an amendment. The bill, as amended, would not require any amount received by a successful claim by a servicemember to be offset by certain veterans and other government benefits to which the servicemember may be entitled. Questions involving offsets would instead be decided on a case-by-case basis under the applicable State law, which is how such questions have always been decided in suits under the Federal Tort Claims Act.

The bill, as amended, also excludes any claims arising out of the combatant activities of the Armed Forces during the time of armed conflict; that is, armed conflict even in the absence of a declaration of war. So if you are injured and treated by a medic on battlefield, the rules don't change. That is fire coming in, fire going out, a very precarious situation. Things could happen. You are a military man. You are in a hospital. It is no different than being in a regular hospital malpractice.

Malpractice claims come in. No conflict. Shouldn't be.

There is no justification for continuing to deny our active duty servicemembers legal redress under the Federal Tort Claims Act when they are killed or injured as a result of medical malpractice. H.R. 1478 would restore the right of these servicemembers, such as the family of the late Sergeant Rodriguez, to sue under the Federal Tort Claims Act just like all other citizens can. I urge my colleagues to support the bill. Thank you.

Chairman Conyers. You are welcome. The Chair recognizes the distinguished minority leader, the ranking member, Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, I agree that Congress should ensure that the men and women who serve in the Armed Services receive the highest quality medical care possible. However, because this legislation does not make any significant contribution toward that end, I have to oppose the bill. The issue this bill presents is not whether servicemembers should receive compensation for injuries resulting from medical malpractice. They already receive no-fault compensation through the Departments of Defense and Veterans Affairs.

The issue also is not whether military medical personnel will be held accountable for medical malpractice. They already are held accountable, including the possibility of court-martial.

Rather, the issue this bill presents is whether flaws in the

current system should be addressed by giving trial lawyers free rein over our military's medical care.

This bill allows active duty military members of the Armed Forces to bring lawsuits against the United States under the Federal Tort Claims Act for medical malpractice injuries that occurred during the course of medical treatment provided by the military.

As we have seen in the civilian sector, there appears to be no correlation between medical malpractice damage awards and improvements in the quality of care provided. In fact, the litigation-created malpractice crisis is one of the major problems facing the practice of medicine in America today, causing health care costs to skyrocket. The major beneficiaries of the malpractice crisis are the trial lawyers, who reap large contingency fees. We can expect the same result to the military medical system if we enact this legislation. Trial lawyers will continue their get-rich schemes, and military medical care will suffer.

My opposition does not mean I believe that there haven't been any problems in military medicine. I oppose this bill because I don't believe that opening the door to lawsuit abuse is the solution. The Congressional Budget Office scored the cost of this bill at $2.9 billion, with no offset in sight. That is $2.9 billion that could be better spent improving the current system.

This bill also treats servicemember injuries differently

depending on how the injury occurred. Those servicemembers injured through medical malpractice will be entitled to the possibility of multimillion dollar damage awards, while those injured in combat will receive only administrative compensation. This is unfair to those injured in combat.

Because of the nature of the military, the medical system interacts with the individual patient to a much greater extent than in the civilian world. Health screening assessments, limitations on duty, eligibility for deployment, annual physicals, fitness for duty determinations, specialized evaluations for pilots, indigenous disease vaccinations, biological defense countermeasures, mental health evaluations, and other interactions are the everyday work of the military medical system. Every such medical interaction would be a potential tort claim for which defenses would need to be planned and defensive medicine practiced, threatening military medical readiness.

In sum, this legislation benefits trial lawyers, not servicemembers; creates inequities between the compensation for combat injuries and malpractice injuries; and disrupts the practice of military medicine. Moreover, this legislation comes with a $2.9 billion price tag for taxpayers, enough to buy catastrophic coverage for 1 million Americans who cannot get health insurance. Now, that is a plan the President should endorse.

I urge my colleagues to vote against final passage of this

bill, and look forward to at least one or two amendments being offered.

I thank you, Mr. Chairman, and yield back.

Chairman Conyers. Thank you, Mr. Smith.

Does any other member have a brief comment or observation?

Yes, Judge. You are recognized.

Mr. Gohmert. Thank you, Chairman Conyers.

I appreciate that. This is a concern of mine. And having served 4 years in the military at Fort Benning, we had some doctors that did not practice the best medicine, and we got them out. But one of the things that people in the military know is that anything that distracts from the mission needs to be eliminated; and, if it cannot be eliminated, it needs to be completely minimized.

And to set up a system where one soldier may be able to have a good lawsuit against a doctor in an Army facility or a military facility, whereas someone else got wounded by an enemy but maybe it was not the best order that was given by his platoon sergeant or his company commander, starts creating these feelings of inequity.

And one of the things the military drives in to people during training is everybody is equally important. Everybody has a different function, but everybody is equally important. And this is the kind of thing that will drive a wedge in there, into the sprit of the military. They shouldn't be thinking about, gee, I

wonder if I have got a lawsuit now, because once this door is open, then the next will be, well, maybe I should be able to sue my company commander. He made a bad decision. We charged the wrong hill.

Those kind of things should not be going about a military member's mind. It ought to be about one thing: Completing the goal, completing the mission, accomplishing what has been ordered and what needs to be done for the protection of this country. And I am greatly concerned that this will add that wedge into a military as a distraction to the overall mission of the military.

With that, thank you, Mr. Chairman. I yield back.

Chairman Conyers. You are welcome, Judge Gohmert.

Any other brief observations before we go into amendments?

If not, I will recognize Steve King for his amendment.

No amendment.

Who has got an amendment?

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

Chairman Conyers. Well, that is what I recognized you for.

Mr. King. I appreciate that.

Chairman Conyers. All right. The clerk will report it.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 1478 offered by Mr. King of Iowa. Page 2, after line 12, insert the following: D, no attorney shall charge, demand, receive, or collect for services rendered fees in excess of 15 percent of any judgment rendered pursuant to this section,

or in excess of 10 percent of any award, compromise, or settlement made pursuant to this section. Redesignate succeeding subsections accordingly.

[The information follows:]

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

Chairman Conyers. The gentleman is recognized in support.

Mr. King. Thank you, Mr. Chairman.

Mr. Chairman, my amendment will place a reasonable limitation on the fees attorneys may charge our service men and women if they decide to bring a lawsuit pursuant to this legislation.

The purpose of this amendment is to maximize the recoveries that our servicemembers might receive. My amendment adjusts the current 25 percent cap on fees in litigated Federal tort claims acts and those cases from 25 percent down to 15 percent, and it takes the current 20 percent cap on fees in settled cases down to 10 percent.

I believe this limitation is particularly important considering that, since 1960, the effective hourly rates realized by attorneys in contingency fee cases, if they are adjusted for inflation, have risen between 1,000 and 1,400 percent. This increase in rates has occurred while at the same time the risk of nonrecovery in medical malpractice cases has fallen. Thus, attorneys are getting paid more in contingency fees today for work that is less risky than it was in the past.

Our service men and women should not be subjected to these increased attorneys fees if we are going to enact this law, and I urge my colleagues against voting in favor of the underlying legislation. We should at least ensure that we maximize the recoveries that servicemembers can receive. We should not be

enacting this legislation for the benefit of trial lawyers.

A recent article in the Legal Times suggests that this legislation was the first preview of the coming fight in Congress on behalf of trial lawyers "over proposals that would open new areas for civil litigation." The article further summarizes that trial lawyers are testing whether they can translate their newfound political capital into legislative victories.

In conclusion, let me say that this bill is not the answer to solving the inadequacies that exist with regard to military compensation. The brave men and women of our Armed Forces deserve better than to be forced into the courtroom to receive increased compensation. However, if we are going to push them into the courtroom, the least we can do is ensure that we maximize their recoveries by placing a reasonable limit on attorney fees, and that would be 15 percent on those cases that go to court and 10 percent on those cases that are negotiated out of court.

Mr. Chairman, I urge adoption of my amendment.

Mr. Issa. Would the gentleman yield?

Mr. King. Mr. Chairman, I would happily yield to the gentleman from California.

Mr. Issa. Is the gentleman saying that you think that by limiting the wanton greed of trial lawyers to seek out these cases by making it less financially rewarding that we might in fact limit the cases to cases that have merit, since your generous percentage in large cases would be the great deal. But is that

the real attempt of the gentleman, is to try to reduce the kind of greed and avarice
that plaintiffs' trial lawyers may have at the expense of our soldiers?

Mr. King. Reclaiming my time. I hadn't characterized it particularly as an attempt to reduce the wanton greed. But that would be the difference between 25 percent and 15 percent, and 20 percent and 10 percent, respectively. And I had not either made the argument that the gentleman from California makes very well, which is when you lower contingency fees, then you get a lot closer to altruism when it comes to litigation, and you get further away from wanton greed. So I appreciate the point made by the gentleman from California, and I urge adoption of my amendment, and I yield back the balance of my time.

Chairman Conyers. Thank you.

Bobby Scott.

Mr. Scott. Thank you, Mr. Chairman.

Mr. Chairman, this amendment doesn't limit the servicemembers' costs. What it will, it will limit access to the servicemembers ability to get an attorney. In fact, a servicemember who is a victim of malpractice will be victimized again because this amendment essentially will prohibit him in many cases, unless there are huge malpractice damages, if it is just a regular case, with this amendment, they will be unable to get a lawyer. If that is helping servicemembers, I think they could do

without the help. If they want to get a lawyer that charges this, you know, you can go find one.

The problem is that these cases are so complicated that lawyers will not take cases unless the damages are extremely large. This amendment would limit many cases where there is clear malpractice, but you just won't be able to hire a lawyer because of this amendment.

I would hope that we would not inflict this additional victimization on our servicemembers by limiting their ability to get justice by limiting their ability to get an attorney.

I yield back.

Mr. Issa. I move to strike the last word.

