point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 431, nays, 0, not voting 3, as follows:

[Roll No. 97]

YEAS—431

| | | |
|---|---|---|
| Abercrombie | Cremeans | Hansen |
| Ackerman | Cubin | Harman |
| Allard | Cunningham | Hastert |
| Andrews | Danner | Hastings (FL) |
| Archer | Davis | Hastings (WA) |
| Armey | de la Garza | Hayes |
| Bachus | Deal | Hayworth |
| Baesler | DeFazio | Hefley |
| Baker (CA) | DeLauro | Hefner |
| Baker (LA) | DeLay | Heineman |
| Baldacci | Dellums | Herger |
| Ballenger | Deutsch | Hilleary |
| Barcia | Diaz-Balart | Hilliard |
| Barr | Dickey | Hinchey |
| Barrett (NE) | Dicks | Hobson |
| Barrett (WI) | Dingell | Hoekstra |
| Bartlett | Dixon | Hoke |
| Barton | Doggett | Holden |
| Bass | Dooley | Horn |
| Bateman | Doolittle | Hostettler |
| Becerra | Dornan | Houghton |
| Beilenson | Doyle | Hoyer |
| Bentsen | Dreier | Hunter |
| Bereuter | Duncan | Hutchinson |
| Berman | Dunn | Hyde |
| Bevill | Durbin | Inglis |
| Bilbray | Edwards | Istook |
| Bilirakis | Ehlers | Jackson-Lee |
| Bishop | Ehrlich | Jacobs |
| Bliley | Emerson | Jefferson |
| Blute | Engel | Johnson (CT) |
| Boehlert | English | Johnson (SD) |
| Boehner | Ensign | Johnson, E. B. |
| Bonilla | Eshoo | Johnson, Sam |
| Bonior | Evans | Johnston |
| Bono | Everett | Jones |
| Borski | Ewing | Kanjorski |
| Boucher | Farr | Kaptur |
| Brewster | Fattah | Kasich |
| Browder | Fawell | Kelly |
| Brown (CA) | Fazio | Kennedy (MA) |
| Brown (FL) | Fields (LA) | Kennedy (RI) |
| Brown (OH) | Fields (TX) | Kennelly |
| Brownback | Filner | Kildee |
| Bryant (TN) | Flake | Kim |
| Bryant (TX) | Flanagan | King |
| Bunn | Foglietta | Kingston |
| Bunning | Foley | Kleczka |
| Burr | Forbes | Klink |
| Burton | Ford | Klug |
| Buyer | Fowler | Knollenberg |
| Callahan | Fox | Kolbe |
| Calvert | Frank (MA) | LaFalce |
| Camp | Franks (CT) | LaHood |
| Canady | Franks (NJ) | Lantos |
| Cardin | Frelinghuysen | Largent |
| Castle | Frisa | Latham |
| Chabot | Funderburk | LaTourette |
| Chambliss | Furse | Laughlin |
| Chapman | Gallegly | Lazio |
| Chenoweth | Ganske | Leach |
| Christensen | Gejdenson | Levin |
| Chrysler | Gekas | Lewis (CA) |
| Clay | Gephardt | Lewis (GA) |
| Clayton | Geren | Lewis (KY) |
| Clement | Gibbons | Lightfoot |
| Clinger | Gilchrest | Lincoln |
| Clyburn | Gillmor | Linder |
| Coble | Gilman | Lipinski |
| Coburn | Gonzalez | Livingston |
| Coleman | Goodlatte | LoBiondo |
| Collins (GA) | Goodling | Lofgren |
| Collins (IL) | Gordon | Longley |
| Collins (MI) | Goss | Lowey |
| Combest | Graham | Lucas |
| Condit | Green | Luther |
| Conyers | Greenwood | Maloney |
| Cooley | Gunderson | Manton |
| Costello | Gutierrez | Manzullo |
| Cox | Gutknecht | Markey |
| Coyne | Hall (OH) | Martinez |
| Cramer | Hall (TX) | Martini |
| Crane | Hamilton | Mascara |
| Crapo | Hancock | Matsui |
| McCarthy | Pombo | Spratt |
| McCollum | Pomeroy | Stark |
| McCrery | Porter | Stearns |
| McDade | Portman | Stenholm |
| McDermott | Poshard | Stockman |
| McHale | Pryce | Stokes |
| McHugh | Quillen | Studds |
| McInnis | Quinn | Stump |
| McIntosh | Radanovich | Stupak |
| McKeon | Rahall | Talent |
| McKinney | Ramstad | Tanner |
| McNulty | Rangel | Tate |
| Meehan | Reed | Tauzin |
| Meek | Regula | Taylor (MS) |
| Menendez | Reynolds | Taylor (NC) |
| Metcalf | Richardson | Tejeda |
| Meyers | Riggs | Thomas |
| Mfume | Rivers | Thompson |
| Mica | Roberts | Thornberry |
| Miller (CA) | Roemer | Thornton |
| Miller (FL) | Rogers | Thurman |
| Mineta | Rohrabacher | Tiahrt |
| Minge | Ros-Lehtinen | Torkildsen |
| Mink | Rose | Torres |
| Moakley | Roth | Torricelli |
| Molinari | Roukema | Towns |
| Mollohan | Roybal-Allard | Traficant |
| Montgomery | Royce | Tucker |
| Moorhead | Rush | Upton |
| Moran | Sabo | Velazquez |
| Morella | Salmon | Vento |
| Murtha | Sanders | Visclosky |
| Myers | Sanford | Volkmer |
| Myrick | Sawyer | Vucanovich |
| Nadler | Saxton | Waldholtz |
| Neal | Scarborough | Walker |
| Nethercutt | Schaefer | Walsh |
| Neumann | Schiff | Wamp |
| Ney | Schroeder | Ward |
| Norwood | Schumer | Waters |
| Nussle | Scott | Watt (NC) |
| Oberstar | Seastrand | Watts (OK) |
| Obey | Sensenbrenner | Waxman |
| Olver | Serrano | Weldon (FL) |
| Ortiz | Shadegg | Weldon (PA) |
| Orton | Shaw | Weller |
| Owens | Shays | White |
| Oxley | Shuster | Whitfield |
| Packard | Sisisky | Wicker |
| Pallone | Skaggs | Williams |
| Parker | Skeen | Wise |
| Pastor | Skelton | Wolf |
| Paxon | Slaughter | Woolsey |
| Payne (NJ) | Smith (MI) | Wyden |
| Payne (VA) | Smith (NJ) | Wynn |
| Pelosi | Smith (TX) | Young (AK) |
| Peterson (FL) | Smith (WA) | Young (FL) |
| Peterson (MN) | Solomon | Zeliff |
| Petri | Souder | Zimmer |
| Pickett | Spence | |

NOT VOTING—3

| | | |
|---|---|---|
| Frost | Wilson | Yates |

☐ 1432

Mr. BURR changed his vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## EXCLUSIONARY RULE REFORM ACT OF 1995

Mr. DIAZ-BALART. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 61 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 61

*Resolved,* That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 666) to control crime by exclusionary rule reform. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. The bill shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from Florida [Mr. DIAZ-BALART] is recognized for 1 hour.

Mr. DIAZ-BALART. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. BEILENSON] pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. DIAZ-BALART asked and was given permission to revise and extend his remarks.)

Mr. DIAZ-BALART. Mr. Speaker, House Resolution 61 is an open rule providing for the consideration of H.R. 666, legislation to control crime by means of reforming the exclusionary rule.

This rule provides for 1 hour of general debate, equally divided between the chairman and ranking minority member of the Judiciary Committee, after which time any Member will have the opportunity to offer an amendment to the bill under the 5-minute rule. Finally, the rule provides for one motion to recommit, with or without instructions.

As with the rule for H.R. 665, which we recently debated, this rule also includes a provision allowing the Chairman of the Committee of the Whole to give priority in recognition to Members who have printed their amendments in the CONGRESSIONAL RECORD prior to their consideration.

I feel that this option of pre-printing is a common courtesy that enables Members to see what amendments their colleagues may be offering. Any Member's amendment, pre-printed or not, will still have the opportunity to be offered and heard on its merits.

Mr. Speaker, the fourth amendment to the Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *

The Founding Fathers did not provide that law enforcement officers could not rely on their common sense and reasonable judgment to fight crime. But, that is what has happened

unfortunately in our society. Something is profoundly wrong when, in a State where 2 license plates on automobiles are required, a policeman stops a car with only one plate, finds 240 pounds of cocaine in the car, and the evidence is thrown out—excluded under the ''exclusionary rule''—because the judge says that the car was registered in a State that only issues one license plate. Who gets hurt when that drug dealer walks? The police officer? No, the children of that community, the people, society gets hurt.

In 1984, in United States versus Leon, the Supreme Court created the good faith exception to the exclusionary rule. In Leon, the Court held that even if a search warrant was ultimately held to be invalid, the evidence gathered by police using that warrant could be permitted at trial, so long as the prosecution could demonstrate that the police believed, in good faith, at the time of the search, that the warrant was valid. The Court stated that since the exclusionary rule had been created to deter law enforcement officials from violating the fourth amendment, excluding evidence gathered by those who believed in good faith that they were acting in accordance with the Constitution served no legitimate purpose.