Chairman Conyers. Mr. Darrell Issa.

Mr. Issa. Thank you, Mr. Chairman.

It is very clear that we have different views of plaintiff trial lawyers here on this committee. That may be an understatement. But it is also clear that if we care about the soldier, we should be not looking at the underlying bill the way we are; we should be looking at, first of all, allowing the court to award separate fees, expenses, and reimbursement from damages. We could bifurcate that fairly easily within our authority, allowing plaintiffs to come with an attorney who knows he or she is going to be fairly compensated by a review board separate from the award of that harmed soldier, sailor, or Marine.

So I think if, in fact, we want to take avarice out of the

process and, as my colleague said, and yet not eliminate somebody who has a valid claim from having that answered, we have the authority to do it, and it is not in this bill.

So I intend to vote with my colleague to reduce this amount, but I certainly would look forward to working with the chairman on the possibility that we actually modernize within our authority the ability for an attorney to receive fair compensation so that if it is a $10 case, but it takes $100 to get there, okay.

But I clearly see today that what we are really doing is simply saying, how much will we let the plaintiffs' lawyers get? And no matter how large the case, even if it is a $1 million, $2 million, they still can get 25 percent. And that is what I think the gentleman wants to --

Mr. Scott. Would the gentleman yield?

Mr. Issa. I would certainly yield to my friend.

Mr. Scott. Did I understand you, with this review panel, to suggest that attorneys fees would be paid on top of the award?

Mr. Issa. Well, I certainly think -- you know, the committee has the authority to take a solid look and say that, in fact, whatever amount of economic damages the individual has, if there is merit to the need to bring the case, if it is removed from any kind of arbitration or other way in which that remedy could have been granted, then in fact that should be fair.

Now, just sort of giving a little food for thought, Mr. Chairman. We certainly do have to look and say, we have a process

to get compensation to the injured soldier, sailor, or Marine. If they choose to use that, that is in everyone's best interest. If it is not sufficient, if they are being denied and they choose to go through a court process and if their need to go through that court process has merit, that becomes an extraordinary case. And I think we could consider that, and I think we should.

But I think that we need to get away simply from the fact that lawyers still cherry pick their cases based on whether 25 percent is going to make a case. So, as the gentleman was saying, if you lower it from 25 percent to 10 percent or 15 percent, all we are really doing is dabbling around when they choose it is in their best interest.

If we really care about the soldiers, we need to get them settlement out of court. If they have to go to court because they were denied a fair settlement through alternate process, then I think the committee should be bold and do the right thing and allow a judge to make a separate finding of expenses to be reimbursed, including reasonable fees. That is within our power. It is not win the bill.

On that, I yield back.

Chairman Conyers. I recognize Steve Cohen at this point.

Mr. Cohen. Thank you, Mr. Chairman.

And thank you, Mr. Issa.

I would I urge the committee to reject this amendment. I appreciate the spirit in which it is offered, because if you

listen to the discussion of the proponents of the amendment, they believe these soldiers deserve compensation. They believe they deserve more compensation, and that is why they want to reduce the attorney fee from what it has been in the law for all Federal tort claims acts since 1948 of 20 or 25 percent down to 10 percent. They want the soldiers to get more money. Well, they are not going to get more money unless this bill passes and gets them out of the system they are under now where they can't sue for medical malpractice.

So the spirit in which they argue, I would join with them and concur with it, and it sounds like they are for the bill because they want the soldiers to be compensated in a maximum amount. Right now, they are not compensated hardly at all.

The good judge from Texas, I believe, said one thing in the military is everybody is equally important. But they are not equally important for compensation. If you are an officer, you get more money based on the fact that you are an officer for the same injury that could be caused by medical malpractice than a private. That is not equal in the military. It is a separate decision that you are not all equally important when it comes to compensation under the present system that we have, which is not fair.

To claim that this bill is unfair, which is a different subject, I guess, to the folks who get injured in combat, it should be stopped to make such an argument, because that is

submitting that there is an injustice or an inequity to start with, and it should be uniformly distributed to those who were in combat and not in combat. Yet, the fact of the matter is opposite, the proponents of this amendment and the opponents to the bill don't want to have any additional compensation.

As far as the trial lawyers go, Mr. Chairman, I haven't heard from the trial lawyers. I have heard from Mr. Hinchey, who is the sponsor of the bill, and I saw the video of Mr. Rodriguez, who was diagnosed for having a boil that turned out to be cancer and that took his life. And when CBS television was at his home to see the situation, they were there when he passed away, which they didn't expect to have happen. And his family was here, and his family has suffered. It was medical malpractice to tell him, You have got a boil; go away. He went away. The tumor grew, and he lost his life. And that is not right.

And that is the only people I have heard from are the family and Mr. Hinchey. It is not about the trial lawyers, and it shouldn't be about making this law different from all other laws from on the same subject which have been uniform since 1948.

Mr. King. Would the gentleman yield?

Chairman Conyers. The Chair recognizes Mr. Lamar Smith.

Mr. Smith. Mr. Chairman, I want to speak in favor of the amendment; and then I have a question for the gentleman from Virginia, Mr. Scott. And then whoever asked to be yielded to, I will be happy to yield.

Mr. Chairman, let me yield to the gentleman from Iowa, Mr. King, and then I will speak in favor of his amendment.

Mr. King. I thank the gentleman from Texas for yielding, and I will keep it brief.

The question occurred to me as I listened to the gentleman from Tennessee, it sounds as I listened to those who are opposed to this amendment and spoke in opposition to it that they must believe that attorneys won't work for 15 percent on litigation cases and 10 percent on negotiated cases. If they will, then this is a benefit to the service men and women that might be covered by this bill should it become law. If they won't, then they should make that point, so we understand that there won't be anybody there to litigate. But that is what I heard from the gentleman from Tennessee.

And I yield back to the gentleman from Texas.

Mr. Smith. Mr. Chairman, I do support Mr. King's reasonable amendment to maximize servicemember recoveries by limiting attorneys fees.

The Congressional Budget Office has given this legislation a preliminary score of $2.9 billion over the next 10 years. Using CBO's preliminary cost estimate of $2.9 billion, we can further estimate that attorneys will receive as much as $725 million in fees over that same period of time. Certainly the lawyers who bring these cases deserve to be paid for their work, but bringing the current 25 percent cap down to at least 15 percent, as this

amendment does, is a reasonable limitation. It will increase what the servicemember receives while still fairly compensating their attorneys.

And, Mr. Chairman, I had a question for the gentleman from Virginia, Mr. Scott, and it is this. Under most contingency fee schedules, you have a sliding scale where the larger percentage is paid up to a certain amount, and then there is a sliding scale down, and a smaller percentage is paid for various amounts above that initial amount.

For instance, in this case, I wanted to ask the gentleman if he would be receptive to or supportive of an amendment that would put the normal kind of contingency fee schedule in effect where we might say 25 percent of the first $50,000, $75,000, then 15 percent of anything over that, and do something along the order that is normally practiced by lawyers.

And I will be happy to yield.

Mr. Scott. First, I would like to say that I was intrigued by the gentleman from California who suggested that the award should be given in a separate case, as is the case in discrimination cases. You could get reasonable attorneys fee. So if it is a small case, the attorneys fees might actually exceed the value of the case, which means that all cases could be brought because the lawyer would know he is getting a reasonable fee.

You know, all of this concern for the serviceman, the serviceman would like to be able to bring a case. If you limit --

the only thing that you do in limiting attorneys fees is limiting someone's access to a lawyer. And if they want to negotiate a fee schedule where they pay less than a third or 40 percent or 50 percent, let them find a lawyer that will do it for that, particularly with the small cases.

Mr. Smith. Just to reclaim my time. I don't think there is any incentive for an attorney to do that if in fact we codified the 25 percent. So I just was simply asking the gentleman if he would agree to a sliding scale as is normally used.

Mr. Scott. Well, I would say that what -- no, because I don't think the fees ought to be limited at all. All the sliding fee scale does is limit your ability to get a lawyer because you would limit the number of lawyers and might almost eliminate lawyers that would advance the case for the prescribed fee.

Mr. Smith. Reclaiming my time. That is the normal practice. I hope you are not saying that what is supported by trial lawyers is inimical to their own interest.

Mr. Scott. Say again.

Mr. Smith. I think the sliding scale is what is supported by trial lawyers across the country. I don't know that they would find themselves at a disadvantage if we in effect incorporated something that they use every day.

Mr. Scott. I don't think we codify professional fees. You don't codify plumbers and carpenters.

Mr. Smith. We are doing 25 percent. It would be just as

easy to do a sliding scale. But I get the general drift of the gentleman's response, and I thank him for that.

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

Chairman Conyers. Let me recognize Hank Johnson, and ask him to yield to me briefly, please.

Mr. Johnson. Yes, Mr. Chairman. I move to strike the last word, and I would yield to the Chair.

Chairman Conyers. Because Darrell Issa raised some interesting conversation, and I just wanted to see how he reacts to this.

The current amendment that we have, Darrell, would treat military personnel who sue the Federal Government differently from all others who sue the Federal Government, so that almost, in effect, this amendment unintentionally discriminates against our active duty military personnel in favor of all other plaintiffs for the exact same kind of medical malpractice. And so, to me, that could raise the issue of fairness.

Mr. Issa. If the gentleman from Alabama would yield to me.

Chairman Conyers. Georgia.

Mr. Issa. Georgia. I am sorry.

Mr. Johnson. Yes, I would.

Mr. Issa. Thank you, sir. And I thank both Georgia and Alabama.

The fact is that, as has been brought up, Mr. Chairman, it is an arbitrary number, and we are suggesting another arbitrary

number. I would hope that we begin looking openly at modernizing and ask the question of, is it an exceptional case? Is it a case in which the ordinary course of compensation that is envisioned to be out of court was not made available or was dramatically insufficient and that led to it? And if that leads to it, then perhaps we can, as was suggested in civil rights cases, we can look at fair compensation.