H.R. 666 would limit the effect of the exclusionary rule, and give Federal judges more latitude to admit evidence seized from those accused of crimes, so long as the search and seizure in question took place under circumstances providing the law enforcement officer conducting the search with an objectively reasonable belief that his actions were in fact lawful and constitutional. Moreover, H.R. 666 establishes a shift in the burden of proof. If a search is conducted within the scope of a warrant, the defendant will have the burden of providing that the law enforcement officer could not have reasonably believed that he was acting in conformity with the fourth amendment.

H.R. 666 builds upon Leon by codifying its holding. A Federal judge may still suppress evidence if it was seized in knowing or negligent violation of the Constitution.

Evidence gathered in violation of any statute, administrative rule or regulation, or rule of procedure would be admissible unless a statute specifically authorizes exclusion of evidence. But, the good faith exception would apply and may render such evidence usable.

Mr. Speaker, I strongly support the Exclusionary Rule Reform Act of 1995 and urge adoption of this open rule for its consideration.

□ 1440

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

Mr. BEILENSON. Mr. Speaker, I appreciate my colleague's, the gentleman from Florida [Mr. DIAZ-BALART], yielding the customary 30 minutes of debate time to me, and I yield myself such time as I may consume.

House Resolution 61, the provisions of which the gentleman from Florida has well explained, is an open rule. I support it, and I urge my colleagues to do the same.

I am, However, as are others, concerned about the wisdom of the provisions of H.R. 666, the bill for which this rule has been granted. As my colleagues on the Judiciary Committee have written, H.R. 666 ''commits affirmative harm to the Constitution.''

It breaks our Constitution's promise, as expressed in the fourth amendment, and which has been maintained for over 200 years, that all Americans have the right to be protected from arbitrary and unfounded governmental invasions of their homes.

The protections of the fourth amendment have been enforced through the exclusionary rule, which prohibits prosecutors from using evidence in criminal cases that has been obtained in violation of the constitutional guarantee against unreasonable searches and seizures.

We should not only question the provisions of H.R. 666 which allow the use of evidence obtained without a warrant as going beyond permissible police search and seizure powers, but we must also question whether Congress has the power to change the exclusionary rule by simple legislation rather than by a constitutional amendment. Along with many of my colleagues, Mr. Speaker, I am confident that the constitutionality of H.R. 666 will be challenged and, I suspect, successfully.

We have to be particularly careful when we deal with an issue as highly charged and emotional as crime to legislate with as much thoughtfulness and as much care as possible. That is especially true in cases such as this when changing the law necessarily raises questions of abridging constitutional protections that were adopted with good cause to protect the innocent.

I fear that in our desire to prove to our constituents that we are not soft on crime we have forgotten that certain procedures such as the exclusionary rule were instituted to protect the innocent—in this case, those who may be subjected to illegal searches and seizures.

Because of these very serious problems with the provisions of H.R. 666, I am pleased, as are Members on our side, that the majority on the Committee on Rules has recommended this open rule.

Mr. Speaker, to repeat, while I have strong and serious reservations about H.R. 666, and even about our considering it as written, I support the rule and urge my colleagues to do the same.

Mr. Speaker, we have no requests for time, and I reserve the balance of my time.

Mr. DIAZ-BALART. Mr. Speaker, I yield 2 minutes to my good friend and colleague from the Committee on Rules, the gentleman from Colorado [Mr. MCINNIS].

Mr. MCINNIS. Mr. Speaker, I thank the gentleman from Florida for yielding time to me so I may have the opportunity to address the floor for a couple of minutes.

First of all, I think it is appropriate once again to address the fact that this is going to be a very controversial bill. We are going to have some very interesting debate on both sides of the aisle, and I think it should be highlighted that the chairman of the Rules Committee chose that an open rule would be appropriate.

In the last couple of weeks I have heard some comments about ''Gee, we see the open rule really when it is a noncontroversial bill.'' Well, today is a good example of when we have a controversial bill and we see an open rule through the Speaker of the House and through the chairman of the Rules Committee. I think that fact should be noted.

Let us talk about the substance of the bill. Obviously, the substance of the exclusionary rule, I think, has merit and will prove to be constitutional in a court of law. Every time we pass some kind of criminal statute in these chambers they are always challenged on a constitutional basis. A defense lawyer's job is to challenge it in any way he can. But I am confident that the constitutionality of the good faith exception to the exclusionary rule will be upheld.

What is the exclusionary rule? We have a lot of people today, perhaps some who are observing this action, who do not understand what we mean by an exclusionary rule. Very simply, let me explain it in this way:

I used to be a police officer, and let us say that I stopped someone incorrectly and in the process of that error in judgment in stopping, say, a motor vehicle, I confiscated or found evidence that led to charges being filed against a defendant. Then the court could come in and say that because of my error of judgment in stopping the person, they are going to exclude any evidence or any fruits of my search that resulted because of my improper stopping.

I think the gentleman from Florida gave an excellent example in that particular case. I do not want to be repetitive, but I think it is important. In that particular case a police officer stopped a car; the car only had to have one license plate. The police officer was in error. He thought the carrequired two license plates. So when he stopped the car, he was in error. But in the process of going up and checking the driver's license, he noticed in the back seat of the car a certain amount of cocaine. I think there were 240 pounds of cocaine there. The court threw out the cocaine as evidence in the criminal trial because the officer improperly stopped the person for missing a license plate.

Now, there is not a person on the Main Street of America who would agree with that finding, and there is not a person on the Main Street of

America, other than defense attorneys, who is not going to say that we should have a good faith exception to the exclusionary rule.

So, Mr. Speaker, I commend the gentleman from Florida for the open rule that he has helped to facilitate. I think the substance of the issue is on our side. I think we are going to have bipartisan support, and I predict the bill will pass.

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

Mr. DIAZ-BALART. Mr. Speaker, I grant such time as he may consume to the distinguished gentleman from California [Mr. DREIER], a member of the Committee on Rules.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding me this time, and I would like to congratulate him on his management of the rule. It is really quite easy to manage an open rule. It has always been somewhat of a challenge to take on what is known as a restrictive rule.

My friend from Woodland Hills raised some very valid questions about the exclusionary rule, and I think that as we look at this legislation, it is going to be considered under a process that will allow amendments to be offered and debated. We will be able to discuss it openly here, as was the case in the Committee on the Judiciary and as were the case when we heard testimony from the chairman and the ranking minority member of that committee.

So basically the institution will be able to work its will on this legislation. Some will vote for it, some will vote against it, and I hope very much we will be able to see the House overwhelmingly pass this open rule and move ahead with this critically important legislation.

□ 1450

Mr. DIAZ-BALART. Mr. Speaker, at this time, again commending Chairman SOLOMON and all of the members of the Committee on Rules for bringing forth this very important piece of legislation, with the opportunity of all Members of this House to bring forth all amendments they wish to be considered on behalf of their constituents, I yield back the balance of my time, and move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. CUNNINGHAM). Pursuant to House Resolution 61 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 666.

□ 1451

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 666) to control crime by exclusionary rule reform, with Mr. HOBSON, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

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

Under the rule, the gentleman from Florida [Mr. MCCOLLUM] will be recognized for 30 minutes, and the gentleman from Michigan [Mr. CONYERS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. MCCOLLUM].

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

Mr. Chairman, today we are considering the exclusionary rule exception called the good faith exception. It is perhaps of all of those things we are considering today the one that has as much import as any that we will consider in the whole series of crime legislation over the next week. It is one which will break down some of the barriers that many have been waiting for us to do for a long time and allow more evidence to come in in search and seizure cases in order that we may get more convictions and not have people get off on technicalities.

The public is tired of people getting off on technicalities. We want to see those who have committed the crimes that they have committed be prosecuted, convicted, sentenced and put away for a reasonable period of time; of course, in the case of violent crimes, for a very long period of time.

The problem has been in part because the courts a few years ago decided to carve out a so-called exclusionary rule to protect us as citizenry from unwarranted intrusions into our constitutional rights of privacy and freedom from search and seizure in terms of police officers committing those kinds of intrusions.

The court thought in its infinite wisdom in this process of creating this rule a few years ago of excluding evidence that is gotten from illegal searches and seizures by police that we could deter the police officers from making those kinds of decisions that would violate our rights, and the courts felt that this was the only way they could go about making sure that the constitutional protections were honored by the police around the country.

Well, obviously when the police do not intend to violate your rights, when it is done without any kind of malice or forethought on their part, there is no deterrent effect. The rule does not have any meaning in the sense that it was intended to be in those kinds of situations.

So a few years ago the U.S. Supreme Court said that in cases where there are search warrants, there can be certain exceptions called the good faith exception, in common parlance, to this rule of procedure and that we will then let evidence in and allow convictions to take place.

Unfortunately, the Court did not rule in the non-search-warrant cases where there are other rights that police have in those cases to go in and do certain searches and seizures, so we have had a lot of litigation going on around the country and many questions raised in various Federal circuits as to whether or not evidence in admissible with a good faith exception in non-search-warrant cases.

That is what brings us here today. The proposal before us would carve out this good faith exception and broaden it to include not just cases that involve search warrants, but involve all of the cases of search and seizure where the police officer acted as we call it in good faith.