But for all of us who are looking at medical reform, health care reform, we realize that we have a low-cost delivery system in the Armed Forces and in the Veterans Administration, and every one of these that adds a billion here or a billion there is going to add to the cost of health care delivery. And I think we have to do this with caution, and that is why I am supporting the gentleman's unique answer. But not because I don't think we could do better.

Mr. Chairman, I believe we could do much better.

And I thank the gentleman from Georgia for yielding.

Mr. King. Would the gentleman from Georgia continue to yield?

Mr. Johnson. Are you going to go with the same line of question?

Mr. King. No.

Mr. Johnson. Okay. I will tell you what, let me go ahead and get mine out of the way, and then I will be happy to yield to you.

I just wanted to ask a couple of questions, Mr. King.

There may be some occasions where medical malpractice cases are not -- the government does not represent but the government may farm out, if you will, to private counsel the defense of the case for the government. And your cap on fees would not be limited to just plaintiffs' counsel. Excuse me, it would be limited to just plaintiffs' counsel and not defense counsel in that kind of a situation. Is that correct?

Mr. King. If the gentleman is asking me to yield, I believe that would be true because the government would be the defense counsel in this case.

Mr. Johnson. Well, now, why is it that we want to limit what plaintiffs' attorneys make, but we have no regard for how much money is paid out to the defense bar, many of whom charge upwards of $1,000 an hour for their representation? What is the reason that we would not have a fee cap for those defense lawyers as well?

Mr. King. If the gentleman would yield, I will respond to that question. And that would be that if in these scenarios that I envision, the Federal Government would be defending the medical practitioners that might be the subject of these suits that are activated by this potential legislation that is before us; therefore, since the government has people on salary defending them, to set contingency fees up to pay the defense would be, I would call that, double dipping.

And I would add also that the fairness that was raised by the chairman, the question of fairness as to these contingency fees being different for these cases as opposed to others, fairness comes into question when you look at injuries to military personnel that might take place in a noncombat situation where one might lose a leg compared to one losing a leg in a combat situation. Combat situations aren't covered under this legislation. And I think it raises a legitimate position of fairness that transcends the point made by the chairman.

Mr. Issa. Mr. Chairman, I ask unanimous consent that the gentleman from Georgia get 2 additional minutes.

Chairman Conyers. Without objection.

Mr. Johnson. Thank you.

And I would also ask, I would point out that when a plaintiff's lawyer takes a case, prosecutes it through trial and loses, and there may have been egregious errors by the judge which mandated that the attorney file an appeal, would this same -- and I will say that it has been my experience that fees generally go up when there is an appeal by either side, because that means more work for the plaintiff's lawyer. But your proposal would just mandate a 15 percent contingent fee regardless of whether or not there is an appeal or not. Is that correct?

Mr. King. If the gentleman would yield.

Yes, that is the answer. The underlying bill, as I understand it is written, sets those contingency fees in litigated

cases at 25 percent. This amendment lowers those fees in litigated cases to 15 percent. And then, as I mentioned, the negotiated cases settled out of court would be taken from 20 percent down to 10 percent.

Mr. Johnson. I will yield the balance of my time to -- well, I am going to yield to Chairman Cohen.

Mr. Cohen. Thank you, sir.

I would just like to comment that I have asked, and with all due respect to our ranking member, who I think the world of, I have kind of taken a survey of folks on my side of the aisle and they, like me, aren't that aware of this allegedly typical standard of lowering contingency fees the higher the award. I practiced in Tennessee and never heard of it in my life. The folks in North Carolina and Virginia aren't aware of it. They said Texas passed some law. And Texas is a great State. Tennessee went to war to protect Texas. But they don't, nevertheless, write the tort laws for the country. And it is kind of a new law to me, and I don't think it is the typical policy.

Mr. Smith. It the gentleman would yield. Maybe that is why our tort reform that was passed in 2003 has been so successful by reducing, for example, insurance premiums by 30 to 40 percent.

But I just consulted with my colleague to my left, Mr. Goodlatte, who says he is familiar with the sliding fees, and he even heard of your situation in Tennessee. So that is Virginia and Texas against Tennessee so far.

Mr. Cohen. We gave you our worst lawyers during that time. In 1840s, they said the worst lawyers go to Texas, and the best ones stay in Tennessee.

Ms. Jackson Lee. There are Texans on both sides of the aisle.

Mr. Cohen. That is true. Back to the argument at hand. We should have uniformity. And to the gentleman from Iowa about the combat situation, that is extraordinary circumstances. You don't have informed consent on the battlefield. You have got informed consent and the opportunity for physicians to make certain decisions that are more thought out and should be more professional in that type of setting than on the combat field where you have to take actions that may not be ones that you otherwise take, not in the best circumstances, and the possibility for disease and all those other things. It is not a sterile atmosphere for surgery. So I think there are good reasons to distinguish the two. And the one is done for the military's opportunity.

So, again, I ask we defeat the amendment.

Chairman Conyers. Before we take the vote, I recognize Dan Lungren and then Sheila Jackson Lee and then Bob Goodlatte.

Mr. Lungren. Thank you very much, Mr. Chairman.

I rise in support of the amendment, not because I think it is the best idea around, but it appears to be the only idea we are going to be able to vote on here today.

For a number of years I did medical malpractice defense. I actually did some plaintiffs cases as well, probably 5 percent plaintiffs cases; 95 percent medical malpractice defense. I was in California when we voted MICRA in, which was our reform of our medical malpractice system. It does have, by the way, a sliding scale for reimbursement to attorneys or attorneys fees, and it does go down as the award goes up. And any review of what has happened in California, it shows that there is not a dearth of attorneys to handle those cases. As a matter of fact, you get excellent attorneys who handle those cases.

The quandary I am in today is that we seem to have forgotten August. The Democratic leadership seems to deny August ever existed. The White House seems to deny August ever existed. During August, Members of Congress on both side of the aisle had town hall meetings about health care, and there was an enormous outcry by people around the country for us to try and do something about it. And one of the major topics of concern was reforming our medical malpractice system.

And so here we are with an opportunity to do that, in an area that is specifically a Federal responsibility, and we are not doing it. We are just saying we are going to add a group of people who maybe ought to have the opportunity to have their cases heard, but we are going to add them to a system that is so screwed up right now that the American people recognize it before Congress does.

We talk about defensive medicine. Every review has shown that billions of dollars are wasted in defensive medicine as a result of a medical malpractice system that is badly in need of reform, and we sit here as the committee of jurisdiction to provide that reform, and we don't bring it up. Instead, we are going to put another group of people, worthy I would say, into the system that almost everybody recognizes is in drastic need of reform.

I am going to vote for the gentleman's amendment, not because I believe it is the best idea, but it is the only idea evidently we are going to have an opportunity to really seriously consider around here.

I take a little umbrage at the characterization that all attorneys are somehow concerned about avarice and greed. I particularly find it difficult on my side of the aisle when we are the ones who usually defend the idea of profit. We always say there is nothing wrong with profit.

There are good attorneys out there who actually allow people to go into court who wouldn't have the chance to go into court precisely because of the system we have. England for many years didn't allow this system, and they didn't have people who had access to court. The fact of the matter is, there could be greed anywhere.

But I wish we wouldn't condemn our entire system by suggesting that any attorney who is a plaintiff's attorney is in

it for greed and avarice. You know, there are actually attorneys out there doing it for the right reason, and there are people that are getting compensation.

Having said that, I would say 85 percent of the cases that I have seen were a number of defendants brought into cases who were in fact not guilty of medical malpractice, and those cases are the kinds of cases that drive the costs up. And somehow we don't deal with that in this body in this committee. And here we have a golden opportunity to do it, but instead of really trying to look at the problems with medical malpractice, we are just going to graft onto the already existing system another group of people who may very well be worthy of being put into a system where they would be able to bring individual actions, but we ignore the problem with the system. The system contributes mightily to the problems of health care cost in this country and defensive medicine, and we sit here as if it doesn't exist.

So I guess I am disappointed with myself and this body that we don't take the time or have the courage to deal with this problem because it is a serious problem that the American people recognize and recognize ought to be dealt with now.

The gentleman's amendment is a blunder bust where we need to have a rifle shot. But if it is the only weapon I have got, I guess I will shoot it. But I am sorry to hear some of the debate that has gone on here today because I think, unfortunately, we distort the issue that is at hand, and we could put our minds to

coming up with some intelligent review.

And, frankly, I am surprised that people haven't even heard of the idea of sliding scale compensation. I know California is a small State, and I know no one notices us there, but the fact of the matter, we have had MICRA since 1976. It has worked pretty well. It is not perfect. It has limitations on noneconomic damages. It has a sliding scale of compensation to plaintiffs' attorneys, and it has a cap, I believe, on total attorneys fees. It has not denied people access to the courts. Thank you very much.

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

The Chair recognizes the distinguished gentlelady from Texas, Sheila Jackson Lee.

Ms. Jackson Lee. Mr. Chairman, thank you.

I think Mr. Lungren has framed the comments that I desire to make this afternoon.

First of all, I join him as a fellow counsel and lawyer to say that we do have an oath that we take or a pledge that we take when we take the bar exam, and I am glad that you have defended the integrity of lawyers, who I believe wish to defend and to represent the principles and the laws of this land.

But he also answers or provides the basis of my opposition to this amendment. We know that this soldier that lost his life was turned away, was in essence -- had the opportunity to indicate what his problem was, but he did not obtain service. And so, in

essence, he lost his life because of a poor judgment, a medical judgment.

That does not label all medical professionals, nor are we in a debate on health care reform, though certainly we will look forward to those debates in the years and days -- in the days to come.