Now, specifically the bill would provide for an exception to the rule in situations where law enforcement officers obtained evidence improperly, yet do so in the objectively reasonable belief that their actions comply with the protection of the fourth amendment to the Constitution.

It is the role of Congress to determine the rules of evidence and procedure that apply in Federal courts. In drafting these rules, we should strive to ensure that unreliable evidence is excluded from the finder of fact, but that trustworthy evidence is not excluded. It should be our guiding principle that evidence of truth should be admissible in a court of law as often as possible.

The exclusionary rule, as I stated earlier, is a judicially crafted rule of evidence that prevents evidence of the truth from being admitted into evidence at trial. The rationale of this rule is excluding truthful evidence obtained in violation of our Constitution will discourage law enforcement officials from acting improperly. Of course, in some cases application of this rule allows guilty persons to go free because truthful evidence is excluded from their trial.

In 1984, the U.S. Supreme Court decided in the Leon case that evidence gathered pursuant to a search warrant that proved to be invalid under the fourth amendment could nevertheless be used at trial if the prosecution demonstrated that the law enforcement officials who gathered the evidence did so under an objectively reasonable belief that their actions were proper. This bill codifies the so-called good faith exception of that case.

H.R. 666 also expands the good faith exception to situations where law enforcement officials improperlygather evidence without a warrant, yet still have acted with the objectively reasonable belief that their actions are proper.

Specifically H.R. 666 provides that evidence obtained through a search or seizure that is asserted to have been in violation of the fourth amendment will still be admissible in Federal Court if the persons gathering the evidence did

so in the objectively reasonable belief that their actions were in conformity with the fourth amendment. The bill makes it clear that it is the Federal judge who will determine whether the persons who gathered the evidence were reasonable in believing that their actions were appropriate under the circumstances.

Mr. Chairman, I wish to point out that the standard that the judge is to apply is an objective one. It does not involve an inquiry into the subjective intent of the law enforcement officials. In other words, just because a law enforcement official thought he or she was acting in proper fashion is not enough. The bill requires that a detached Federal judge view that mistake to have been reasonable.

The bill also provides that the exclusionary rule shall not be used to exclude evidence that may have been gathered in violation of a statute, administrative rule or regulation, or a rule of procedure; that is, where no constitutional violation is asserted. Congress could still authorize exclusion of this type of evidence by passing a statute or procedural rule that specifically authorized the exclusion of that evidence. Even in that situation, however, the evidence in question would still not be admitted if the Court found that the persons who gathered the evidence did so in the objectively reasonable belief that their actions were proper.

Mr. Chairman, this bill does not limit the fourth amendment, nor does it reverse any Supreme Court precedent. This bill simply codifies the principles of the Leon holding and applies it to similar situations, ones that have yet to be presented to the Supreme Court for review. It is appropriate for Congress to determine by statute the evidentiary procedures that will be used in Federal courts. H.R. 666 does exactly that.

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

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

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

Mr. CONYERS. Mr. Chairman, this is an exceedingly important debate, one that I feel very privileged to be the ranking member on the Democratic side to advance, because we are now talking about a part of the so-called Contract With America that now inflicts affirmative harm to the Constitution. This so-called Exclusionary Rule Reform Act of 1995 attempts to keep its promise made in the Contract With America by eradicating our Constitution's higher covenant with the American people that it has maintained for over 200 years.

□ 1500

Let us review the exclusionary rule. Started in 1914 by court decision that made no exceptions but applies only to the Federal jurisdiction, it rolled along without event until 1961, when Mapp versus Ohio then created another exception that included States as well as Federal in the application of the exclusionary rule. Then in the 1970's came two very, very important additional modifications: the plain-view doctrine, which allowed that evidence or activity going on in plain view of the officers was a reason that one would not have to go to the magistrate to get a warrant; then came the exigent-circumstances doctrine, which rationally concluded that evidence that was either in danger of being destroyed or eliminated or that put the officers at great bodily risk were also exceptions to the exclusionary rule that had been created.

Notice that all of these modifications were positive and supportable for those of us, like me, who view this constitutional protection to be absolutely important. And then in 1981 came Leon versus the United States that created yet another reception, in which it dictated through the Supreme Court majority, incidentally, a Republican Supreme Court, that if good faith was used by the officer in seeking a warrant and that for reasons unknown to him at that time the warrant was invalid or defective, that the exclusionary rule would not be obtained and the evidence would be admissible into court anyway.

And so today we meet here with our new majority, which are here to tell us that we are now going to codify the Leon case and make it merely a continuing part of the exclusions to the exclusionary rule that I have just recited.

Well, my colleagues, this is not a codification of Leon versus the United States. I want to repeat that one more time. This bill before us, H.R. 666, is not a codification of Leon versus United States. For anyone who looks at the case will find that in Leon the officers sought and were given a warrant. They went to a magistrate and got a warrant. It turned out later that it was not a good one, and Leon said that even so, if the officer in good faith went to get a warrant and got one that was subsequently invalid for any reason, then he would be held, the evidence would be admissible and he would be held to have been operating in good faith.

But the measure before us does not do that. The measure before us now permits the officer to declare on his own that he believes that he is operating in good faith, having not ever gone to a magistrate.

My friends in the Committee on the Judiciary are now suggesting that this is a codification of Leon. Well, I suggest that anyone in or out of law school examining the Leon case will quickly come to the conclusion that this is not the case at all, and I think it makes a very important argument.

What we are doing is going far, far beyond Leon and are moving now to dispense with the exclusionary rule in its entirety.

What we are saying now is that law officers, Federal or local, that operate on their perception that they are operating in good faith will now be let off beyond the purview of the exclusionary rule. I think that this is the most dangerous damage and harm that we could work to a rule that has been a part of our Constitution for 200 years. I suggest to my colleagues that the amendment that I will offer is the only codification of Leon.

What we will do is codify Leon by saying where a warrant turns out to be invalid or defective, given by a magistrate to a police officer who operates on the basis that he had a perfectly legal document, that he will be excused and his evidence will be allowed to be offered. Nothing more. And it is on that basis that I want everyone to realize that this is far more than codification. It is a complete wiping out of the exclusionary rule as we have known it throughout American history.

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

Mr. MCCOLLUM. Mr. Chairman, I yield myself 30 seconds.

I would just like to comment on the fact that this bill does not in any way, as the gentleman from Michigan, implied, allow for a court to look into the mind of the police officer and make a subjective determination or base its determination on the thought pattern of the police officer. It is an objectively reasonable standard.

We would never want to do what the gentleman suggested. I suppose that is the subject of the debate here, but is the way the wording of the statute is written.

Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. HYDE], chairman of the Committee on the Judiciary.

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

Mr. HYDE. Mr. Chairman, I thank the gentleman for yielding time to me.

I just want to disagree with my good friend, the gentleman from Michigan [Mr. CONYERS].

The exclusionary rule is not wiped out. It is changed from the way it is presently administered. But if the evidence is offered and an unreasonable search and seizure has been made that was not in good faith, I am sure the exclusionary rule in all its glory will be enforced. This does no violence to the fourth amendment.

The exclusionary rule is judge-made. It was not made by this Congress. It is a rule the judges thought up to deter the policeman from making unreasonable searches and seizures. And their idea of deterring that was just not to admit the evidence.

What happens is, the policeman is not punished. He walks out of the courtroom and the accused walks out of the courtroom. And the evidence of his or her guilt is suppressed. The people who lose on that one, the victims,

still end up with the dirty end of the stick. So this does not codify Leon.

I agree with the gentleman from Michigan [Mr. CONYERS]. It codifies the principle of Leon, which applies to warrants and may well apply to warrantless searches.

If the search was done in good faith, as determined by the court, not by the policeman, by an objectively reasonable standard, then the evidence, the heroin that they got in the trunk of the car, gets admitted, not suppressed. And the judge makes that judgment.

Yes, this is a change in emphasis. Heretofore in criminal law, the rights of the criminal, the rights of the accused have been paramount. In the last bill we suddenly awoke to the fact that victims have rights and are entitled to restitution, regardless of the financial solvency or insolvency of the criminal.

Now we are saying, with Justice Cardozo, who famously pronounced that a trial should be a search for the guilt or innocence of the accused, not a determination as to whether the constable blundered, if constables are going to blunder, then punish the constables, but do not suppress the evidence.

The public out there is also an important factor in this equation. I hope this bill passes unmended, and I thank the gentleman again for yielding time to me.

□ 1510

Mr. CONYERS. Mr. Chairman, I yield myself 1½ minutes.

Mr. Chairman, I am reminded by my colleagues on the other side not to worry about what we are doing here today, that we are merely changing law that was made by the courts.

However, Mr. Chairman, the Supreme Court can make the laws of the land unless we modify them. That is how the whole exclusionary rule came into the law. Therefore, let us not put some pejorative effect on Supreme Court law. Thank goodness they came up with the exclusion.

The gentleman from Illinois [Mr. HYDE] says ''Don't worry, the courts will eventually catch up with illegal actions,'' but that, again, is not the point. What we are saying is that illegally seized evidence should not be part of a trial.

We are not saying that people should walk out of courts. If you can make a case legally, fine. If you cannot make a case legally, that is precisely why the fourth amendment has been here for 200 years.

Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. SCHUMER], the former chairman of the Subcommittee on Crime and Criminal Justice of the Committee on the Judiciary.

Mr. SCHUMER. Mr. Chairman, I would like to make a few points about this.

Mr. Chairman, I rise in opposition to H.R. 666, which is appropriately numbered. Let me say, Mr. Chairman, that there are two points I guess I would make here. The first is, there have been many instances where judges, defense lawyers, and others have hung on technicalities, and it seems, when we hear the result, that the technical change is overruling common good sense and what is good for the people of this country. That has happened, basically, in search warrant cases.

However, I must say that the Supreme Court in the Leon case dealt with that issue and dealt with it well. They said ''When you get a warrant and the warrant is technically deficient, for some reason that is no one's fault and there was no real attempt to make that warrant technically deficient, we will allow the evidence to be admitted, the seized evidence to be admitted.''

That is a good decision. It was done by a very conservative court, and it makes a good deal of sense.

However, Mr. Chairman, what the other side wants us to do now is take the rule of good faith and extend it to warrantless searches. That is taking what Leon did, which was a change that was needed, and falsely extending that logic to an area where there is no place for it.

Most Americans, Mr. Chairman, feel very strongly that police officers should not be allowed, unless there are exceptions, emergencies, in plain view, and there are lots of exceptions to the exclusionary rule, should not be allowed to knock on the door of their house and enter and search and seize. That is one of our more fundamental rights, just like free speech and freedom of religion.

Mr. Chairman, to undo that when, first of all, the evidence is that there are very few cases where this would apply that this would make a difference, as I heard the two gentleman from Florida get up and talk about cases with automobiles, I would remind my colleagues, we are not talking about automobiles here, because there is a much more lenient standard under the Terry case for automobiles. We are talking about people's homes. In that situation, we find almost no egregious cases.

Mr. Chairman, when we talk to law enforcement people, they indicate that they think that they can live with this.

I guess my first point, Mr. Chairman, and let me sum up that one here, to fix technicalities is one thing. To avoid getting a warrant altogether when there are none of the recognized exceptions, I think if that happens, Americans are going to shudder, including Americans like myself who are very much afraid of crime, and Americans like myself who think that in many instances the pendulum has swung too far for individual rights and against societal rights.

The second point, Mr. Chairman, that I would make, that is equally relevant, is that when I learned about the exclusionary rule in law school I scratched my head. I said ''This doesn't quite fit.'' A law enforcement officer steps over the line, and we punish them by not allowing what might well be good evidence. It does not fit.

As I learned more and more about it, both in law school and afterwards, there was one major problem with the logic of those who say it does not fit and we should repeal it. They do not come up with a good alternative. That is the problem.

The only alternative I have seen proposed in the law books, et cetera, is to punish the police officer. That side is not going to vote for that. This side is not going to vote for that. Our police officers, God knows, have enough burdens on them that we are not going to punish them when they go over a line.

Mr. HYDE. Mr. Chairman, would the gentleman yield?

Mr. SCHUMER. I am happy to yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, does the gentleman think suppressing the evidence punishes the policeman who had made an unreasonable search?

Mr. SCHUMER. No, Mr. Chairman, I do not.

Mr. HYDE. Mr. Chairman, if the gentleman will yield further, I am just saying the present exclusionary rule does not accomplish anything but let the accused go free.

Mr. SCHUMER. Reclaiming my time, Mr. Chairman, what I would say to the gentleman, the one thing it does accomplish is that there is care before making a search of one's home. I would like there to be a better way to create that level of care, Mr. Chairman. I agree with the gentleman. However, the gentleman has not shown it.

What the gentleman has shown in his amendment, or what H.R. 666 does, which is not the gentleman's amendment, there is no alternative standard proposed. There is simply something that says ''If you are in good faith, you do not need a warrant.'' To me that crosses the line we ought not to cross.

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

Mr. SCHIFF. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, I rise in support of H.R. 666.

First of all, Mr. Chairman, I have to point out, with respect to that statement that the exclusionary rule has applied within the courts of the United States of America as a congressional doctrine for all 200 years plus of our existence, that that is incorrect.

The exclusionary rule was first, I believe, announced in Federal court in Federal cases in 1914. It was not applied to the States, at least not through Federal doctrine, until all the way to 1961.

However, I want to say that I do support the broad purpose of the exclusionary rule. I think, as the Supreme Court said in Mapp versus Ohio, cited by the gentleman from Michigan, that the exclusionary rule was a necessary device to encourage police officers not

to flagrantly disregard the Constitution of the United States, and in particular the 4th and 14th amendments to the Constitution of the United States, in terms of their search and seizure practices.

I think the exclusionary rule, even though it is opposed by some, I think implied in some of the remarks we have already heard, because it does represent a fact that evidence sometimes is not allowed in cases, is still an important device in terms of protecting constitutional rights. If there were a bill, if there were a bill that proposed to totally eliminate the exclusionary rule completely, I would not support it.

However, that is not what it does. What it does is broaden the exception already announced by the U.S. Supreme Court for a good-faith error in terms of search and seizure.

The whole purpose of the exclusionary rule, and it is a rule, it is not in the Constitution itself—one cannot find it in the Constitution—the whole purpose of this rule is to encourage officers to observe our rights under the fourth amendment in terms of their putting together criminal cases.

Again, I have said I agree with that. The penalty, of course, the deterrence intended, is evidence cannot be used if officers deliberately or for any reason, as of right now, violate the fourth amendment.

The point is, Mr. Chairman, this rule makes sense in terms of encouraging officers to comply with the fourth amendment to the best of their ability. It makes no sense—it makes no sense under the theory of the exclusionary rule—to exclude evidence from a court where an officer has acted in good faith; that is, has acted on an objectively reasonable standard and in the belief that the search was legal.

I can recall, Mr. Chairman, during the years when I was general counsel for the Albuquerque Police Department, and also when I was district attorney of the Albuquerque area, that certain areas of search and seizure without a warrant were changing so rapidly in court decisions that it was hard to even advise the police officers what the standards were.

□ 1520

It seems to me that it accomplishes nothing to exclude evidence in a particular case where an officer has seized that evidence and later a court says this was in fact a good faith error but was an error when that officer has to try to be a lawyer out on the street. It seems to me that the purpose of the exclusionary rule is not accomplished when an officer in good faith, under the standards announced here in objectively reasonable good faith, makes an error.

That is the reason why I support H.R. 666. It is true that ''objectively reasonable'' has to be determined in each case, but that is no different than the fact that probable cause has to be determined in each case. It is no different than the fact that the term ''beyond a reasonable doubt'' must be determined in each case. The legal system has handled that in the past on a case-by-case basis and, I am confident, is capable of doing so in the future.

For that reason, I urge passage of this bill.

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

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, to the gentleman from Illinois [Mr. HYDE], our chairman, I would have him remember that the exclusionary rule was put in place to make sure that the police behave rather than allowing ''anything goes,'' and then we have years later a court decision that finds out that they did not conduct themselves in the manner that they should. That is the importance of the exclusionary rule.

Mr. Chairman, to my friend from Arizona who said we want an objectively reasonable standard, but not the police officer's objectively reasonable standard. We want the magistrate's objectively reasonable standard at the front end. We do not want policemen applying court doctrine unilaterally.

Mr. Chairman, I yield 4 minutes to the gentleman from North Carolina [Mr. WATT], a member of the committee.

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

Mr. Chairman, I am beginning to wonder what happens when the Republicans' 1995 political contract comes into conflict with the people's 1791 contract with the American people, the Constitution.

I thought the conservative approach was to uphold the people's contract under all circumstances. What I have found recently is that the Republicans are not willing to be conservative in their approach. They talk about being conservative but when it comes time to be conservative, they throw the most conservative document in the world out the window.

When the Constitution conflicts with their beliefs, they are willing to either violate it or amend it, because they think they are smarter than the Founding Fathers of this country were.

The 1791 contract leaves no equivocation. It says the right of the people to be secure in their persons, houses, papers, and so on shall not be violated. it does not say if we find some objectively reasonable standard, we will violate it. It says ''shall not be violated.'' ''No warrant should issue but upon probable cause.'' It does not say probable cause if there is some objective belief that there was probable cause. It says ''probable cause.'' Yet here we are trying to undermine that document.

Since 1791 when this fourth amendment was put into the Constitution, there has been litigation. Case after case after case we have litigated what this fourth amendment means. Notwithstanding that, what did they come back with? Some more language, objectively reasonable standard, that we will have to litigate for 200 more years before we find out what it means.

Mr. Chairman, this makes no sense. The gentleman from New Mexico [Mr. SCHIFF] says it is not in the Constitution. I beg to differ with him. My Constitution says, ''The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.''

Nobody can tell me that there is any objectively reasonable standard in this Constitution. It says ''shall not be violated.'' And here we are, claiming that we are conservatives and all the while treading on the most conservative document we have in this country, treading on the rights of the people.

This document was not written for the protection of the guilty. This document was written for the protection of the innocent. They can tell me all they want that only 1 percent or 2 percent of the cases that come up under this amendment are won by the defendant. Those are the people that this language was designed to protect.

If we believe in the Constitution, we will leave it exactly like it is. In fact, we will vote for the amendment I plan to offer when the time for amendment comes on this bill.