But what this is, a simple premise of equality and the elimination of discrimination. It says that soldiers, noncombat, not in the midst of a conflict, have the ability to be made whole on the basis of a medical malpractice determination, the act of not providing service.

This is not an issue of a medical malpractice Federal bill. This is not a bill on medical malpractice. This is a bill on eliminating discrimination. And, frankly, we do not have, to my understanding, a Federal medical malpractice law. We have left that to the States. That would not be violated, as I understand, in terms of the guidelines, but it would give this individual, who happens to be active duty, the right to sue. That is an important element when you think of the sacrifice they make for all of us, willing to sacrifice their lives, willing to go in faraway places, that they should have the opportunity to be able to be served and to be served right.

This is not a denial of their health care system. Many of them would applaud it. Many of them applaud the veterans system, the TRICARE system. But it is a recognition that this family was

harmed. This individual was harmed. And they should have the simple ability to file a lawsuit. If they are governed by certain State laws in filing of the lawsuit, it is my understanding that they will adhere to those laws. But what we would be doing is making a Federal malpractice law, and that is not the underlying premise of the bill.

I would oppose the amendment and simply ask the vote on the question of equity and justice that our soldiers have the right to be made whole in the light of an unfortunate medical decision that would result in medical malpractice.

I yield back.

Chairman Conyers. Thank you, Ms. Jackson Lee.

Bob Goodlatte to close the debate.

Mr. Goodlatte. Thank you, Mr. Chairman.

I, too, will support this amendment with some reluctance and oppose the underlying bill for a number of reasons.

First of all, I generally, as an attorney who used to practice tort law and am very familiar with sliding scale, both in terms of the size of the award and in terms of the amount of work done by the attorney, whether they settle the case before going to court or take it through court or go all the way to appeal, or the size of the verdict might -- or the settlement could dictate the percentage recovered. So I think that is certainly a good suggestion that is not encompassed by the bill or the amendment. And, generally, I believe that individuals ought to be able to

freely contract the arrangement that they make with their attorney.

In this case, however, I will support a cap on attorneys fees, in fact a lower cap, because the bottom line here is this is paid for by the American taxpayers. And the government always isn't the best representative of them in making decisions about how to settle cases and do so with the taxpayers' interest in mind in terms of what is fair. And if this causes attorneys who are looking at these cases to be a little more careful in the ones they select because their recovery cannot be as great; I think that is a good thing. Maybe we will see fewer Yellow Pages ads around military hospitals and around military bases that say, No fee if no recovery, and not inject the legal practice any further than we need to into the Armed Forces of the United States. That is of course why the Feres doctrine exists in the first place.

And the ranking member has correctly pointed out that the cost projection of this is $2.9 billion over 10 years. I will remind folks that over those same 10 years, the Congressional Budget Office says that in no year for those next 10 years will our Federal deficit fall below $550 billion. The administration just recently added another $2 trillion to the projected budget deficits. And so when we start adding, we ought to be really looking at what most people in this country want the Congress looking at, and that is the cost of how we can reform things.

The gentleman from California makes a very, very good point

that there is strong demand for medical liability reform that would cut down on the amount of defensive medicine. I hate to think what this will do in our military hospitals to see an increase in the amount of defensive medicine that gets practiced there, because those physicians will find themselves in the same situation that other physicians around the country are finding themselves in. We have already estimated the cost of $10 billion to $20 billion a year in added medical costs because of defensive medicine that is practiced; never mind the insurance and other liability issues that come with that.

But there is another issue here that troubles me, and that is the fairness. Much has been made of how the fact that people who are injured in a military hospital would not be able to recover. Why is it that we are only addressing medical liability? There is a whole array of other tort liability issues that those serving in our military would also face: eating an improperly cooked meal that causes a severe illness or disability. How about a building falling on you, or some other defective piece of equipment that the military has you operate? All of those things are not addressed by this either. This is a view of selective fairness that I think should be rejected.

If we are going to change the overall approach of our government in terms of looking at whether we should inject our tort liability system into the United States military, we ought to do it in a more comprehensive way.

I, for one, am very skeptical of that idea, and for that reason I don't want to kick the door open with regard to this particular area.

The military does need to address the needs of those who are injured under its purview, and it needs to do it in a comprehensive way, and perhaps we need to have oversight of that. But to bring our civil justice system into the military in this way, I think it is as much a mistake today as it was when the United States Supreme Court adopted the Feres doctrine in the first place.

So I will support the amendment and oppose the bill.

Chairman Conyers. I thank Mr. Goodlatte for closing down the debate.

We will now vote on the King amendment with a roll call vote.

The clerk will call the roll.

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.

[No response.]

The Clerk. 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.

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

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.

[No response.]

The Clerk. Mr. Gonzalez.

Mr. Gonzalez. No.

The Clerk. Mr. Gonzalez votes no.

Mr. Weiner.

[No response.]

The Clerk. Mr. Schiff.

[No response.]

The Clerk. Ms. Sanchez.

[No response.]

The Clerk. Ms. Wasserman Schultz.

Ms. Wasserman Schultz. No.

The Clerk. Ms. Wasserman Schultz votes no.

Mr. Maffei.

Mr. Maffei. No.

The Clerk. Mr. Maffei votes no.

Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner aye.

Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Lungren.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

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.

[No response.]

The Clerk. Mr. Jordan.

[No response.]

The Clerk. Mr. Poe.

Mr. Poe. Aye.

The Clerk. Mr. Poe votes aye.

Mr. Chaffetz.

[No response.]

The Clerk. Mr. Rooney.

Mr. Rooney. Yes.

The Clerk. Mr. Rooney votes yes.

Mr. Harper.

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Chairman Conyers. Mel Watt.

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Chairman Conyers. Mr. Brad Sherman.

Mr. Sherman. No.

The Clerk. Mr. Sherman votes no.

Chairman Conyers. Ms. Waters.

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Chairman Conyers. Mr. Schiff.

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no.

Chairman Conyers. Chairman Berman.

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Chairman Conyers. Mr. Weiner.

Mr. Weiner. No.

The Clerk. Mr. Weiner votes no.

Chairman Conyers. Ms. Jackson Lee.

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Chairman Conyers. Judge Gohmert.

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Chairman Conyers. Mr. Issa.

Mr. Issa. Aye.

The Clerk. Mr. Issa voted aye.

Chairman Conyers. The clerk will report.

The Clerk. Mr. Chairman, 13 members voted aye; 18 members voted nay.

Chairman Conyers. The amendment is not successful.

Mr. Trent Franks of Arizona may have an amendment.

Mr. Franks. Mr. Chairman, I do have an amendment at the desk.

Chairman Conyers. The clerk will report it.

The Clerk. Amendment to the amendment in the nature of a substitute to H.R. 1478 offered by Mr. Franks. On the first page, strike line 4.

Mr. Franks. Mr. Chairman, I move the amendment be considered as read.

Chairman Conyers. The amendment will be considered as read, and the author of the amendment will be recognized in support of it.

[The information follows:]

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

Mr. Franks. Thank you, Mr. Chairman.

Mr. Chairman, in sincerity, I have heard several calls today for uniformity, and I would just suggest that one of the benefits of the current military compensation system is that comparable injuries at this moment are indeed treated uniformly. But this bill will require the Department of Defense to pay twice in some cases for medical malpractice claims, and it would also make damages and awards contingent on where a person or servicemember is stationed.

For example, a servicemember stationed in California will not be subject to the collateral offset, while one stationed in New York will be. Thus, holding all other factors constant, servicemembers with exactly the same injuries will receive very different amounts of compensation depending on where they are stationed. Of course, selective compensation based on duty station falls short of the evenhanded fairness needed to preserve military morale.

Mr. Chairman, that doesn't even reach some of the comments that Mr. King mentioned related to if someone is hurt in battle, that they are treated very differently under this system, under this bill, than those, say, someone hurt in an office in Pittsburgh.

So, Mr. Chairman, I identify strongly with the remarks of Mr. Goodlatte that this needs to be approached from kind of a

comprehensive direction, and my amendment would require that GAO to conduct a study of several issues related to medical malpractice by military medical personnel. I believe it is important that we study any problems with the current system before we take the drastic step of repealing the Feres doctrine for medical malpractice claims.

The Feres doctrine has been on the books for about 59 years. And while the doctrine certainly has deservedly engendered some of its criticism, I believe that we have an obligation to do more than just one subcommittee hearing before we move toward its repeal.

Our subcommittee hearing was the first hearing Congress held on the Feres doctrine since the Senate Judiciary Committee held similar hearings 7 years ago, and we did not even hear from the Department of Defense nor the Department of Justice at our hearing, nor have we heard their opinions on this legislation since that hearing, as far as I know. In the past, both Departments have strenuously opposed this similar legislation. And I don't believe that, based on one subcommittee hearing with only five witnesses, we can do much more than just begin to assess whether this legislation is either necessary or the best solution to any problems that may exist with military medical malpractice claims.

I will say again, Mr. Chairman, I do believe the system needs to be looked at and addressed, but my amendment will put a

reasonable hold on this legislation so that the GAO can conduct a study of the current system to provide us with at least some of the information we need to make an educated decision on whether we should enact this law. And I hope my colleagues will support this, what I believe is a reasonable amendment.

Chairman Conyers. Thank you, Mr. Franks.

Before I recognize Steve Cohen, I notice the presence of Maurice Hinchey of New York in the Judiciary Committee room.

We welcome you to these hearings.

The Chair recognizes Steve Cohen.

Mr. Cohen. Thank you, Mr. Chairman.

I do ask the committee to oppose this amendment as well, and there are quite a few good reasons to do it.

I will start with our dear friend in this argument, the distinguished Supreme Court Justice Scalia, who has so many friends on this committee. He might not know it today, but generally he does. And Justice Scalia said that the unfairness of servicemen of geographic varied recovery is, to speak bluntly, an absurd justification for the Feres bar. It is absurd because, Justice Scalia said, nonuniform recovery cannot possibly be worse than uniform nonrecovery.