Mr. SCHIFF. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, the exclusionary rule is what is not in the Constitution. It was not imposed upon the States as a mandatory Federal doctrine until the year 1961. And somehow the Republic made it all that way from the 18th century until 1961 without the exclusionary rule. Nevertheless, I support it as enunciated in the case Mapp versus Ohio and the circumstances they were talking about, an outrageous ignorance of following constitutional prescription, and the reason they imposed it on the States. But it makes no sense to impose it in a situation where an officer is in objective good faith.

Although the last speaker said we should not change anything, the Supreme Court has already made a modification in the exclusionary rule by allowing this very good faith exception in the case where a warrant is obtained by police officers and the warrant is later held to be invalid, and that has not caused a wholesale violation of constitutional rights through that exception.

Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina [Mr. HEINEMAN].

Mr. HEINEMAN. I thank the gentleman for yielding me the time.

Mr. Chairman, we hear the talk about the exclusionary rule, and I do not think we have had much dialog about the warrant search, the search under the authority of a warrant, other than having Leon explain to us on two occasions. What we are really talking about is we are really talking about the warrantless search. Leon did not

speak to the warrantless search, but warrantless search is basically what this exclusionary rules points up. Warrantless searches are searches performed by police officers at the scenes of a provocation, so to speak, a situation where the exigencies of the service require a police officer to act.

Police officers do not have with them the luxury of a law library to look up in the library as to what is legal and what is illegal. They have their own instincts, they have their own practices, and they have their own good common sense. Nor do they have a boardroom to caucus their contemplated actions before making an arrest or a search. They have to again rely on their experience and precedent.

Of course we can talk about officers in 1910 or we could talk about officers in 1995, the training and those that are not trained. I submit that officers in 1995 are better trained than officers at any other time in the history of law enforcement in this country.

□ 1530

But it all comes down to an arrest and evidence being seized and it all comes down to the courtroom where defendants have a right to an attorney present. Those attorneys, if they are worth their salt, and in Federal cases and I have great respect for Federal attorneys and people that ply their wares in Federal court and the judges, at that point the attorneys have an obligation to make a motion to suppress, a motion to suppress the evidence that was seized, and the attorney, and if he does not do that, then that is something else, then that is another motion to make to get rid of the attorney.

But the judges present, listening to the probable cause that was offered by the police officer that generated his action, will make a determination as to whether to suppress that evidence or not to suppress the evidence. And if that evidence was not seized under probable cause, then I am sure that the evidence will be suppressed.

If it was not, if the evidence, if the probable cause that was laid before the judge would have been probable cause to issue a warrant, then the judge has an obligation not to suppress that evidence, and I think that the Constitution, yes, the Constitution which gives the right of the people to be secure in their persons, protects the victim.

We are not talking about specifically protecting the criminal, we are talking about in this day and age protecting the victims of crime. And I as a citizen, and I 2 months ago was a citizen, not a legislator, I want to know that the courts, I want to know that the Constitution, I want to know that law enforcement is out to protect me, because determination of the evidence seized and suppressed has to go to someplace. And if it is a pound of cocaine or if it is a gun in a room or whatever, it is going to come down to the citizens of this country one way or another.

I am for law enforcement officers and I urge the passage of the exclusionary rule, H.R. 666.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from New Jersey [Mr. TORRICELLI].

Mr. TORRICELLI. Mr. Chairman, I thank the gentleman for yielding me this time.

The right of persons to be secure in houses, papers and effects against unreasonable searches and seizures shall not be violated, the fourth amendment to the Constitution of the United States.

Today we are told it is an inconvenience, it is in the way of the police, it did not apply to the States until 1961 anyway. It is the Bill of Rights, and every Member comes to this floor every day and pledges allegiance to that Constitution and has sworn an oath to it.

It is not always going to be convenient and sometimes it is going to cause problems. And yes, I say to the gentleman from New Mexico [Mr. SCHIFF], it did not apply to the States in these cases until 1961.

But the Supreme Court of the United States, the people of this country, had decided in each generation, in each decade to expand its powers, because for 200 years we have understood that the principal danger to the freedom of the people of this country was expanding Government power. For 200 years we have understood the very cause of our revolution, that we wanted to be secure in our homes, that we feared the criminal and lawlessness, but we also feared a government so content in its own powers that it would enter our own homes and violate our own rights.

It is a great irony that a new conservatism, believing that government robs people of their freedom, believing in the right and the sanctity of private property, would now cause a new exclusion, the exclusion of the right of the person to be free of government power.

It is, of course, worth noting that many of those things that we are told that need to be protected for law enforcement are already protected. A fleeing felon, the police can already enter under the fourth amendment. The destruction of evidence, the police can already enter under the fourth amendment. The possibility of escape, the police can already enter under the fourth amendment.

Indeed, the very things the police need for practical law enforcement for the dangers of our times are already protected. We achieve nothing but lowering the standard that we apply to law enforcement, a standard which will be lowered and lowered if this measure succeeds.

My colleagues, we must make compromises, but if today we violate the fourth amendment, then the criminals have already won. Our Constitution will have been compromised.

Mr. SCHIFF. Mr. Chairman, I yield 3 minutes to the gentleman from Georgia [Mr. BARR].

Mr. BARR. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, we are really talking here today not about thousands upon thousands of court decisions, not about tens of thousands of pages of court documents, but about two documents, the Constitution of the United States of America, and H.R. 666.

Is it not interesting, Mr. Chairman, that both of these documents talk about reasonableness? They complement each other, they are not antagonistic, they do not fight with each other as the other side would have us believe they are doing here today. We are simply taking that standard of reasonableness embodied in this document, the Constitution of the United States, which includes the word ''reasonable,'' which many Members on the other side conveniently disregard in their quotings from the Constitution, the fourth amendment today as does H.R. 666.

We are not saying we do not believe in the Constitution. No Member on this side of the aisle needs to allow those on the other side of the aisle impugn our motives or with regard to the Constitution of the United States of America. What we are talking about here today, Mr. Chairman, is strengthening that document and saying we pay attention to the entire document, including that language which says in the preamble:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.

Mr. Chairman, today that preamble, the ability of our Constitution is in danger, it is in danger because we have drifted, drifted through decisions over the years that do not pay attention to the specific wording of the fourth amendment.

This bill today, H.R. 666, gets us back to the root, the heart of what our Constitution was intended to do, and that is to apply a reasonable standard to protect all people, including those of us who may be victims of crime, those of us such as myself as a former U.S. attorney who seek to promote and protect the welfare as well as the rights of the accused.

Mr. Chairman, I rise today in strong support of H.R. 666 which supports our Constitution, which follows in recent cases and says that, yes, to the people of the United States, reasonableness, as embodied in our Constitution but has been forgotten in recent years, is there, should be there. And this proposed statute that we are debating today simply contradicts that and says to the people of this country who spoke very loudly on November 8 that yes, we want our Constitution, but we want it to apply with reasonableness to our police officers who are there to protect

the good and to carry out this great document.

Mr. CONYERS. Mr. Chairman, I am pleased now to yield 1 minute to the gentleman from Missouri [Mr. VOLKMER].

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

□ 1540

Mr. VOLKMER. Mr. Chairman, I just want to alert the Members that I will be having an amendment to this bill that would exempt the Bureau of Alcohol, Tobacco and Firearms agencies from the provisions of this bill.

BATF has been the biggest rogue, Rambo outfit that has taken guns away from innocent people, and this will permit them to break into houses, break into business houses, without a warrant. It is bad enough now with a warrant.

The gentleman from Georgia talked a minute ago about the fourth amendment. Well, he had better start looking at the second amendment, because this bill, as it is written right now, lets BATF, if somebody tells somebody, ''Hey, that guy has got an illegal gun down there in his house,'' they can go in and bust the door down and get it. If it is not there, they just say, ''Tough luck, buddy,'' just like they have said to many people in this country. I have fought BATF since the 1970's since I first came here. What do you think happened at Waco? Who was that? What happened in Idaho? Who was that?

Mr. SCHIFF. Mr. Chairman, I yield myself 1 minute.

I just want to respond and point out that if any agency breaks down a door looking for evidence and it is not there and they say, ''tough luck,'' that is true under the exclusionary rule today. The exclusionary rule only applies if something illegal is in fact found.

One of its detriments is the fact it offers by itself no protection in those situations where someone, an innocent's rights are transgressed.

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

Mr. SCHIFF. I yield to the gentleman from Missouri.

Mr. VOLKMER. If they have a warrant; if they have a warrant. If they do not have a warrant, as your bill permits it, they do not have to have a warrant to break into that house, and if the warrant is defective, even under the Supreme Court, which I disagree with, the evidence can possibly be used.

Mr. SCHIFF. Reclaiming my time, the example given by the gentleman from Missouri was, if nothing illegal is found, tough luck. That is true under the exclusionary rule today. That is my point. The exclusionary rule, since it suppresses evidence that is found that the police officers seek to use has no effect if nothing is found.

Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I had not planned to speak on this matter. I sit with the gentleman from New Mexico and the gentleman from Michigan on the House Committee on the Judiciary, I am proud to say, but I heard other speakers come to the podium, and I feel obliged to insert my oars into the water, if you will.

Mr. Chairman, no one on this floor is trashing the Constitution, as far as I am concerned. I intend to vote in favor of H.R. 666. In doing so, am I guilty of trashing the fourth amendment? Indeed not.

The gentleman from Georgia, I believe, who preceded me here, he used a key word that many are either conveniently or unintentionally avoiding, ''reasonableness,'' and ''good faith.'' Those are words you do not hear kicked around too much.

Now, I am not suggesting that every police officer and every law enforcement officer in this country is a model citizen.

I am suggesting, however, Mr. Chairman, that most police officers and most law enforcement officers in this country are good people, and most of them do their jobs orderly and properly and most of them do their jobs, in my opinion, at least speaking for the law enforcement officials in my district, they do their jobs laced very generously with good faith.

I think it is a shame that we are hearing those of us who are speaking in favor of this piece of legislation as being guilty of trashing the Constitution. I resent such charges. They are not well founded.

I urge passage of H.R. 666.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Rhode Island [Mr. REED].

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

Mr. REED. Mr. Chairman, we all want to see criminals convicted and serve prison sentences for their crimes. No one wants to hinder the police in their dangerous and difficult effort to protect all of us and to combat crime.

However, this bill is not about merely eliminating legal technicalities. It is about removing the requirement for a warrant prior to a search and seizure, and the Founders of our country believed that our citizens should be free from unreasonable searches and seizures.

The words of the Constitution, the fourth amendment, ''The right of the people to be secure in their persons, houses, and papers and effects against unreasonable searches and seizures shall not be violated.'' I am not talking about the rights of defendants or the rights of prosecutors. We are talking about a fundamental right of the people of this country, and that is what we want to protect here today.

I do not think we should chip away at that fundamental right. The warrant requirement is not a burden on law enforcement. Police can get a warrant by telephone. In fact, it takes sometimes only 2 minutes to get a warrant.

Warrantless searches are permissible under exigent circumstances. I do agree that officers who rely on a warrant that later turns out to be invalid should not be penalized. I support that part of the bill that codifies that good-faith exception.

I also support extending this exception to cases where the police relied upon a statute that later turned out to be unconstitutional.

However, I am reluctant to leave behind the presumption that in the ordinary course a police officer should obtain a warrant.

The majority would have you believe that this technicality results in many cases being thrown out. The evidence is contrary to that. The Comptroller General, in a report, indicated that suppression motions, those motions to eliminate evidence, succeed only in 1.3 percent of Federal cases. In fact, in those cases, 50 percent of the individuals are convicted anyway.

In fact, under the majority's formulation, more evidence may be thrown out as police officers have to justify after the fact their constitutional compliance.

I suggest we maintain the protections of the Constitution for the people.

Mr. CONYERS. Mr. Chairman, I yield 2¼ minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I think we need to go back to exactly what we are talking about. What we are talking about in this discussion is illegal searches.

Legal searches are not affected by this legislation.

Oliver Wendell Holmes, Justice Oliver Wendell Holmes, said the fourth amendment protects an individual's legitimate expectation to privacy. ''The right to be let alone, the most comprehensive right and the most valued by civilized men.'' The fourth amendment, Mr. Chairman, allows the State to breach an individual's right to privacy only when the amendment's rules are followed.

The purpose of the exclusionary rule is to protect innocent people from illegal searches, because it removes all incentives the police officer may have to conduct illegal searches. If an officer conducts illegal searches, a search of innocent people, those for whom he has no probably cause that there is evidence of a crime, if he conducts illegal searches, he could not use the evidence anyway if he happened to find some evidence.

So police officers do not conduct illegal searches.

This bill would remove the incentive to obey the law and gives the incentive to police officers to break the law, because if they break the law in good faith, then they can still use the evidence.

Mr. Chairman, the police officers always act in good faith. I believe that the officers who beat Rodney King were acting in good faith. If they act in good faith, they act in good faith when they develop racial profiles to target certain ethnic groups for arrests. For example, there is the drug courier profile. If you have a black or Hispanic young male driving a Florida rental car up Interstate 95, they are targeted for arrest.

Those kinds of profiles ought to be illegal. If the police find something in an illegal arrest, they can always come up with an excuse for the search.

The exclusionary rule removes the incentive for illegal searches. It protects innocent people from those searches. It is the exclusionary rule that first causes complications, but now is being complied with. We should not dilute the Constitution. We should uphold the Constitution.

We should not encourage police misconduct.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, I just am pleased to come to the well right at this point, because I think it helps show why we feel H.R. 666 is a radical diversion from the Constitution and really is trashing it.

The gentleman from Virginia who spoke before me asked some very serious questions in the committee, and that brought it all right down to where we are.

□ 1550

Right now Americans are basically protected from illegal searches and seizures by the fact that, yes, or course, today the FBI or the BATF or the local police could come and go through your house, your car, whatever, without a warrant. But if they find anything, they could not use it against you. Therefore, that is a real inhibitor. Why would you, as a FBI agent or BATF or a police officer, go running through, stopping people illegally or searching homes illegally if you could not use it to prosecute? The idea being now, if you want to prosecute someone and you have cause, you go get a warrant and then you go get it. If you take away that, which is what this bill does—this bill says if they come through your house, if they come through your car, if they do not have a warrant and the find anything, they could still use it—why would anybody go get a warrant?

Why would anybody go get a warrant? This is Monday morning quarterbacking, then. They will say, ''Oh, but the way you are protected is the court will see whether or not they have an objective standard to illegally search your house without a warrant.'' If they could not figure out something by then to say, they are not worth their pay, they are not worth their salary.

So what we are really doing as we adopt this bill is just totally doing away with the requirement to have a search warrant, because there is not penalty paid, no penalty at all paid if they illegally search.

Therefore, I hope everybody takes a great, sober second look at H.R. 666.

Mr. CONYERS. Mr. Chairman, I am pleased to yield the balance of my time to the gentleman from California [Mr. MINETA].

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

Mr. MINETA. I thank our very fine ranking Democrat on this committee for yielding me this time.

Mr. Chairman, I rise today in strong opposition to H.R. 666, exclusionary rule reform.

Mr. Chairman, this legislation in its present form is an affront to the fundamental principles upon which our great Nation was established. It hollows-out the fourth amendment and severely curtails one of our most basic civil liberties.

The exclusionary rule was designed to protect the fourth amendment right of all Americans to be free from unlawful persecution by the government. It ensures that evidence illegally obtained cannot be used in a trial.

This legislation would make a mockery of the fourth amendment. It would expand the good faith exception to say that evidence illegally obtained, in instances where law enforcement officers did not even try to get a warrnt, could be admitted in court if the officers were acting in good faith.

If we could depend on ''good faith'', Mr. Chairman, then we would not need a Constitution. But our founders adopted the Bill of Rights 200 years ago because they wanted civil liberties to be the foundation upon which this Nation was built.

We needed that protection 200 years ago, Mr. Chairman, and we need it more than ever today.

Mr. Chairman, I strongly urge my colleagues to oppose this legislation.

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

Mr. Chairman, this debate today indicates some woeful belief, I think, of the wrong direction of what we are about. My judgment on the debate I have been hearing today is that there are some Members, particularly on the other side of the aisle, who think somehow there is a constitutional right that we are undermining today, that we are doing something radical—I have heard that word used—we are making a major change that would undermine the basic rights for the protection against unlawful search and seizure in our homes. I think this needs to be put in perspective. There was no exclusionary rule of evidence prior to 1914, when the Supreme Court made the decision to enact such a rule to discourage police officers from carrying out unlawful searches and seizures. It is not a constitutional matter. It is a matter of procedure, and the courts thought this was the best way to go about doing it whenever they could do it, trying to discourage police from knowingly and intentionally doing something wrong.

There have been exceptions to this rule in orderto make it more likely to get convictions in those cases where there was no reason to have this rule. That is in cases where the police officers are not going to be deterred from doing something unlawful.

That is the whole exception that was carved out in cases of search warrants. One needs to note that this particular question of just keeping it to the search warrants has never been decided by the U.S. Supreme Court. In fact, in the fifth and 11th circuits of our system, our Federal court system, they have for quite some time allowed the good-faith exception we want to adopt today on the floor of the House. They have allowed it to be the law in those two circuits. There has been no ill that I know of that comes from that broader interpretation. And there have been a few cases where we have gotten some convictions with search and seizure evidence that we otherwise would not have gotten against the bad guys. I cannot find any instance where any harm has come from this looser interpretation that the fifth and 11th circuit courts have given to the rule that we want to adopt here today.

I would cite that there is a case going before the Supreme Court in Arizona that illustrates the absurdity of the situation we are in.

On Jan. 5, 1991, two Phoenix police officers stopped Isaac Evans for driving the wrong way on a one-way street. After obtaining Mr. Evans' identification, one of the officers ran a computer check from his car, which showed an outstanding arrest warrant for Mr. Evans. As the officers arrested Mr. Evans, he dropped a marijuana cigarette, which, along with more marijuana found in his car, was seized as evidence.

However, 17 days earlier, the Central Phoenix Justice Court had quashed the Evans arrest warrant. It is unclear whether a check in the Justice Court had failed to notify a police clerk or whether a police clerk, after receiving notice, had failed to remove the warrant from the police computer. The trial court concluded that the arrest was invalid since the warrant had been quashed and, applying the exclusionary rule, suppressed the evidence of Mr. Evans' guilt. The Arizona Supreme Court agreed, with that interpretation.