So the old Justice Scalia, who was certainly right on this particular dissent, clearly shows that the whole argument that you should be against disparate recovery and to be so would be for no recovery is illogical.

And there is certainly a reason why people who are injured on the battlefield should get different compensation standards than people who are injured or hurt because of medical malpractice in a hospital setting, which should be of the same professional standards as would be in the United States or wherever in a noncombat atmosphere. All of those arenas should be uniform in terms of the medical practice extended, and nobody would submit that the combat situation is one that would be the same. And certainly, there you have got the command and the discipline that is important for the military present. It is not the same in an operating room.

So I would oppose it.

Chairman Conyers. Would the gentleman yield to me?

Mr. Cohen. I would gladly yield to the chairman.

Chairman Conyers. Could I ask Trent Franks, is this amendment that proposes a study in place of the substance of the Amendment No. 1 that could be described as simply gutting the bill?

Mr. Franks. Well, Mr. Chairman, I suppose there are some who might say that. But I am sincere in the amendment that I do think the situation should be looked at, and I just was suggesting that Mr. Cohen made partly my argument here. He was saying that Justice Scalia -- and, incidentally, Justice Scalia was a friend of mine. I knew Justice Scalia. But he made the argument that we shouldn't treat battlefield injuries differently than those

injuries in country, and this bill will do exactly that. And so I am suggesting that a GAO study, where we can get the parties involved in it, may very well be the product of that meeting, may be something that some of us could support.

So I want you to know that I think this should be addressed, but what we are doing here is injecting a kind of a very complex, I think, as Mr. Lungren mentioned, we are injecting kind of the same challenges that we have in our tort system into the military.

Chairman Conyers. Then you are in effect asking our colleague, Mr. Hinchey, to withdraw this bill and let us do a study before?

Mr. Franks. I am not sure he would vote for my amendment, so I am not suggesting he should withdraw it. But I think that would be in the best interest. If the amendment passes, it wouldn't be withdrawing his legislation. It would simply be saying we need the GAO to give us the facts on this so we can get together and make a better bill.

Chairman Conyers. So that the Hinchey bill could go forward and the study could go forward as well?

Mr. Franks. Well, that is not the way the amendment is written.

Chairman Conyers. Well, how is it written?

Mr. Franks. I understand the confusion. The committee has put this as an amendment to the amendment, because as you know, there was a manager's amendment first planned for this. The

manager's amendment was never brought up, and so they just went ahead and left the nomenclature the same. And this does affect the underlying bill as a substitute to the underlying bill when it was originally meant to be a substitute to the manager's amendment. So I apologize for the confusion.

Chairman Conyers. So it evolved into a gutting amendment.

Mr. Franks. Yeah. And it is your fault.

Chairman Conyers. Of course. The Chair is responsible for everything that goes on in the committee.

Mr. Cohen. Thank you, Mr. Chairman.

If I can reclaim my time. I listened to the arguments and thought that the amendment was one specifically on the two different arguments. I didn't realize this was the gutting amendment and went so much further to destroy justice and not just to do it in a small, you know, more surgical manner. So, yes, this is the gutting amendment. We have had 60 years to study it, and I don't know that we need more time. I think the situation is clear. And I do understand that the gentleman probably knew Justice Scalia. I just hope that he shows that he knows him and respects him and supports him as I do on this issue.

Chairman Conyers. Well, this has been a very enlightening discussion.

Let us now vote on this by way of a record vote.

The Clerk. Mr. Conyers.

Chairman Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman.

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

[No response.]

The Clerk. Mr. Scott.

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt.

[No response.]

The Clerk. Ms. Lofgren.

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Ms. Jackson Lee.

[No response.]

The Clerk. 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.

[No response.]

The Clerk. Mr. Pierluisi.

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

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.

[No response.]

The Clerk. Mr. Gonzalez.

[No response.]

The Clerk. Mr. Weiner.

[No response.]

The Clerk. Mr. Schiff.

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no.

Ms. Sanchez.

[No response.]

The Clerk. Ms. Wasserman Schultz.

[No response.]

The Clerk. Mr. Maffei.

Mr. Maffei. No.

The Clerk. Mr. Maffei votes no.

Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner, aye.

Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Lungren.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Issa.

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Forbes.

[No response.]

The Clerk. Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Franks.

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

[No response.]

The Clerk. Mr. Jordan.

[No response.]

The Clerk. Mr. Poe.

Mr. Poe. Aye.

The Clerk. Mr. Poe votes aye.

Mr. Chaffetz.

[No response.]

The Clerk. Mr. Rooney.

Mr. Rooney. Yes.

The Clerk. Mr. Rooney votes yes.

Mr. Harper.

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Chairman Conyers. Mr. Weiner.

The Clerk. Mr. Weiner is not recorded.

Mr. Weiner. No.

The Clerk. Mr. Weiner votes no.

Chairman Conyers. Mr. Nadler.

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Chairman Conyers. Mr. Gonzalez.

Mr. Gonzalez. No.

The Clerk. Mr. Gonzalez votes no.

Chairman Conyers. Chairman Johnson.

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Chairman Conyers. Ms. Jackson Lee.

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Chairman Conyers. Brad Sherman.

Mr. Sherman. No.

The Clerk. Mr. Sherman votes no.

Chairman Conyers. The clerk will report.

Mr. Boucher.

Mr. Boucher. No.

The Clerk. Mr. Boucher votes no.

Chairman Conyers. The clerk will report.

The Clerk. Mr. Chairman, 11 members voted aye; 16 members voted nay.

Chairman Conyers. The amendment is unsuccessful.

The Chair recognizes the gentleman from Florida, Tom Rooney, for the final amendment.

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

Chairman Conyers. The clerk will report it.

The Clerk. Amendment offered by Mr. Rooney of Florida. On page 2, line 13, insert at the beginning, number 1: For purposes of this subsection C, combatant activities shall include training for combatant activities.

[The information follows:]

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

Chairman Conyers. The gentleman is recognized in support of his amendment.

Mr. Rooney. Thank you, Mr. Chairman.

Mr. Chairman, some of the

things that we have been discussing with the other amendments to the amendment have been related to combatant activities and the difference between combatant activities and those activities that are not at wartime or on the battlefield or the like. Even Mr. Cohen recently just said that command and discipline on the battlefield is different than in the operating room.

If that is the case, one of the concerns that I have as a former Army captain and former judge advocate as we discuss whether or not to change the Feres doctrine and who would be Feres barred is regarding injuries or incidents occurring in training for battle at the National Training Center in California or at Fort Hood, Texas, where I was stationed, or any of the training facilities in deployed arenas, such as Kuwait. These are dangerous places that require commanders to be able to adequately train for the good order and discipline and not only that but for the ability to properly execute what they are being required to do by the commander in chief. Sometimes it is not easy. Sometimes its not safe.

And I think that if we are going to have this amendment pass, even though I oppose the underlying amendment, if we are going to

have it pass, shouldn't it also include for good order and discipline of the troops that are training that the Feres bar be extended to training for combatant activities rather than just combatant activities? Unless combatant activities includes that it is implicit in that already, then I would be willing to withdraw my amendment. But I think, for clarity purposes, training for combatant activities should also be included in this.

Chairman Conyers. Would the gentleman yield?

Mr. Rooney. I would.

Chairman Conyers. We would be delighted to take the concept that you have presented in your amendment, even though it may be withdrawn. We would like to study it.

Mr. Rooney. That combatant activities would imply training for combatant activities? Because that is a whole other realm of potential injuries/health concerns that I don't know if Mr. Cohen has included in his amendment.

Chairman Conyers. Well, I doubt that he has, frankly. But could we discuss it? If you are going to withdraw the amendment, I am offering to discuss this with you. Are you moving forward for a debate and a vote then?

Mr. Rooney. Mr. Chairman, I would just respectfully like to move forward.

Chairman Conyers. Of course. Fine.

I recognize Chairman Cohen.

Mr. Cohen. Thank you, Mr. Chairman.

Let me ask the gentleman a question, the gentleman from Florida. The distinction that I was making in the law that we propose is the distinction in a calm and rational and collective and sterile environment that is parallel to one that exists in the private sector as distinguished from one that is in the combat world.

Now, this training, I would think, operates in that former arena that is calm and rational and thought out and applied without the fear of the haste and need to move forward because of exigent circumstances. Why do you believe that there should be that distinction or that inclusion that this training, if it is negligent, shouldn't be subject to a clear oversight and damages and a remedy if it is indeed in fact negligent?

Mr. Rooney. Would the gentleman yield?

Mr. Cohen. Yes, sir.

Mr. Rooney. I think that your presumption is somewhat misguided in that training for battle is clean and sterile and that it is distinguishable from combat in that the amount of exigency and the amount of risk and the amount of danger and the amount of stress and the amount of situational operations, operations where a medic or a physician might be in a situation that is not an Army hospital on Fort Hood, Texas, but say at the National Training Center in California, or in the middle of a desert or in Kuwait.

Mr. Cohen. Reclaiming my time. So what you -- I may

misconstrue your amendment. You are not talking about training that goes on like in a hospital. You are talking about training that is in the arena as if it were combat, training and doing drills and maneuvers.

Mr. Rooney. Yes, sir. And I don't believe that the way that this bill is written makes that clear.

Mr. Cohen. I can understand. And in that situation, it is more -- it is not the sterile atmosphere. I thought you meant training, like taking medics and saying, here's how you do an IV, et cetera, in a classroom or in a non -- you are talking about in a simulated battlefield arena.

Mr. Rooney. Right. But that also extends to a lot of other things. Again, the problem I have with the underlying bill is I think that could actually extend to things like physical training and certain problems that you have with, where does actual combatant activities begin and noncombatant activities end?