I would suggest that if the record-keeping efficiency of the Phoenix criminal justice system was what was wrong, that is what should have been corrected, not throwing out the evidence. The better solution obviously if it is the clerk who was at fault, to fire the clerk, not to exclude the evidence and deny the public the right to convict somebody who actually committed a crime we all know he committed.

We are going overboard, and to the excess, in our law enforcement process today to protect the innocent, if you

will, protect us from unlawful searches and seizures. We need to have a balance in the system, one that says, ''Yes; the rights of the individual under the Constitution are protected, but we also have a right, as the general public, to be safe and secure in our homes and on our streets of this Nation.''

We cannot be safe and secure if we go to the extremes to protect the rights of the individual under the Constitution with the created rule that we have developed in the court systems today that excludes evidence when somebody is clearly guilty, evidence of their guilt, in cases where it would not deter the police at all from doing whatever acts that they did to have excluded that evidence.

I submit that we are not doing anything complicated in this bill if we pass H.R. 666. We are simply taking what two circuit courts in the Federal system today already have adopted as the rule of evidence and apply that rule, that good-faith exclusionary rule, throughout the Nation, throughout all the circuits, to obviate the necessity of protracted litigation and the potential for more Supreme Court rulings coming down over the years in the future and that undoubtedly will gradually expand the rule to encompass all these possible cases as the fifth and 11th circuits have already done. That is all we are doing, nothing really profound, but something the law enforcement community and the general public can be very important because we need to get more convictions and do not need to let criminals get off on technicalities. That is what it is all about, pure and simple.

That is what the good-faith exception to the exclusionary rule is all about. Again I would urge my colleagues to proceed through the amendment process and keep that in mind and that in the end we have an overwhelming vote to pass this bill, as we have twice before done in this body and previous Congresses, only to see it fail because the other body did not act on it. But we have passed it overwhelmingly here this good-faith exception to the exclusionary rule in two previous Congresses in recent years.

I would urge my colleagues, before the day is out or by tomorrow if it goes to tomorrow, to pass this bill.

Mr. LAZIO. Mr. Chairman, what does the fourth amendment say? It is illuminating to read the text which describes each and every American's constitutional right:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

While the fifth amendment contains an explicit exclusionary rule in that ''No person * * * shall be compelled in any criminal case to be a witness against himself * * *'' the fourth does not. The exclusionary rule is a mechanism created by the Supreme Court designed to enforce violations of the fourth amendment.

This bill does not abolish the exclusionary rule, but rather improves it. This bill seeks to broaden the ''good faith exception'' by applying it to warrantless searches. The rationale of this is the same as searches with warrants which the Supreme Court addressed in the 1984 Leon decision. The reasoning is that since the action was taken in good faith, there would be no deterrent effect, the means by which the fourth amendment is enforced. Some critics of this bill say that it allows the police officer to be ignorant of the law. This is not the case. The bill calls for an ''objectively reasonable belief'' on the part of the police officer. The police officer's belief must not only be reasonable to him or her, it must be an objective one made in good faith.

As a former prosecutor, I have seen clearly guilty individuals go free merely because certain evidence was excluded, despite the best efforts of the police. H.R. 666 would end this unfair result. The safety of our community is more important than a law review article.

Mr. YOUNG of Florida. Mr. Chairman, I rise today in support of H.R. 666, the Exclusionary Rule Reform Act. This legislation represents title VI of the Taking Back our Streets Act, one of the 10 points of the Republican Contract With America, and continues our efforts here in the House to address our Nation's crime problem. As you know, Mr. Speaker, we have already completed work on the Victim Restitution Act.

Mr. Speaker, the fourth amendment to the U.S. Constitution protects Americans from unreasonable search and seizure of their persons, houses, papers, and effects. Under current law, if a court finds that evidence was obtained in violation of this amendment, that evidence cannot be used by the Government in its case against the defendant and is to be excluded at trial.

Unfortunately, this exclusionary rule has been manipulated by skillful defense attorneys to protect murderers, drug dealers, rapists, and robbers. In one instance, more than 250 pounds of cocaine found in a car during a routine traffic stop were ruled inadmissible at trial because the officer did not have a warrant to search the car. This strict interpretation too often leads to the acquittal of many who are obviously guilty.

In 1984, the Supreme Court modified the exclusionary rule to permit the introduction of evidence that was obtained in good faith reliance on a search warrant that was later found to be invalid. H.R. 666 codifies this decision into law. However, as the above example makes clear there is a need for a similar good faith exemption in cases where police officers, acting in good faith, conduct a search or seizure without a warrant. Today's legislation creates such an exemption by allowing evidence to be admissible so long as the law enforcement officials who gather the evidence held an objectively reasonable belief that their action conformed to the requirements of the fourth amendment.

Mr. Speaker, H.R. 666 strikes the proper balance between the rights of Americans against unreasonable search and seizure, and the rights of society to be free of criminal threat. It will help to protect America's citizens and put away America's criminals, and I urge its support.

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

THe CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the bill is considered as having been read for amendment under the 5-minute rule.

The text of H.R. 666 is as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Exclusionary Rule Reform Act of 1995.''

**SEC. 2. ADMISSIBILITY OF CERTAIN EVIDENCE.**

IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following:

**''§ 3510. Admissibility of evidence obtained by search or seizure**

''(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

''(b) EVIDENCE NOT EXCLUDABLE BY STATUTE OR RULE.—

''(1) GENERALLY.—Evidence shall not be excluded in a proceeding in a court of the United States on the ground that it was obtained in violation of a statute, an administrative rule or regulation, or a rule of procedure unless exclusion is expressly authorized by statute or by a rule prescribed by the Supreme Court pursuant to statutory authority.

''(2) SPECIAL RULE RELATING TO OBJECTIVELY REASONABLE SEARCHES AND SEIZURES.—Evidence which is otherwise excludable under paragraph (1) shall not be excluded if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that the search or seizure was in conformity with the statute, administrative rule or regulation, or rule of procedure, the violation of which occasioned its being excludable.

''(c) RULE OF CONSTRUCTION.—This section shall not be construed to require or authorize the exclusion of evidence in any proceeding.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 223 of title 18, United States Code, is amended by adding at the end the following:

''3510. Admissibility of evidence obtained by search or seizure.''.

☐ 1600

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

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. CONYERS

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. CONYERS: Page 2, strike line 1 and all that follows through the end of the bill and inserting the following:

**SEC. 2. SEARCHES AND SEIZURES PURSUANT TO AN INVALID WARRANT OR STATUTE.**

(a) IN GENERAL.—Chapter 109 of title 18. United States Code, is amended by adding at the end of the following:

**"§ 2237. Good faith exception for evidence obtained by invalid means**

''Evidence which is obtained as a result of search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the Fourth Amendment to the Constitution of the United States, if the search or seizure was carried out in objectively reasonable reliance—

''(1) on a warrant issued by a detached and neutral magistrate or other judicial officer ultimately found to be invalid, unless—

''(A) the judicial officer in issuing the warrant was materially misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth;

''(B) the judicial officer provided approval of the warrant without exercising a neutral and detached review of the application for the warrant;

''(C) the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or

''(D) the warrant is so facially deficient that the executing officers could not reasonably presume it to be valid; or

''(2) on the constitutionality of a statute subsequently found to constitutionally invalid.''

(b) CLERCIAL AMENDMENT.—The table of chapters at the beginning of chapter 109 of title 18, United States Code, is amended by adding at the end the following new item:

''2237 Evidence obtained by invalid means.''

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

Mr. CONYERS. Mr. Chairman and colleagues, we have heard continually that those who have brought H.R. 666 to the floor contend that all they want to do is codify existing law with respect to the exclusionary rule. If that is their simple goal, then what is the purpose of the current legislation before us since current Supreme Court decisions are controlling in American jurisprudence in the first place? In other words, why are we doing that?

If, however, the sponsors of H.R. 666 content that even with Supreme Court decisions it is necessary for the Congress to put them in statute, I have no exceptions save one. Let us really codify the law as it exists and not use this as an exercise, as a pretext, totally invalidate the fourth amendment protections to innocent and law-abiding citizens.

So, Mr. Chairman, I have brought forward this amendment to protect law-abiding citizens. This amendment codifies the key controlling case law on the so-called good-faith exception, which includes both the Leon case as well as the Krull case. In both cases the Supreme Court recognized a good-faith exception for police officers who rely either on an improperly issued search warrant, or as in Krull, an invalid statute as a basis to make a search or seizure of property. The reasoning of the court in these two cases was that police need this type of latitude in exercising their duties and that they should be held harmless for any error that a magistrate commits in issuing a warrant or any error that a legislature makes in passing a statute. Hence the phrase ''good-faith reliance.''

Yet, both Supreme Court decisions that define the good-faith exceptions share a crucial, common aspect, the need for a law enforcement official to rely on a source of authority outside of himself to make the final determination that probable cause exits for search for evidence. Without the requirement of an external source of authority making such a determination, government and law enforcement agencies can simply be a tribunal to themselves as to when and how they will invade the privacy of law-abiding citizens in their homes. We have already seen the results of such carelessness in ill-conceived and disastrous raids in Texas and in Idaho.

These cases dealing with good-faith reliance by law enforcement officials were developed by the more conservative Supreme Court appointees during the 1980's as a reaction to, perhaps, a very valid criticism, that the law on the exclusionary rule was too restrictive and confining on police officers. However, following the Leon and Krull cases, Justice Sandra Day O'Connor warned that the Supreme Court has reached the outer limits on the fourth amendment through its good-faith exception and that any further diminishment of the requirement of having an outside, neutral authority issue a warrant could lead to complete chaos and complete violation of our citizens' expectations of privacy in their own homes.

Justice O'Connor further warned very perceptively that some in the Congress might want to push the envelope beyond these outer bounds to that, and I quote, ''they would not be perceived to be soft on crime,'' and we are now witnessing her warning and prediction come true in the form of the bill that is before us as passed out of the Committee on the Judiciary.

My amendment would simply restate the law on good-faith reliance by police officers to exactly where it currently exists. That reaffirmation would keep the delicate balance struck by the court between assisting the police in their important duties while safeguarding the rights of innocent Americans from improper searches of their homes.

Let us remember also that in addition to the good-faith exception, law enforcement already has the right to take whatever action it deems necessary in emergency circumstances under the ''plain view'' doctrine that would not be affected. In fact, if there is a desire to codify the good-faith exception, then my amendment provides us with just such an opportunity.

I say to my colleagues, ''Support this amendment if you want to codify the existing Supreme Court decisions.''

Mr. MCCOLLUM. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Michigan [Mr. CONYERS].

Mr. Chairman, I must oppose this amendment. It actually would reserve the court rules with regard to evidence in the area of the fifth and the eleventh circuits by adopting the Leon case and one little small additional exception from one other Supreme Court ruling dealing with statutes. We already have, as I explained a few moments ago in general debate, two of the circuits of our Federal court system, the fifth and the eleventh, which for quite some time now have had this broader good-faith exception to the exclusionary rule as their rule of evidence allowing more evidence in than has been yet certified by the Supreme Court as in the Leon case, which is what the gentleman from Michigan is trying to codify into law. He would by this amendment.

So we all understand it, he would strike the bill that we have before us today and substitute his own language, his own language. The language of the gentleman from Michigan [Mr. CONYERS] is the language derived, 98 percent of it, from the so-called Leon case that deals with the good-faith exception in cases where there have not been search warrants issued. He does not broaden it to all of those cases where there have not been search warrants issued, nor would he cover the Arizona case that is now before the Supreme Court where I described a situation which a warrant had been issued, but it had been illegally quashed some 17 days before the search occurred which resulted in the contraband being seized, which was then held to be inadmissible in that particular case on the basis of the previous Supreme Court rulings.

I think this is way too narrow, and, as I said,

> It does change the law elsewhere in the country in ways that are not beneficial, and I would urge my colleagues to defeat this amendment and to stick with the broadening provisions that we have placed in this bill in order to allow the good-faith exception that all of us on this side have promoted for quite some time.

So, again I object and oppose this amendment and urge its defeat.

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

Mr. Chairman, I come down here today. I had no intention of coming down here until I started listening to the debate, and the more I listened to it, the more concerned I have become and the more convinced I am that we need the amendment proposed by the gentleman from Michigan [Mr. CONYERS].

There are very few principles in our Constitution or in the amendments in our Bill of Rights that are more sacred than protecting people and their homes from unreasonable search and seizures.

As I was in my office discussing matters with some constituents, the gentleman from North Carolina, who had a very long and distinguished career in law enforcement, came up and spoke in favor of H.R. 666, but what the gentleman said are words to this effect, that the fourth amendment applies only to law-abiding citizens, as he was 2 months ago.

I say to my colleague, ''The fourth amendment applies to everyone in this country, whether you're a law-abiding citizen, whether you are driving down the road and being stopped by the police, or whether you are walking home at night and being stopped by the police. We are all citizens, and we all have the protection of the fourth amendment against unreasonable search and seizures.''

□ 1610

Having been a police officer for 12 years, 12 years of having worked the road while I was a police officer, I also went back and got my law degree and was assigned to special investigations. I also taught constitutional law, search and seizure and criminal law at the Michigan State police academies, and I continued to work the road and to do special investigations.

No matter who you are, the fourth amendment applies to you. We do not know when the resources of the State or local or Federal Government will turn their resources on you, and you then become a suspect. You do not suddenly lose your fourth amendment rights. You cannot lose these rights.

The gentleman from Florida mentioned the Arizona versus Evans case, and he said in his comment ''We all know he was guilty.'' That is the reason why we need the fourth amendment, because we do not know people are guilty until they are tried by a jury of their peers. It is not a subjective standard. It is reasonable search and seizure.

The Leon standard as articulated by the Supreme Court in 1984, that was a Reagan Supreme Court that decided Leon. Last night we were handling President Reagan as a hero of the line item veto. Today we are saying his Court did not know what they were doing? It cannot be both ways. It cannot be both ways.

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

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

Mr. MCCOLLUM. Mr. Chairman, I have no problem with the Leon decision or what his Court decided. They did not have before them anything but the warrant cases. They had no nonwarrant cases we have up here today. So I have no squabble at all with Leon.

Mr. STUPAK. Mr. Chairman, reclaiming my time, how can one get on the floor and say under this law we all knew in Evans versus Arizona the gentleman was guilty? That is the kind of standard we cannot have.

Mr. MCCOLLUM. Mr. Chairman, if the gentleman will yield further, I never said the gentleman was necessarily guilty. I said there are many cases where the people were guilty out there who have been getting off on technicalities. Not necessarily that case. We know the evidence in that case was not allowed in, and therefore that is the problem. We assume that might have made him guilty. It might not have.

Mr. STUPAK. Mr. Chairman, reclaiming my time, the reason we don't allow it in is because the standard is to be proven guilty beyond a reasonable doubt. Beyond a reasonable doubt is a fair and honest doubt growing out of the evidence or the lack of evidence. The lack of evidence comes in when evidence illegally obtained is excluded from the courtroom procedure. It is not the subjective standard that the gentleman argues, but rather a very, very profound standard with parameters on it that the Supreme Court gives to all of us and the Constitution has guaranteed.

Let us be clear about this: The ABA studies at the time of the Leon case found that less than 1 percent of the individuals arrested for felonies are released because of illegal search and seizures, less than 1 percent. So there is a huge standard here, a very sacred standard, and we should not disregard it. Your H.R. 666, while well-intended, puts a good faith exception, and we do not know what that good faith is, other than the good faith as articulated in a police report. But the Conyers amendment says take the highest authority we have, the Supreme Court, let us codify it, and bring some reasonableness to the standard.

Believe me, if we are wrong on one or two, so be it. But less than 1 percent. Not everyone is guilty. You do not know when the resources of government will be turned on you.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. STUPAK] has expired.

(At the request of Mr. CONYERS and by unanimous consent, Mr. STUPAK was allowed to proceed for 1 additional minute.)

Mr. STUPAK. Mr. Chairman, I yield to the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Chairman, the gentleman has been a law enforcement officer for many years in Michigan. I would just like to ask the gentleman, were the exceptions to the exclusionary rule sufficient while the gentleman was operating as a law enforcement officer? You have the good faith exception, you have the emergency exception, you have a number of provisions that it seems to me would allow any officer, even without a warrant, to be able to operate, and certainly in most cases to get a warrant from the magistrate.

Mr. STUPAK. Mr. Chairman, reclaiming my time, the requirement I always felt was proper, having spent 12 years there. If I may expand, warrants are not needed in exigent circumstances like hot pursuit. Consent searches, you do not need a warrant. Stop and frisk, you do not need a warrant. Before you place someone in your squad car to transport them, you do not need a warrant. Inventory searches upon arrest, you do not need a warrant. Automobile searches, you do not need a warrant. Independent sources, and I can go on and on.

Mr. MCCOLLUM. Mr. Chairman, I move that the Committee do now rise for the purposes of having the minority leader and the majority leader conduct a colloquy on the further order of business today.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SCHIFF) having assumed the chair, Mr. RIGGS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 666) to control crime by exclusionary rule reform, had come to no resolution thereon.

## LEGISLATIVE PROGRAM

(Mr. GEPHARDT asked and was given permission to address the House for 1 minute.)

Mr. GEPHARDT. Mr. Speaker, I take this time to inquire of the majority leader about consultations we have been having on trying to work out a procedure for the consideration of the rest of the crime bills.

Mr. Speaker, I yield to the distinguished majority leader.

Mr. ARMEY. Mr. Speaker, I thank the gentleman for yielding. Let me preface my remarks by saying we have been having consultations, not only between the minority leader and myself, but between the chairman of the committee and the distinguished gentleman from Michigan [Mr. CONYERS] and other members of the committee, and the Committee on Rules, and they have been going well. So I think I can report to the Members with a high degree of confidence a probable schedule for today and the remainder of the week, with a few caveats interceded.

First of all, we expect to be able to finish the exclusionary rule reform today, and there is a very good likelihood we could be out by 7 o'clock this evening. We would begin tomorrow at 11 o'clock and, if necessary, we would finish the exclusionary rule.

We would then begin an attempt to finish the effective death penalty, subject to a unanimous-consent request that I will make in a moment that has been cleared on both sides of the aisle.