Mr. Cohen. I don't think it begins or starts when you go into a surgery or go into a doctor and say, is this a boil or is this a tumor?

Mr. Rooney. Right. I agree, that is definitely distinguishable. I agree with you there. But I think that, for the sake of this amendment, that I don't think it is a perfect amendment. I think that it is made a little bit better by making clear that combatant activities just doesn't mean being in Iraq or being in Afghanistan and being at war. It also is the preparation

for a war, which would include a lot of scenarios and situations where the Feres bar should remain.

Mr. Cohen. If I can reclaim my time, I think you offer a good idea, and I concur with the chairman that we ought to take this idea and look at putting it in a manager's amendment. But your amendment says combatant activities shall include training for combatant activities. Training can be in the field, in a pseudo mock wartime environment. Or training can be in a medic type classroom that is more analogous to the operating room. And your amendment is not clear enough to show -- and I think in these situations where you are doing drills or you are doing simulated activities and training, that is one thing, as if combatant activity.

But just to say shall include training for combatant activities, you know, training while in faux combatant activities might be better language. But I think it is something that is good material for a potential manager's amendment, and would ask you to work with the chairman and try to include this in the manager's amendment because I think right now it is kind of vague and overly broad.

Mr. Rooney. I would agree that it is vague and overly broad, but I would also argue that the way that it is written now as just combatant activities is also vague. So I would be willing to work with you on moving forward with the manager's amendment to try to clarify, because I do think that it is important that we make the

distinction between what is truly training for combat and combat versus removing a boil as a normal medical procedure from military personnel.

Mr. Cohen. Thank you, sir.

I appreciate your duty and your service and your knowledge. And I think your amendment has a lot of merit, and I would ask the chairman and staff to work closely with him to come up with an amendment that does have parallel universes.

Chairman Conyers. Would the gentleman yield?

Lamar Smith has agreed to sit with me to review this matter with you. We know this is your first amendment. And it is not a mark of a negative inference that you withdraw your first amendment, especially if the chairman and the ranking member feel that there is merit in further analysis of it.

Mr. Rooney. Mr. Chairman, with that commitment to move forward, I certainly feel like we made some headway in the right direction, so I would be willing to withdraw my first amendment.

Chairman Sensenbrenner. I thank the gentleman.

There being a reporting quorum present, the question is on reporting the bill favorably to the House.

Those in favor say aye. Those opposed say no.

The ayes have it. The bill is ordered reported favorably.

A recorded vote has been requested.

The Clerk. Mr. Conyers.

Chairman Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

Mr. Berman. Aye.

The Clerk. Mr. Berman votes aye.

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.

[No response.]

The Clerk. 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.

[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.

[No response.]

The Clerk. Ms. Baldwin.

[No response.]

The Clerk. 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.

[No response.]

The Clerk. Ms. Wasserman Schultz.

[No response.]

The Clerk. Mr. Maffei.

Mr. Maffei. Aye.

The Clerk. Mr. Maffei votes aye.

Mr. Smith.

Mr. Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Sensenbrenner.

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner, no.

Mr. Coble.

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

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.

[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. No.

The Clerk. Mr. Rooney votes no.

Mr. Harper.

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Chairman Conyers. Judge Poe.

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Chairman Conyers. Mel Watt.

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Chairman Conyers. Mr. Weiner.

Mr. Weiner. Aye.

The Clerk. Mr. Weiner votes aye.

Chairman Conyers. Sheila Jackson Lee.

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Chairman Conyers. The clerk will report.

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

Chairman Conyers. Thank you.

The measure is agreed to.

Chairman Conyers. Pursuant to notice, I call up H.R. 1110, the PHONE Act, for purposes of markup, and ask the clerk to report the bill.

The Clerk. H.R. 1110, a bill to amend title 18, United States Code, to prevent caller ID spoofing, and for other purposes.

[The information follows:]

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

Chairman Conyers. Thank you.

Would the Chair of the Crime Subcommittee put this bill in perspective from the majority point of view?

Bobby Scott.

Mr. Scott. Thank you, Mr. Chairman.

Thank you for holding the markup on H.R. 1110, the Preventing Harassment through Outbound Number Enforcement or PHONE Act of 2009.

This bill was developed in prior Congresses on a bipartisan basis, and I want to commend the members and staff on both sides who have worked on this legislation. It is aimed at a practice called spoofing. Spoofing occurs when a caller uses a fake caller ID to hide the caller's true identity in order to commit fraud or some other abusive act. Spoofing also occurs when the caller knowingly uses the caller ID of another person or business without permission.

One of the witnesses at a prior hearing last year was Phil Kiko, prior Judiciary Committee chief counsel, who had been a victim of such ID spoofing. This kind of spoofing is also used to commit identity theft. Recipients sometimes divulge personal information to the spoofer under the mistaken disbelief that the call is legitimate. For example, the AARP has reported cases in which people received calls falsely telling them they missed jury duty. They were told, to avoid prosecution, they needed to

provide their Social Security number and other personal information. The phone number that appeared on their caller ID was the local courthouse, so people gave up their information.

Recently, the technology needed to spoof has become readily available, and therefore, we need this legislation. Last Congress we passed the bill with a vote of 413-1; the Senate Judiciary Committee had a slightly different version, and those changes have been incorporated into this bill.

Mr. Chairman, I ask unanimous consent that the rest of my statement be entered into the record.

[The information follows:]

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

Chairman Conyers. Without objection.

The Chair recognizes Howard Coble for an opening statement.

Mr. Coble. Thank you, Mr. Chairman.

H.R. 1110, the Preventing Harassment through Outbound Number Enforcement Act, or the PHONE Act, addresses caller ID spoofing deployed for obtaining a victim's personal or financial information in order to commit identity theft and other similar fraud. Spoofing involves masking one's caller ID information to facilitate a fraudulent telephone call to the recipient.

Those who engage in spoofing use incorrect, fake, or fraudulent caller identification information to conceal their identity and then obtain personal information from the victim. Spoofers pose as representatives of banks, credit card companies, or even a court of law. They often claim that the individual's bank account or personal information has been compromised and that additional information is needed to protect against theft. Call recipients unwittingly divulge their names, addresses, or Social Security numbers to spoofers under the mistaken belief that the individual on the other line is someone they can trust. Unfortunately, with spoofing, a person does not know that their identity has been stolen until it is too late and the damage has been done.

This legislation will help law enforcement officials identify thieves before they strike by cutting off their means of obtaining

personal information. Similar legislation passed the House with bipartisan support in both the 109th and 110th Congresses, and I urge my colleagues to join you and me, Mr. Chairman, in supporting this bill.

And I yield the balance of my time to the Crime Subcommittee ranking member, Mr. Louie Gohmert of Texas.

Mr. Gohmert. Thank you.

And thank you, Ranking Member Coble.

Mr. Coble. For the moment.

Mr. Gohmert. For the moment.

I join you and Chairman Conyers and Ranking Member Smith in support of the legislation.

Spoofing is relatively new technology that allows identity thieves to disguise themselves as legitimate businesses on a person's caller ID in order to solicit personal information from the victim. This scheme affects people from all walks of life. Even Members of Congress are not immune, as Congressman Tim Murphy, who sponsored this legislation in the 109th Congress, testified in 2007 before the Crime Subcommittee that the caller ID of his congressional office was used to disguise calls to his constituents.

Spoofing not only victimizes the phone call recipient but also invades the privacy of those individuals whose caller ID is used to mask the fraudulent calls. To address this, the PHONE Act specifically prohibits the use of an actual person's caller ID

information for spoofing.

Although the technology needed to spoof has been available for some time, it previously required special equipment and knowledge to use it. Now, an identity thief can supply or simply purchase Internet telephone equipment or use a Web site specifically set up for spoofing.

The PHONE Act imposes penalties for modifying a caller ID with the intent to deceive the recipient of a telephone call as to the identity of the caller. However, the legislation does not affect legally available technology for blocking caller ID or lawfully authorized activities of law enforcement or intelligence agencies. This legislation will help deter telephone fraud, protect consumers from harassment, and protect consumers and their personally identifiable information from identity thieves.

I, therefore, urge support for the bill, and I yield back the balance of my time.

Mr. Coble. I reclaim, and I yield back. Mr. Chairman.

Chairman Conyers. Thank you.

The Chair recognizes Chairman Scott for a manager's amendment.

Mr. Scott. Thank you, Mr. Chairman.

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

Chairman Conyers. The clerk will report it.

The Clerk. Amendment to H.R. 1110, offered by Mr. Scott of Virginia. Page 4, strike line 3 and all that follows through line

23, and insert the following. Number 2 --

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

Chairman Conyers. Without objection, it is considered so. And the gentleman is recognized in support of his amendment.

[The information follows:]

******** INSERT 1-5 ********

Mr. Scott. Thank you, Mr. Chairman.

This amendment is a product of discussions between this committee and the Energy and Commerce Committee, who were concerned that the definition of Voice Over Internet Protocol, known as VOIP, is inconsistent with the way the term is defined by the FCC. To avoid confusion, we used the generic definition for telephone call to include all types of telephone calls, regardless of the mechanism, whether it is Internet or a regular phone call or anything. This is agreed to with the Energy and Commerce Committee, and I hope we would adopt the amendment.

And, Mr. Chairman, before I yield back, I did want to thank you, the gentleman from Pennsylvania, Tim Murphy, Ms. Jackson Lee, and Mr. Sherman for being original cosponsors of the bill.

I yield back.

Chairman Conyers. Thank you.

Mr. Coble.

Mr. Coble. Thank you, Mr. Chairman.

I support the amendment offered by the gentleman from Virginia. The amendment revises the definition of telephone call to clarify the application of this law to Voice Over the Internet Protocol, or VOIP, technology.

VOIP technology transmits telephone calls across the Internet rather than traditional telephone lines; yet, this technology could just as easily be exploited for spoofing crimes.

The amendment also makes several other technical changes to the bill. I urge adoption of the amendment, and I yield to the gentleman from Virginia.

Mr. Goodlatte. I thank the gentleman for yielding, and I support the manager's amendment and the underlying bill.

Consumer fraud and identity theft are serious problems facing our citizens today. While technology has provided access to a vast amount of information about products and services that was not even imaginable a few years ago, technology is also being used by criminals to commit new types of fraud and to steal personal information from unknowing consumers.

Like other technologies, caller ID devices have empowered consumers. These devices allow consumers to screen out calls they would prefer not to take. They also perform the important function of acting as an additional check to ensure that individuals placing incoming calls are who they say they are.

Unfortunately, criminals have found a way to fake caller ID information in order to trick consumers about who is actually calling. Increasingly, thieves are using the tactic to extract personal information from unsuspecting consumers. For example, by faking the caller ID of a consumer's bank, a thief can lure a consumer into divulging bank account numbers, Social Security numbers, and other types of sensitive personal information, which can then be used to commit identity theft and other criminal acts.

The PHONE Act will help to stop this abusive practice.

Specifically, this bill imposes criminal penalties on those that provide false caller ID information with the intent to wrongfully obtain anything of value as well as those that provide the caller ID information of an actual person without that person's consent with the intent to deceive the recipient of the call.

The PHONE Act is an important tool to fight against identity theft, and I urge support of the legislation and the manager's amendment.

Mr. Coble. Reclaiming, Mr. Chairman, and yield back.

Chairman Conyers. Thank you.

My thanks to Chairman Scott and Mr. Coble and Mr. Goodlatte.

The question is on the amendment. Those in favor will say aye. Those opposed no.

The amendment is agreed to.

And if there are no other amendments, a reporting quorum being present, the question is on reporting the bill as amended favorably to the House.

Those in favor say aye. Those opposed say no.

The ayes have it, and the bill, as amended, is ordered reported favorably.

And, 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 additional days to submit views.

Chairman Conyers. At this point, I would like to, pursuant to notice, call up the bill H.R. 42, the Commission on Wartime Relocation and Internment of Latin Americans and Japanese Descent, for purposes of markup, and ask the clerk to please report the bill.

The Clerk. H.R. 42, a bill to establish a fact-finding commission to extend the study of a prior commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, and for other purposes.

Chairman Conyers. Thank you. The bill, without objection, is considered read and open for amendment at any point.

[The information follows:]

******** INSERT 1-6 ********

Chairman Conyers. And might I invite the Chair of Immigration, Zoe Lofgren, to lay the foundations for our understanding of the bill?

The gentlelady is recognized.

Ms. Lofgren. Thank you, Mr. Chairman.

We know much about the internment of 20,000 Japanese Americans during World War II in part because of the Commission of Wartime Relocation and Internment of Civilians Act of 1980. This act established a commission to review the history of the internment and relocation of Japanese Americans and legal permanent residents, and to recommend appropriate remedies. The commission produced an extensive report of its findings and made a series recommendations.

Although the commission's report is widely accepted as having thoroughly examined the facts surrounding the World War II internment of Japanese Americans, the mistreatment of other populations during World War II was either not sufficiently examined or not studied at all by this commission.

This is the case for thousands of Latin Americans of Japanese descent who were mistreated during this period. The commission merely touched upon this subject briefly in the appendix of its final report.

Approximately 2,300 men, women, and children of Japanese descent were involuntarily relocated from their homes in Latin

America, detained in internment camps in the United States, and, in some cases, deported to Axis countries to enable the United States to conduct prisoner exchanges.

H.R. 42 would create a fact-finding commission to investigate and determine facts and circumstances surrounding the relocation and internment and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February of 1948. The bill would also assess the impact of the United States' actions and recommend appropriate remedies, if any.

I would like to note that several members of our committee, including Representatives Issa, Lungren, Berman, Gutierrez, Jackson Lee, and Pierluisi are cosponsors of this bill. When the bill was in the subcommittee, I offered an amendment that contained language agreed to by the bill's sponsor, Mr. Becerra, and Mr. Lungren, one of the cosponsors of the bill. The amendment was adopted 9-0, and the amended bill was reported by a strong 7-2 vote.

I commend Mr. Becerra for his hard work on this bill, and I urge my colleagues on both sides to support H.R. 42 and to vote favorably on the measure today.

I would note, although it is not part of the bill, it will be part of the committee report with a letter I promise to send from myself to the commission should the bill become law that we do not foresee nor invite a recommendation for monetary awards to any of the individuals. So we wish to make that clear.

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

Chairman Conyers. Thank you.

Howard Coble, acting ranking member of the Judiciary Committee.

Mr. Coble. Thank you for that promotion, Mr. Chairman. I appreciate that.

I will read the ranking member's statement, Mr. Chairman.

RPTS REIDY

DCMN MAYER

[4:10 p.m.]

Mr. Coble. H.R. 42, the Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act, creates a commission to review the United States Government's World War II relocation and internment policies towards Latin Americans of Japanese descent. The commission is also required to recommend appropriate remedies, if any, based on preliminary findings by the original commission and new discoveries.

According to the 1983 report on the United States Commission on Wartime Relocation and Internment of Civilians, approximately 3,000 residents of Latin American were deported to the United States for internment to secure the Western Hemisphere from internal threats and to supply exchanges for American citizens held by the Axis. Most of these deportees were citizens of Japan, Germany and Italy, but not the United States.

The commission proposed by this bill is designed for a very different set of circumstances, the bills of the earlier commission. The earlier commission looked at the treatment by the United States of its citizens of Japanese ancestry. Here, the majority of the affected persons were apparently citizens of Japan and not citizens of the Latin American countries in which they lived. As citizens of the country with which we were at war, our

obligations were very different at the time, and that fact should result in a very different outcome here.

I would support the bill were it not for certain events which occurred during the Immigration Subcommittee's markup in July. I understand that the individuals who were relocated, interned and, in some cases, traded to Axis countries in return for U.S. prisoners would like their stories told. I understand that they may feel wronged by the United States Government; however, I do not believe that they should be given monetary redress. In fact, this makes no sense that this generation of American taxpayers should have to pay for events that occurred in the 1940s.

During the subcommittee markup, Ranking Member King offered an amendment to prohibit the commission from recommending monetary compensation as an appropriate remedy. Unfortunately, not only did the majority decline to accept the amendment, they argued against it.

Let's be clear, the amendment simply prohibited the commission from recommending monetary compensation if it did not in any way bind the hands of future Congresses should they wish to provide reparations. Opposition to such an amendment is, unfortunately, very telling as to the desired outcome of this commission.

The ranking member then offered an amendment to require that the commission be made up of impartial academic historians who have made no prior judgment about the facts to be examined by the

commission. This idea, in fact, does make sense. We should not stack a commission with people who have preconceived notions of the conclusions the commission should reach; and while it is unusual, it is not unprecedented for Congress to establish professional qualifications for appointment to office. Examples of positions that are subject to such limitations include members of the Board of Contract Appeals and the Archivist of the United States. Nevertheless, the majority unanimously opposed this amendment as well.

Should the subcommittee ranking member offer these amendments today, I will support them. And if those amendments pass, I will support the bill. However, as it stands, I urge my colleagues to oppose the legislation.

And I yield back, Mr. Chairman.

Chairman Conyers. Thank you very much, Howard Coble.

It is the Chair's intention to entertain the two amendments by our colleague, Steve King, a colloquy with Sheila Jackson Lee, and then we would recess for the day.

The Chair recognizes Steve King for an amendment.

Mr. King. Thank you, Mr. Chairman. I do have an amendment at the desk, King Amendment No. 1, please.

[The information follows:]

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

Chairman Conyers. The clerk will report.

[The clerk read the amendment.]

Chairman Conyers. The gentleman is recognized in support of his amendment.

Mr. King. Thank you, Mr. Chairman.

This is an amendment that prohibits the commission from recommending reparations, in fact from considering them. Simple amendment: Appropriations remedy shall not include any monetary compensation. That is the language of the amendment, and that was the language that we have heard from some of the witnesses. In fact, we had one of the witnesses who testified that, no, they were not in support of reparations, but yet her writings supported reparations.

But this amendment clarifies there would be no reparations or other monetary compensation recommended by the commission. U.S. taxpayers who were not even alive during World War II should not have to foot the bill for actions of former generations simply because some individuals felt victimized by those actions. The people that committed those actions, whatever they might be, are no longer with us.

Let's be clear about the point of this bill. Some proponents claim the bill is about having their story heard, and we have heard some of that story before the subcommittee. They also want the U.S. Government to acknowledge the treatment that they or

their family members received. They claim that the bill is not about reparations.

Well, I would like to take them at their word, but history doesn't prove this out. The statements in opposition to reparations in previous cases didn't hold up and we ended up paying reparations anyway, which I objected to. And we have the case of one witness, Grace Shimizu, who testified in favor of the bill at a March subcommittee hearing -- and she is actually the coordinator for the Campaign for Justice: Redress Now for Japanese Latin Americans. She called for redress, both monetary and in the form of an apology, by the United States Government.

So it is one thing to require a commission to investigate so that we do have an accurate depiction of history -- and I share the sentiments that we heard from the gentleman from North Carolina about people who want to have their story told, but -- to require that commission to investigate is one thing, but to expect U.S. taxpayers to be on the hook for perhaps millions of dollars because some felt injustices would be an injustice itself, Mr. Chairman.

And I just point out that we can never -- when we look back in times of war, especially a world war like World War II, it is impossible to go back and correct the wrongs that might have been committed. And I think it is inappropriate for us to have this discussion until we put it in the frame of the context of the history and the current events of the decision makers at the time.

And I think that we ought to not only question their motives, but also come to a conclusion that this commission may -- at least be positioned to do so, that there are those that have been wronged by that decision, and that the descendants of those people that were here at the time should have to pay the descendants of the people that might have been wronged -- to me, this can go on and on and on every generation back to Adam and Eve.

And I think that war is over. I think history is capable of righting this. But we have heard from the proponents of the bill that it is not about reparations, and yet we will find out in the recorded vote that we are about to have for this amendment -- this amendment says a commission can't recommend reparations, and I am going to ask the committee to support this. It codifies the statements made by the gentlelady from California that it is not about reparations, but this Judiciary Committee has to say so. And if we don't support this amendment by a vote before this committee, the message will be clear that the door is open to reparations.

So I would urge adoption of this amendment, and I yield back the balance of my time, Mr. Chairman.

Chairman Conyers. Thank you very much, Steve King.

Ms. Zoe Lofgren, chairwoman of the subcommittee.

Ms. Lofgren. Mr. Chairman, I would urge the committee to reject the amendment, and let me explain why.

First, when dealing with a bill introduced by a Member who is

not a member of the committee, I have always felt it is important to reach out to the author as amendments are proposed; and this is not one that the author embraced. But I think there is a broad understanding, which is why I mentioned in my opening statement that we are not going to have a reparations, a monetary reparations as part of this measure. Which is why we are going to put it in the committee report, and why I am going to personally send a letter to the commission with the committee report if this whole measure becomes law.

But I think there is a sense of, number one, this Congress cannot bind future Congresses relative to this matter, so the amendment really doesn't achieve a solid result. And number two, a sense of respect for the individuals who will serve on this commission, to allow them at least the ability to freely look at the entire picture, understanding that although we cannot bind prior Congresses, we are not anticipating or welcoming a recommendation for monetary reparations. And I think that that will be effective.

And it is respectful of the members who will serve of the commission, it is in conformity with the wishes of the author of the bill, and I think it does the job that we all share rather effectively.

And so I would ask that we reject the gentleman's amendment, and I yield back, Mr. Chairman.

Chairman Conyers. Dan Lungren.

Mr. Lungren. Mr. Chairman, I rise in support of the amendment, even though I am a cosponsor of the bill, and let me explain why.

I served as the vice chairman of the Commission of Wartime Relocation and Internment of Civilians mentioned previously. I was the only Member of Congress to serve on that, and I guess it was because I had garnered sufficient votes on my side of the aisle to pass the underlying bill that allowed the establishment of the commission.

During that discussion, I basically promised Members that it was not about reparations. I basically explained that we needed to review the historic record, we needed to establish an official historic record with respect to this event in our Nation's history; and that we weren't trying to scapegoat, but rather we were trying to lay the facts on the table and allow us to learn from those mistakes. It was in that capacity that I first became familiar with the internment of Japanese Latin Americans.

If you review our commission report, you will find that we mentioned Japanese Latin Americans in our appendix. What we do know is that about 2,300 people of Japanese descent from Latin American countries were taken from their homes and moved to the United States where they were held in internment camps during the Second World War. Our report stated at that time this: "What began as a controlled, closely monitored deportation program to detain potentially dangerous diplomatic and consular officials of

Axis nations and Axis businessmen grew to include enemy aliens who were teachers, small businessmen, tailors and barbers, mostly people of Japanese ancestry. About half the Japanese internees were family members. Over 80 percent of the deportees came from the country of Peru.

The commission appendix that we put out at that time pointed out that fear of a Japanese attack in Latin American, particularly at the Panama Canal, produced a suspicion of Latin American Japanese. However, when we reviewed as much of the record as we could, our commission recognized that the program produced what we called a "curious triangle trade in Japanese aliens where Peru and other Latin American countries deported Japanese out of cultural prejudice and antagonism based on economic competition, while the United States interns sought these Latin American Japanese internees in exchange with Japan for American citizens trapped in territories Japan controlled."

I don't think it is easy, nor do I think it is appropriate, to sit in judgment of those who made those very difficult decisions; but I do think it is important for us to establish a historical record so that we might avoid mistakes in the future when put under tremendous pressure.

Despite the comments that the commission acknowledged the historical documents relating to the Japanese in Latin America, whereas, we said at that time, housed in distant archives, and that there was a body of research material which had not been

scrutinized concerning the treatment of these people, that was not within the realm of our authority.

The commission noted one thing is certain: Whatever justification is offered for this treatment of enemy aliens, many Latin American Japanese never saw their homes again after remaining for many years in a kind of legal no-man's land; and their history is one of strange, unhappy, largely forgotten stories of World War II. In many cases, these folks were denied visas from the consular officials in the Latin American countries from, from which they were taken, and therefore treated as illegal aliens in the United States once they were brought here.

It is for that reason that I think it is important that a further study of the events surrounding the deportation and incarceration of Japanese Latin Americans is justified. And so I have joined Congressman Becerra in cosponsoring this legislation.

But I do think it not does upset the purpose of the bill to have the gentleman's amendment considered. To me, it is far more important that we establish a historic record than we say that it is about money. We ought to own up to what occurred there. We ought to take a fresh look at it.

One of the important things that came out of our commission in the previous consideration was not, in my judgment, the reparations that were paid, but the official apology that was made, the historical record that was established. And we did establish a fund to allow for continued historical studies of this

and providing some educational materials so that our children might learn from some of the circumstances of the past.

So I strongly support this underlying legislation, but I do think that the gentleman's amendment is in order.

Let me just tell you one thing. When we met the very first time of that commission, that I served as vice chairman of, one of the other commissioners said in his opening statement, How much money are we talking about? That was his opening gambit, and this is after I had told members it wasn't about reparations. I would hope that wouldn't happen again.

So although I understand the gentlewoman's concern, I would hope that since we generally agree, as I understand it, that reparations ought not to be the aim or the purpose of this commission, we could embody that in this bill and ensure that that is not the case.

And, with that, I would yield back the balance of my time.

Chairman Conyers. Thank you for your explanation, Mr. Lungren.

The Chair recognizes Sheila Jackson Lee.

Ms. Jackson Lee. Thank you very much, Mr. Chairman. I would like to strike the last word.

Chairman Conyers. Without objection, the gentlelady is recognized.

Ms. Jackson Lee. Thank you.

Let me speak to the underlying bill and congratulate the

author of the legislation and congratulate Chairwoman Lofgren for seeing the value of this particular legislation.

And allow me to ask a procedural question. Are we still on Amendment 1?

Chairman Conyers. Yes.

Ms. Jackson Lee. And let me just generally speak to the opposition of that amendment.

I think the mover of the bill and the chairwoman has worked very hard to focus this bill on the immediacy of responding.

I would like to acknowledge an expanded concept of an amendment that I was going to offer, but I am not going to offer, just to make note of the work that we would be doing, why this bill is so appropriate. Because this committee is entrusted with the responsibilities of upholding justice and equalizing the playing field of a number of individuals who have been discriminated against.

This committee has examined the cases of suffering of Japanese descendants living in Central and South America during World War II. We studied the plight of the survivors of the infamous Tulsa-Greenwood race riot, and we have analyzed the plight of over 500,000 residents of the Nation's Capital, the District of Columbia, who annually pay over $1 billion of Federal taxes and still today are denied representation. Our business is justice.

Mr. Chairman, as we support this bill, I can't help but be

reminded of a similar piece of legislation that you have reintroduced for the past 20 years, H.R. 40, the Commission to Study Reparation Proposals for African Americans. Similar to this legislation before us today, H.R. 40 also proposes a study of past acts of our Nation to serve as a lesson and a forum of national healing.

Specifically, your bill called for a study of the four-plus centuries of enslavement and postenslavement oppression suffered by African Americans and our ancestors. Like the bill before us today, H.R. 40 establishes that this study be undertaken by a commission that would report back its findings to Congress on how best to repair those injured.

We can look at our history and understand that we have had a series of incidents that may even reflect on the depredation and the inequities of our history in this country as African Americans. We can look to the tragedies of the killings of young people in Chicago. We can look at a number of actions that have occurred over the last couple of years, in particular, the very well-covered issue with Henry Louis Gates, and know that there are a number of issues that probably just frame the life that African Americans have led in this country.

So, as I indicated, I was going to offer an amendment that would have achieved the aims of the thoughts of your bill and take it one step further. Specifically, my amendment would not only have called for a study of the enslavement of Africans and African

Americans, but rather a comprehensive study of the enslavement of all who were enslaved in America prior to 1865, which would have included Native Americans and other Europeans who were indentured servants.

However, I am not going to offer that amendment knowing that you are moving full speed ahead on some issues dealing with the wide breadth of our concerns about discrimination and the inequities that happen when people are treated unfairly.

It is estimated that two-thirds of all white immigrants to colonial America came as indentured servants, so I would just say that this is a broad-based question. And this legislation is narrowly focused, and so I rise to support it and oppose the amendment.

But I hope as we move forward, Mr. Chairman, that we will acknowledge any numbers of injustices included in H.R. 40, your bill, that have not yet been addressed. And I hope by moving this bill along, we will have the attention of this committee and the sensitivity of this committee to be able to be responsive to the concerns that have been expressed already in the history of African Americans, Native Americans, and even indentured servants here in the United States.

So I thank the chairman for yielding, and I would ask that we have the opportunity, Mr. Chairman, to work together, as we have the mutual interests, and I have certainly been committed to the legislation that you have offered over the years and will not

offer my amendment at this time.

I yield back.

Chairman Conyers. May I thank the gentlelady for her thoughtful resolution of this, and we will continue to work together as we have.

The Chair notices the absence of a reporting quorum, and so with my thanks to all the members, the committee stands adjourned.

[Whereupon, at 4:30 p.m., the committee was adjourned.]